

IN THE COURT OF COMMON PLEAS

LORAIN COUNTY, OHIO

JAMES J. ARMSTRONG, etc.,

Plaintiff,

-vs-

JUDGE ZALESKI

CASE NO. 00 CV 126180

EMH REGIONAL HEALTHCARE
SYSTEM dba AMHERST
HOSPITAL, et al.,

Defendants.

- - - -

Deposition of DAVID BURKONS, M.D., taken as
if upon cross-examination before Pamela S
Greenfield, a Registered Diplomate Reporter,
Certified Realtime Reporter and Notary Public
within and for the State of Ohio, at the offices
of University Suburban Gynecologists, 1611 South
Green Road, South Euclid, Ohio, at 5:15 p.m. on
Monday, May 20, 2002, pursuant to notice and/or
stipulations of counsel, on behalf of the
Plaintiff in this cause.

- - - -

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On behalf of the Plaintiff;

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On behalf of the Defendants
Paul Bartulica, M.D., et al.

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1 DAVID BURKONS, M.D., of lawful age,
2 called by the Plaintiff for the purpose of
3 cross-examination, as provided by the Rules of
4 Civil Procedure, being by me first duly sworn, as
5 hereinafter certified, deposed and said as
6 follows:

7 CROSS-EXAMINATION OF DAVID BURKONS, M.D.

8 BY MS. TAYLOR-KOLIS:

9 Q. Dr. Burkons, we haven't actually been formally
10 introduced. My name is Donna Taylor-Kolis and
11 I'm one of the attorneys who is representing
12 James Armstrong who is the executor of the Estate
13 of Nancy Armstrong.

14 It's my understanding that you are prepared
15 to give testimony in this matter on behalf of
16 Dr. Bartulica. Is that a correct statement?

17 A. That is correct.

18 Q. Doctor, I know through what I call the
19 convenience of brief banks that you've given at
20 least 100 depositions in your lifetime, so you
21 probably know these rules; but just for the
22 record, I'd like to state my deposition rules.

23 If at any time, doctor, I ask a question that
24 you do not understand, would you extend me the
25 courtesy of telling me straightforward you don't

1 know what information I'm seeking?

2 You have to say yes. That's going to be the
3 next rule.

4 A. Yes. Yes.

5 Q. The second rule is that customarily you have to
6 answer each question, as you know, verbally so
7 that the court reporter is not placed in a
8 position of interpreting your body language or
9 what you might mean, and I take it you understand
10 that rule?

11 A. Yes.

12 Q. I further take it that you do understand that you
13 are under oath here today just as if in a court
14 of law?

15 A. Yes.

16 Q. And you would probably be aware, would you not,
17 that this is the only opportunity that I have to
18 speak with you before the trial commences?

19 A. That's correct.

20 Q. As of today's date, are you scheduled to testify
21 live at the matter of this lawsuit?

22 A. I don't know about specifically scheduled, but I
23 have said that I will be available during -- I
24 don't have a specific time or date; but that I
25 would be available to testify during the period

1 when the trial is scheduled.

2 Q. Prior to commencing the deposition, you allowed
3 me to review your personal file. I want to ask
4 you some initial questions about that.

5 Is it a fair characterization that initially
6 in this matter you were contacted by attorney
7 Joseph Farchione?

8 A. Either him or someone in his office.

9 Q. And I haven't committed these dates to memory, so
10 certainly look at your file if you would like to.

11 It appears that Mr. Farchione contacted you
12 sometime in the early summer of 2001. Is that an
13 accurate statement?

14 A. Yes.

15 Q. What day and month was it?

16 A. Well, I got my letter on June 18th, 2001. I
17 would assume that I had been contacted sometime
18 before, you know, within a week or two before
19 that by telephone to see if I was interested in
20 reviewing the case.

21 Q. Prior to this particular matter, had you reviewed
22 any other cases for Mr. Farchione?

23 A. One or two.

24 Q. And probably some other ones for Reminger?

25 A. Yes.

1 Q. And in fact have you worked with Weston Hurd?

2 A. Yes.

3 Q. And previously with Buckingham Doolittle?

4 A. I was thinking. I mean it had to be -- I worked
5 for Mr. Banas maybe 15, 20 -- 15, 16 years ago.

6 Q. And that was probably a memorable experience, I
7 would suspect.

8 Did you also, at the time that PIE was still
9 in existence, do testimony or review cases for
10 Jacobson Maynard?

11 A. I was on their, they tried to stay away from
12 people who were insured by them. I was several
13 times on -- I was insured, not by them but by PIE
14 and I was several times on their --

15 Q. Review panel?

16 A. -- review panel, yes.

17 Q. And my understanding also from reading some other
18 depositions that you've given previously is that
19 it's your testimony, or at least it was as of a
20 year ago, that you do about two-thirds of your
21 work for defendants and about one-third for
22 plaintiffs?

23 A. That's correct.

24 Q. And all of your plaintiffs' work, with the
25 exception of a case you did for a friend and one

1 other person for plaintiffs, in general are
2 outside the State of Ohio?

3 A. No. I'm now doing one here in Cleveland for Jim
4 Johnson at Koeth & Rice and just was recently
5 asked to review another one for, supposedly
6 another attorney is sending me a, something for
7 me to look at from the Columbus area.

8 Q. Doctor, just to ask for a characterization, is it
9 fair for me to conclude that as a matter of
10 custom and practice up until at least this most
11 recent case you're telling me about for Jim
12 Johnson, that you wouldn't previously have looked
13 at cases for plaintiffs attorneys in northeast
14 Ohio?

15 A. They haven't asked me.

16 Q. Do you still get referrals from Saponaro &
17 Saponaro?

18 A. Yes.

19 Q. How many cases is that a year?

20 A. Probably anywhere from two to five -- well, you
21 know, sometimes after I've been referred a case,
22 then the same firm will call me again.

23 Now, I always tell them they're supposed to
24 contact Mr. Saponaro. Whether they do or not, I
25 have no idea.

1 Q. What is your understanding of the type of
2 business that Saponaro & Saponaro are engaged in?

3 A. Apparently attorneys call them if they need an
4 expert.

5 Q. How long have you been receiving cases from that
6 particular entity?

7 A. Probably 15 years.

8 Q. How soon after you became board certified in
9 OB/GYN did you begin testifying or working as a
10 medical/legal consultant?

11 A. Well, I was, let's see. I was, probably two or
12 three years after.

13 Q. Do you know how it is that you got contacted
14 initially to do these kinds of cases?

15 A. Yeah. Actually, I do remember. There was a --
16 she still is a patient of mine, Lynn Moore, who's
17 at, not Weston Hurd. I keep wanting to say
18 Weston Hurd.

19 Q. Gallagher Sharp?

20 A. Gallagher Sharp, who was a patient of mine and
21 asked if I wanted to review a case and I said I'd
22 do that and she gave my name to somebody who gave
23 my name to somebody who gave my name to somebody
24 type of thing.

25 Q. And at that time of course you understood that

1 Ms. Moore was identified with representing
2 physicians, correct?

3 A. Yes.

4 Q. Did you obviously do some work then with Burt
5 Fulton, I would guess?

6 A. Yes.

7 Q. Today I was supposed to have brought you a \$1,500
8 check, and I assure you it exists.

9 Can you explain to me the \$1,500 covers what?

10 Is it a per hour charge or --

11 A. It's, I charge for the actual time of deposition,
12 \$500 an hour for the first three hours and \$500
13 per half-hour after that with a minimum of three
14 hours.

15 Q. So if I finish in about 25 minutes, I still owe
16 you the 1,500?

17 A. That's because I scheduled three hours.

18 Q. Okay. Fair enough.

19 MR. RISPO: We won't hold it
20 against you.

21 MS. TAYLOR-KOLIS: If I finish in
22 20 minutes?

23 MR. RISPO: Yes.

24 A. I've never had that happen, either.

25 Q. I'm going to get into your background in a minute

1 but I want to ask a question while it's on my
2 mind.

3 Initially when you reviewed this matter for
4 Mr. Farchione, it's my understanding that you had
5 certain medical records?

6 A. Yes.

7 Q. And the deposition testimony of Dr. Bartulica and
8 Dr. Celerio?

9 A. That's correct.

10 Q. Am I characterizing that correctly?

11 A. Yes.

12 Q. Could you identify for the record what medical
13 records you were provided with prior to the
14 issuance of your first report dated August 24,
15 2001.

16 A. The office chart of Dr. Bartulica. Is that how
17 it's pronounced?

18 Q. Bartulica?

19 A. Elyria Memorial Hospital, on 8/7/99, the autopsy
20 report. I think, I did not get the records of
21 Dr. Richardson until just a couple days ago, and
22 I think that's it.

23 Q. Just to be clear, it isn't that you think you
24 just got Dr. Richardson's --

25 A. I don't.

1 Q. For certain you did not receive those records
2 until May of 2002?

3 A. Yes.

4 Q. So at the time you had the records that you
5 described and, was I correct, were you given the
6 depositions of Dr. Bartulica and Dr. Celerio?

7 A. Yes.

8 Q. And it was upon those documents plus the autopsy
9 that you rendered your initial opinion; is that
10 correct?

11 A. Also there was a letter from Dr. Mendelsohn.

12 Q. I'm sorry, I missed that. You actually had a
13 letter from Dr. Mendelsohn at the time you wrote
14 your first report?

15 A. Yes, I did.

16 Q. Doctor, have you as a -- is it okay if I just
17 call you a gynecologist since this is a
18 gynecology case?

19 A. That's fine.

20 Q. -- ever dealt with a patient who had primary
21 amyloidosis?

22 A. No, and it's interesting. I as yet haven't found
23 many internists who ever have, either.

24 Q. Have you been conferring with people to see what
25 they know about this disease process?

1 A. Just asked if they've ever had a case of it and
2 almost nobody has.

3 Q. Why don't we just, we'll get this up front and
4 then Tom will remind me to go back later.

5 You have no conversance with the disease
6 process amyloidosis. Is that what your testimony
7 is?

8 A. Well, it's one of these things that in medical
9 school you see many, many slides of it because
10 it's classic pathology slides, it's one of those
11 things that, you know, anybody can look at and
12 say boy, there's something wrong there because
13 you see these huge mamilloid plaques and they
14 talk about it and then that's the end of it. You
15 never see a case of it.

16 Q. When you say classic pathology slides, you're
17 indicating maybe poetically that this is
18 something of great interest because it's clear
19 and easy to differentiate when you see it on a
20 pathology slide?

21 A. Right. It's kind of like when you're looking at,
22 if you're going to show somebody a normal
23 pathology slide and then show them a slide that
24 isn't normal, amyloidosis would be one of the
25 things because it's so distinct.

1 Q. As a result of the fact that you were retained to
2 be an expert in this matter, have you done any
3 Internet research on primary amyloidosis?

4 A. No.

5 Q. Will you be offering any opinions whatsoever at
6 trial as to whether or not it would have been
7 possible to diagnose the amyloidosis, first of
8 all?

9 A. No.

10 Q. You will not be rendering that testimony?

11 A. No.

12 Q. Will you be offering any testimony as to
13 Mrs. Armstrong's quality of life had she not died
14 on August 7th because of her amyloidosis?

15 A. Only in the extent that in -- my opinion would be
16 that if something as minor as induction of
17 anesthesia caused the problem that it caused,
18 that this lady was not going to live very long.

19 Q. You're characterizing the induction of anesthesia
20 as something not very significant relevant to a
21 person who has a disease process in their heart?

22 A. No. I'm saying that we, you know, anesthetic
23 deaths are incredibly rare today and people that
24 -- you do sick people all the time and when
25 people die from surgery from just the induction

1 of anesthesia to cause this kind of problem, in
2 my opinion -- and this is strictly an opinion,
3 it's a medical opinion without being an expert
4 medical opinion -- that this is a woman who was
5 on the verge of dying.

6 Q. Well, let me ask you this: Are you aware that
7 there's a stipulation amongst the parties that
8 Mrs. Armstrong's life expectancy would be four to
9 five years?

10 A. Well, if that's what they say.

11 Q. So you're not going to be contradicting that
12 stipulation at trial, correct?

13 MR. FRASURE: Let me just object
14 for the record. I'm not sure there is but
15 I'll let Mr. Wilt deal with that.

16 Q. Well, it's in writing; but in any event, assuming
17 hypothetically?

18 A. I would give that opinion, as I said, an opinion
19 as an educated, educated opinion without
20 pretending to be an expert in the disease or in
21 cardiology.

22 Q. In fact because you are not an expert in
23 cardiology or this particular disease process,
24 correct?

25 A. That's correct.

1 MR. RISPO: Off the record just a
2 second.

3 - - - -

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

6 - - - -

7 Q. Doctor, are you going to be rendering an opinion
8 as to the cause of death in this case?

9 A. Yes.

10 Q. And what is your opinion?

11 A. That it was due to primary cardiac amyloidosis.

12 Q. Do you also hold the opinion, doctor, that if she
13 had not had general anesthesia on August 7th,
14 1999, she would not have died that day?

15 A. My guess is she would not have died that day.

16 Q. Moving around a little bit, subsequent to the
17 time that you were retained by Mr. Farchione and
18 you wrote this initial report, August 24th,
19 2001 -- first of all, is that the first and only
20 report you wrote in this matter, doctor?

21 A. Yes.

22 Q. You were contacted by, it looks like someone from
23 Buckingham, correct, to be advised that they were
24 taking over the representation of Dr. Bartulica?

25 A. That was last week I got a call from Maria

1 somebody.

2 Q. A paralegal?

3 A. A paralegal.

4 Q. For Ron Wilt?

5 A. Right.

6 Q. And is that what then caused a letter to be sent
7 to you that Mr. Wilt wanted you to read
8 Dr. Richardson's records and deposition, I
9 assume?

10 A. Yes, and --

11 Q. Can you pull that letter for me? I think there's
12 another attachment letter also from Marie Haessly
13 dated in or around the same time submitting many
14 more documents to you. Can you locate that one?

15 A. The only other documents that I got from her
16 besides this was -- I don't see it. I may not
17 have put it because I got it faxed to me. Maybe
18 this here?

19 Q. Yes. That's what I'd be referring to.

20 A. And then the other thing that, I don't know if
21 it's here or it's not, is there is a, I have
22 never seen the initial letter from Dr. London and
23 they -- here it is, and they faxed this to me
24 actually just, I got it this weekend.

25 Q. So that I have a fair understanding of what

1 material is before you, and we'll mark that. You
2 want to just mark these A, B, and C?

3 - - - -

4 (Thereupon, Burkons Deposition
5 Exhibit A, 5/16/02 Haessly letter to Burkons, was
6 marked for purposes of identification.)

7 - - - -

8 (Thereupon, Burkons Deposition
9 Exhibit B, 5/17/02 Haessly letter to Burkons was
10 marked for purposes of identification.)

11 - - - -

12 (Thereupon, Burkons Deposition
13 Exhibit C, two-page 5/29/02 London letter to
14 Taylor-Kolis was marked for purposes of
15 identification.)

16 - - - -

17 Q. Doctor, we'll be more than happy to give you your
18 originals back but we'll need copies of these,
19 okay?

20 Burkons Depo Exhibit A is a transmitted
21 letter to you from a paralegal named Marie
22 Haessly who works for Attorney Ron Wilt dated May
23 16th, 2002. That was four days ago? I don't
24 even know what today is.

25 MR. FRASURE: We'll stipulate to

1 that.

2 Q. So about four days ago you received expert
3 reports of Jeffrey Mendelsohn, Richard Watts,
4 Kenneth Smithson?

5 A. Well, Mendelsohn's I had had that already.

6 Q. So they just resent it to you?

7 A. They just resent it.

8 Q. That's fine. Then you got the CV of
9 Dr. Smithson. By the way, did you request the CV
10 of my retained anesthesiologist?

11 A. They just sent it along with the report.

12 Q. Was it relevant or important to you in any
13 evaluation you made in this case?

14 A. No.

15 Q. And the expert report of Dr. Charles Brandon?

16 A. Yes.

17 Q. And you had not seen that previous to four days
18 ago, correct?

19 A. Correct.

20 Q. Depo transcripts of Celerio and Bartulica, which
21 I think you and I have established you previously
22 had?

23 A. Yes, that's correct.

24 Q. Deposition transcript of Lisa Armstrong and of
25 William S. Richardson, correct?

1 A. Correct.

2 Q. Have you read the deposition of Dr. Smithson?

3 A. No.

4 Q. Dr. London?

5 A. No.

6 Q. Let me ask the question simply this way: Did any
7 of the material which you were provided in those
8 items one through nine in any regard alter
9 written opinions contained in your report on
10 August 24th, 2001?

11 A. No.

12 Q. Doctor, I also noticed, since I had the
13 opportunity to go through all of the medical
14 records in your possession, that you do not have
15 any notes anywhere on those records, correct?

16 A. Correct.

17 Q. No highlighting, no notations, no flagings?

18 A. Correct.

19 Q. Do you take notes when you review medical cases?

20 A. Rarely.

21 Q. Then how do you summarize without taking any
22 notes?

23 A. I have a good retentive memory and as I write my
24 reports, I just have it all sitting in front of
25 me and, you know, I write my rough drafts and

1 redo them and have them typed and redo them
2 again. If I need to look something up, I do.

3 Q. And you don't keep those anywhere? You just
4 eventually produce a report, correct?

5 A. That's correct.

6 Q. All right. And then Burkons Depo B, the day
7 following the date of the receipt of all of that
8 material is the date you actually had an
9 opportunity to review the records of
10 Dr. Richardson, correct, or they were sent to
11 you?

12 A. They were sent to me, yes.

13 Q. When did you actually receive them?

14 A. Last Friday, which is, I believe the 17th.

15 Q. Did they have someone hand-deliver them to you?

16 A. Or it might have been Thursday. I was going out
17 of town on Friday for the weekend and I asked if
18 I could get them by the time I went out of town,
19 so they may have come Thursday. They either came
20 Thursday afternoon or Friday morning.

21 Q. Well, the letter is dated May 17th, 2002. Wasn't
22 May 17th Friday?

23 A. That must be when they came.

24 Q. So now does that refresh your recollection as to
25 whether or not they actually delivered them here?

1 A. Somebody delivered them. They were in my basket
2 so I assume they were hand-delivered.

3 Q. And you were going where for the weekend?

4 A. Chicago.

5 Q. What were you doing in Chicago?

6 A. My great-nephew had a bar mitzvah.

7 Q. Did you take those records with you to Chicago so
8 you could review them with carefulness, of
9 course, given the importance of the deposition,
10 over the weekend?

11 A. Yes.

12 Q. How much time did you spend reading
13 Dr. Richardson's chart over the weekend?

14 A. Well, I took, I picked my son up in Ann Arbor,
15 Michigan and he drove from Ann Arbor to Chicago
16 and from Chicago back to Ann Arbor and those were
17 the times that I was doing most of the review of
18 the records.

19 Q. Also in that cover letter it said, "Enclosed
20 please find the report of Dr. Andrew London," and
21 you had indicated you had not ever seen
22 Dr. London's report previously?

23 A. That's correct.

24 Q. Do you know who Dr. London is?

25 A. He's an OB/GYN from what I'm told.

1 Q. Retained to give testimony for the Armstrong
2 family?

3 A. Yes.

4 Q. Is that your understanding?

5 A. Yes.

6 Q. Before we get into your opinions in the case
7 other than the ones we've already discussed, I
8 received your CV at my office today and I'm not
9 going to go through much, doctor. Obviously you
10 practice medicine full time, correct?

11 A. Yes.

12 Q. Currently you spend what percentage of your
13 clinical time doing OB or GYN work?

14 A. Are you asking what percentage is OB, what
15 percentage is GYN?

16 Q. Yes. Of your professional time what percent is
17 spent practicing medicine?

18 A. 98 percent.

19 Q. What do you do the other 2 percent?

20 A. This sort of stuff.

21 Q. Are you currently a clinical instructor in
22 obstetrics or gynecology for any facility?

23 A. I'm currently actually a clinical assistant
24 professor now at Case Western Reserve University
25 Medical School and University Hospitals of

1 Cleveland.

2 Q. How long has that been true?

3 A. Well, I was appointed back in 1977 and I've been
4 there continuously since.

5 Q. And the facility where we are today is on South
6 Green Road. Is this the only office that you
7 operate out of?

8 A. Yes.

9 Q. And you solely exclusively have privileges at
10 University Hospital at this point in time,
11 correct?

12 A. Well, there's a surgery center in this building
13 and we have separate privileges for that surgery
14 center.

15 Q. I didn't mean to confuse myself; but in other
16 words, you don't have privileges at any other
17 local hospital?

18 A. No.

19 Q. Correct?

20 A. No,

21 Q. Doctor, you participated at University Hospitals
22 of Cleveland on a committee called specialty task
23 force on the operating room.

24 Can you tell me what that was about?

25 A. Well, it was about when they were trying to, when

1 they redid the operating rooms and to try to make
2 them more efficient. It didn't work.

3 Q. When were you on that task force?

4 A. That was back in the early '80s for about three
5 years in the early '80s.

6 Q. What issues specifically were you addressing on
7 that committee in terms of efficiency? What
8 wasn't efficient enough, I guess?

9 A. Well, the whole logistic system, you know.
10 People getting into the operating room, the
11 turnaround times. I think the major, the major
12 thing we came up with was, that did help was it
13 used to be that people were admitted, went
14 through admitting, they were admitted to their
15 postop floor and then had to be brought over to
16 the operating room and there was this huge log
17 jam because there weren't enough transporters and
18 we lobbied and now they got the system that they
19 have where they're admitted to basically the
20 recovery room, so the place does run a little bit
21 better because of that, but that was sort of the
22 thing.

23 The other thing we wanted to do was get
24 actually somebody who was in charge of all the
25 facets of the operating room, one person to be in

1 charge of admitting, the lab, the nursing. A
2 place like University Hospital, you might as well
3 be spitting into the wind. It just doesn't
4 happen.

5 Q. In terms of your obstetrical -- gynecological
6 surgeries, are you performing the majority of
7 them here at the center or downtown?

8 A. Well, I would say I do, I would probably say I do
9 80 percent of my D&Cs and laparoscopies here and
10 the other 20 percent, either because they're
11 going to be more extensive in the way of
12 laparoscopy or sometimes insurance reasons, we do
13 them at University whereas any of our so-called
14 major procedures, hysterectomies and such, are
15 all done at University.

16 Q. That was my point, you do your abdominal
17 hysterectomies downtown, correct?

18 A. Well, it's not downtown.

19 Q. I call it downtown.

20 A. University Circle.

21 Q. University Circle, okay. I noted also that since
22 1998, and there's a little hyphen so it must mean
23 current, that you are on the quality assurance
peer review community here at University Suburban
Health Center?

1 A. Yes.

2 Q. Describe for me your participation in that
3 entity. What's your function?

4 A. Well, there's a monthly meeting in which we
5 review quality assurance issues having to do with
6 the various departments of this building;
7 radiology, the surgery center, patient care
8 items. Now there's all this new thing with HCFA
9 and, you know, patient confidentiality rules so
10 that there is some overall policy for the
11 building in certain of these things.

12 Q. Do you actually participate here at this facility
13 in a peer review process? Is there peer review
14 done here?

15 A. The only peer review that is done here is, that I
16 ever participate in is in the admission when
17 somebody applies for privileges here in
18 evaluating their privileges.

19 Q. So the committee that you're sitting on, so that
20 I'm clear, is not actually evaluating the quote
21 unquote alleged substandard conduct of
22 physicians?

23 A. It has the charge to do that, but to my knowledge
24 none, that's never been brought up; but if it
25 was, that would be the committee that it went to.

1 Q. So it wouldn't be referred to as University
2 Circle's peer review committee?

3 A. No. No, unless, I mean, there are a lot of
4 people, most people here are University Hospital
5 physicians, so there may be issues that would
6 have both; but if there were some specific, say
7 for the surgery center or something like that,
8 they would be referred to that committee
9 initially before they went to the board.

10 Q. I was trying to listen, write and think all at
11 the same time and that doesn't work out too well.

12 You indicated that part of your quality
13 assurance evaluation here had to do with
14 radiology?

15 A. Yes.

16 Q. What aspect of radiology?

17 A. It has more to do with, you know, as far as I
18 know, with these committees, it has more to do
19 with the logistics of radiology rather than
20 the --

21 Q. Substance of the practice?

22 A. -- substance of the practice.

23 Q. I was indeed sorry that I had only gotten your CV
24 today because there's an article that you were a
25 coauthor and I'm going to ask you about it.

1 In 1975 in the American Journal of Obstetrics
2 & Gynecology, you were a coauthor with
3 J.R. Wilson in an article entitled,
4 "Gynecologists/Obstetricians are Primary
5 Physicians to Women. Education for a New Role."

6 Can you tell me about the substance of that
7 paper, doctor?

8 A. Well, there are actually three papers there that
9 were all -- I don't know if that was the first,
10 second or third one, but there were three papers
11 that had to do with that and that, my father was
12 an obstetrician/gynecologist and he used to
13 comment all the time that for, particularly for
14 women, you know, in their post child-bearing ages
15 until maybe they got into their 50s or 60s, we
16 were the only physician that they saw, so we were
17 doing a lot of primary care and when I was still
18 a medical student, that's when all of a sudden
19 everybody wanted to be in primary care because
20 the government was funding it a lot and
21 Dr. Wilson, who was chairman of the department at
22 the University of Michigan, gave a talk and I
23 came up and talked to him and, oh, that's
24 wonderful and I like that and I'm the chairman of
25 this and that and, you know, let's work on that.

1 So we did, initially did a study of my, of
2 physicians in Michigan and asking them what they
3 did and we determined that OB/GYNs do do a lot of
4 initial primary care and he used that as a
5 jumping off point to say that we had to do more
6 primary care in the residency program and indeed
7 a lot of the residents would probably -- I'm glad
8 they don't know that I'm responsible for this --
9 but they now do more work in the family practice
10 clinics and primary care clinics than they did
11 when I was in training.

12 Q. Do you subscribe to the philosophy that a OB/GYN
13 who is taking care of a female patient has the
14 duty to be aware of her other medical issues?

15 A. Within reason, yes.

16 Q. In this particular instance, Dr. Burkons, do you
17 have a criticism of any healthcare provider who
18 participated in Nancy Armstrong's care?

19 A. You know, not specifically. I mean, it's very
20 easy, you know, after the fact to look back and
21 say this could have been done or that could have
22 been done; but, you know, overall looking over
23 the whole thing, no.

24 Q. Let's be real clear about that. Are you going to
25 offer an opinion at trial that you have a

1 criticism of anyone, that someone in the mix of
2 Nancy Armstrong's doctors fell below the accepted
3 standards of medical care?

4 A. Well, the only one I would say after reading the
5 deposition is that, you know, Dr. Richardson
6 says, well, you know, I was busy and, you know, I
7 thought he was just calling and I said just
8 change the Lovenox whereas if somebody calls you
9 up and says, you know, I'm doing surgery on this
10 patient, you know, if you have some reason that
11 you don't think this patient should have surgery,
12 you should say well, hey, you know, I think this
13 patient needs to be worked up before we have
14 surgery and I sort of got the idea from his
15 deposition that he felt that if, you know, if --
16 nobody asked me about that. I would have said
17 don't do the surgery and if that's the case, if
18 indeed he really meant that, I would feel that it
19 would have been his duty, I mean, why else, you
20 know, why else would the doctor be calling him up
21 saying I'm doing surgery and what should I use
22 rather than the Coumadin if he wouldn't say, if
23 he wasn't calling up to find out if the patient
24 was okay to have surgery?

25 Q. Well, let's sort this out. First of all, I don't

1 like dancing on the head of a pin.

2 Are you going to walk into the courtroom,
3 this courtroom and say that Dr. Richardson
4 deviated from the accepted standards of medical
5 care?

6 A. If indeed Dr. Richardson says that he didn't
7 think that he was being consulted for medical
8 clearance, I would say that he fell below the
9 accepted standards of care.

10 Q. Let's get right to the issue. What evidence do
11 you have that he was consulted for the purpose of
12 medical clearance of this patient?

13 A. Well, why would -- if you call up, if I call up
14 one of the internists in this building and I ask
15 them, you know, Mary Smith is on Coumadin and I'm
16 going to do a hysterectomy on her next week, how
17 do you want me to handle her anticoagulation and
18 if this doctor thinks that she shouldn't have
19 surgery and he says to me, oh, well, just change
20 her to Lovenox and doesn't mention that he
21 doesn't think she should have surgery, that's
22 ridiculous.

23 Q. Doesn't the gynecologist have an independent duty
24 to clear the patient for surgery?

25 A. In the real world? No.

1 Q. So you're telling me that the standard of care
2 right now in 2002 in your mind the gynecologist
3 does not have an independent separate duty to
4 clear a patient for an abdominal hysterectomy?

5 A. If the gynecologist feels that the woman has a
6 severe medical problem, I mean, I can give you an
7 illustration from this morning. I did a
8 hysterectomy this morning on a 74-year old woman
9 with a pacemaker who's had a lot of cardiac
10 problems.

11 I made sure that she saw her cardiologist
12 last week and he did adjustments until he was
13 satisfied and then we went ahead and operated on
14 her. If my patient is a 45-year old woman,
15 46-year old woman who does not seem particularly
16 symptomatic, you know, I assume that she is, I
17 assume that she is healthy and if she goes to see
18 anesthesia and anesthesia is going to ask her a
19 legitimate question, every once in a while
20 anesthesia will call me up and say did you know
21 that Mrs. So and So, this and that. Well, you
22 know, I didn't really know that, or she told me
23 this. So I think it all depends on what is the
24 overall health of the patient and if the patient
25 has, very often if the patient has an internist,

1 I'll call them up and say, Mary Smith has said
2 she has this and that she's on these medications,
3 do I have to do anything different for surgery
4 and they'll say yes or no. I mean that I feel is
5 my duty.

6 Q. Do you understand from Dr. Richardson's
7 deposition that he did not believe that he was
8 being asked to give her surgical clearance?

9 A. Well, I don't know why he thought that he was
10 getting called. I mean, that's what he says and
11 I feel that that is --

12 Q. He expressed that he believed he was being called
13 because Dr. Bartulica had an issue as to what to
14 do with her blood thinner; is that not his
15 testimony?

16 A. That's his testimony.

17 Q. Okay. Did you read Dr. Bartulica's testimony
18 where he assumed that she had been physically
19 examined in contemplation of this surgery by
20 Dr. Richardson?

21 A. I believe that's the case.

22 Q. When did Dr. Richardson last see Nancy Armstrong
23 before this surgery?

24 A. I believe it was in, the surgery was in, what --

25 MR. FRASURE: You can look at

1 your records, doctor. Don't guess.

2 A. Her surgery was in August, was it not?

3 MR. FRASURE: Yes.

4 A. I believe he saw her in June or July.

5 Q. Well, do you know precisely what date?

6 A. I'd have to look for that.

7 Q. Why don't you do that?

8 A. She was seen by the neurosurgeon July 30th.

9 Q. What neurosurgeon is that?

10 A. Dr. -- I don't know if I can pronounce his name.

11 Dr. Eltomey --

12 Q. Eltomey?

13 A. Eltomey.

14 MR. FRASURE: E-L-T-O-M-E-Y.

15 A. -- on July 30th. I see that -- she was seen I
16 can see, on 5/27/99 she was seen, so that may be
17 the last time, 5/27, so about June 1st.

18 Q. I didn't bring my records but I'm going to
19 suggest to you that she did see Dr. Richardson
20 the first week of July, if you want to look a
21 little bit harder.

22 A. Well, as I said, what I'm seeing here is a lot
23 of, here's progress notes.

24 Progress notes is probably where you'll find it.

25 There's a pharmacy request, 6/21/99. I don't

1 know if they have those in those orders or not.
2 Let's go back here. This is a phone call,
3 7/28/99, there's a phone call.

4 Q. You're getting warm.

5 A. 7/6/99. That looks like it.

6 Q. There we go.

7 For the purposes of this deposition, can I
8 get you to just assume that that is the last
9 physical visit --

10 A. Sure, yes.

11 Q. -- that Dr. Richardson ever had with her?

12 A. Yes.

13 Q. Was it clear to you from his deposition that when
14 he received a telephone call from Dr. Bartulica
15 on I believe August 5th, he was unaware that
16 Nancy was scheduled for a hysterectomy?

17 A. Well, why would they be wanting to switch her
18 from Coumadin to Lovenox if she wasn't going to
19 be scheduled for surgery? There would be no
20 reason to do that.

21 Q. Dr. Bartulica called Dr. Richardson, do you
22 understand that from the testimony?

23 A. Yes.

24 Q. But on that day he had not previously been aware
25 that there was a scheduled hysterectomy?

1 A. That's correct, yes.

2 Q. And from his testimony and now looking at his
3 note, it's clear that the last time he saw her on
4 July 6th he had no information whatsoever about a
5 hysterectomy. Would you agree with that?

6 A. Yes, I would.

7 Q. In looking at Dr. Bartulica's chart, and you can
8 take all the time you want, do you from
9 recollection know the date that Dr. Bartulica
10 suggested this surgery?

11 A. Well, yes, it was fairly soon before the surgery
12 because he said the woman wanted to have it
13 fairly soon; so, and he had suggested surgery to
14 her, at least laparoscopic surgery to her back in
15 I believe it was '95 or '96.

16 Q. When is the first mention of a total abdominal
17 hysterectomy in Dr. Bartulica's chart?

18 A. It may be in this 7/22/99 maybe.

19 Q. I think you might be right, but go ahead and look
20 at it.

21 A. Yes. Severe pelvic pain. Yes.

22 Q. So let's just get to where we are
23 chronologically.

24 We know that on July 6th, 1999 Nancy has an
25 office visit with her internist and no mention of

1 a total abdominal hysterectomy is there, correct?

2 A. Correct.

3 Q. There is also no evidence in the chart that at
4 any time before July 22nd, 1999 did Dr. Bartulica
5 suggest the same. Would you agree with that?

6 A. Yes.

7 Q. Now, we've also established that there was
8 telephone contact between Richardson and
9 Bartulica initiated by Bartulica on August 5th.
10 Would you agree that that's what the state of the
11 record shows?

12 A. If it was August 5th, fine. I mean, I know it
13 was between the time that he saw her and before
14 the surgery.

15 Q. I paid you for three hours. We've got plenty of
16 time.

17 A. Certainly I found nothing to --

18 Q. You'll stipulate to that?

19 A. I'll stipulate to that, that's fine.

20 Q. Now, if Dr. Bartulica's testimony is that he was
21 relying upon the fact that Mrs. Armstrong was
22 going to have a physical examination by
23 Dr. Richardson, don't you think that it was
24 incumbent upon him to ask Dr. Richardson if she
25 had appeared in his office for a physical exam

1 for medical clearance?

2 A. Well, state that one again.

3 MS. TAYLOR-KOLIS: Sure. Can you
4 read it back to him, please, Pam.

5 - - - -

6 (Thereupon, the requested portion of
7 the record was read by the Notary.)

8 - - - -

9 MR. FRASURE: Let me object. It
10 doesn't include all the testimony but go
11 ahead.

12 A. Yes.

13 Q. Doctor, as a gynecologist who performs abdominal
14 hysterectomies, when you are aware that your
15 patient has had other medical problems in or
16 around the time you're going to do a
17 hysterectomy, do you write for a consult to the
18 internal medicine physician?

19 A. If I think they need a consult, I'll either tell
20 them to go get one or sometimes I'll call the
21 internist myself. I don't actually physically
22 write usually.

23 Q. So it's not, if it's not your habit to write for
24 the consult, at a minimum, however, you're saying
25 that you would call the internal medicine doctor,

1 correct?

2 A. Uh-huh, yes.

3 Q. Or alternatively tell the patient to schedule an
4 appointment.

5 How do you confirm that the patient has had
6 an appointment with an internal medicine
7 physician and received actual clearance?

8 A. Well, as I said, in the vast majority of cases,
9 we don't require any clearance and this would be
10 a case that probably other than changing her
11 Lovenox, I would not particularly feel she needed
12 a clearance.

13 Q. That kind of gets to my point. As a
14 gynecologist, given what you knew, the issue that
15 apparently was concerning Dr. Bartulica was was
16 he going to be able to appropriately manage her
17 anticoagulants. Is that what you gleaned from
18 reading Dr. Richardson's deposition?

19 A. Yes.

20 Q. And that's what you would have done, you would
21 have picked up the phone and talked about that,
22 correct?

23 A. Correct.

24 Q. Once you get past that issue, doctor, don't your
25 patients go to preadmission testing?

1 A. Most of it we do here in the building, yeah.

2 Q. I don't care if it's in the building or not in
3 the building, your patients go through
4 preadmission testing as ordered by you, the
5 surgeon, correct?

6 A. Correct.

7 Q. Just like what Mrs. Armstrong went through,
8 correct?

9 A. Right.

10 Q. Have you had an opportunity to carefully read the
11 preadmission testing records of Amherst Hospital?

12 A. Yes.

13 Q. Now I just want you to play this hypothetically
14 with me.

15 If Dr. Bartulica truly believed that
16 Mrs. Armstrong had received surgical clearance
17 from Dr. Richardson, why didn't he pick up the
18 phone and call Dr. Richardson and tell him about
19 the two abnormal findings: The chest x-ray and
20 the EKG?

21 A. First of all, he may not have felt that they were
22 that abnormal and if anesthesia was happy with
23 them, he was going to be happy with them.

24 Q. Well, isn't that kind of circular? I mean,
25 you're saying two things. Are you saying that

1 you believe that Paul Bartulica evaluated the
2 chest x-ray and the EKG and made an independent
3 medical decision that these were not serious
4 issues?

5 A. No. I'm saying that Dr. Bartulica felt that if
6 anesthesia didn't feel they were serious issues,
7 that there wasn't any reason he should feel they
8 were serious issues.

9 Q. I'm sorry. Are you finished with your answer
10 now?

11 A. Yes.

12 Q. So what I hear you saying, so we're going to be
13 clear about this before we leave this room today,
14 even though Dr. Bartulica has testified that
15 clearance was given by the internal medicine
16 physician, it was not the standard of care for
17 him to call that physician back and advise him
18 there were new findings. Is that what you're
19 testifying to?

20 MR. FRASURE: Objection to the
21 characterization of new.

22 A. What I'm testifying to is that Dr., his
23 understanding was Dr. Richardson did not feel
24 there was any reason that the patient could not
25 have surgery from a medical point of view.

1 In his opinion, the changes, and I happen to
2 agree, that the changes seen on the chest x-ray
3 and on the EKG, if they were not, if they did not
4 have accompanying physical findings, were not
5 reasons to hold off surgery.

6 Q. I want to be clear. Are you changing what you
7 initially said which was that he didn't have to
8 make that decision, he would defer to anesthesia
9 and let them make the decision whether she was
10 going to be cleared at that point?

11 MR. FRASURE: Objection. Too
12 many assumptions in there. Go ahead.

13 A. There's a difference between clearance for
14 surgery and clearance for anesthesia. Clearance
15 for surgery means that the internist says, you
16 know, there's no reason that I can see, internist
17 or family practitioner, general medical doctor
18 says there's no reason that I can see in this
19 case that this lady can't have the surgery that
20 you're planning to do.

21 The anesthetic clearance is a completely
22 different thing. Anesthesia says on this day
23 given the findings that I have here, this patient
24 can undergo whatever anesthesia is that we're
25 planning to do.

1 Q. I'll reask it until I get it refined, I suppose.

2 In terms of medical clearance, if Dr. --
3 first of all, you're capable of giving medical
4 clearance, correct, as the gynecologist?

5 MR. FRASURE: In any case? This
6 case?

7 Q. Well, in general. I mean, you can give clearance
8 for your own patients, correct?

9 A. Well, I mean, it may depend. I mean, as I said,
10 the patient I did today, anesthesia wasn't going
11 to take my word for it. I mean, I don't do
12 pacemakers, so I mean it depends.

13 On the other hand, if I send a, you know, a
14 45-year old woman who is in basically good
15 health, the anesthesia assumes that they're
16 healthy, that I think they're healthy.

17 Q. May I ask if you're referring to Nancy Armstrong
18 as a relatively healthy 45-year old woman?

19 A. What I'm saying is it depends on the patient. I
20 mean many, many times if the patient is otherwise
21 healthy, it can be a 30-year old woman, it can be
22 a 25-year old woman that has severe problems that
23 they're going to want, you know, an internist or
24 a neurologist or a surgeon's clearance for and
25 there might be an 85-year old woman that they're

1 going to say fine, she's healthy. So it just
2 depends on the basics of the patient.

3 Q. Let's go backwards, then. In this question I'm
4 asking based on all these hypothetical
5 assumptions, that Dr. Richardson gave medical
6 clearance.

7 If that was Dr. Bartulica's belief, you are
8 testifying under oath today that it did not
9 deviate from the standard of care for
10 Dr. Bartulica not to call Dr. Richardson back and
11 tell him of these new findings?

12 A. It did not, except I think, because you're saying
13 because they aren't, at least as far as I can
14 tell, they aren't new findings.

15 Q. Well, let's talk about that in a minute.

16 Do you have any understanding based upon your
17 reading of the depositions of Dr. Celerio and
18 Dr. Bartulica, as to what communication
19 Dr. Bartulica actually had with Dr. Celerio
20 regarding the EKG findings and the chest film?

21 A. As far as I know, there wasn't any, as far as I
22 know, there was, as far as the chest film goes,
23 it was from Dr. Bartulica's office to anesthesia
24 that if anesthesia was okay with the chest film,
25 it was okay with him to go ahead.

1 Q. You read the deposition testimony of Nurse
2 Mehalko?

3 A. No.

4 Q. Nurse Mehalko has testified under oath that when
5 Dr. Bartulica called her regarding the PAT
6 findings -- you understand how that works, they
7 faxed this wet read -- she has a note recorded in
8 the chart, and she stands by that note, and that
9 note says, "Cleared for surgery per
10 Dr. Bartulica."

11 Have you read that note in the chart?

12 A. I probably did. I'd have to look.

13 Q. You're relying upon what he has written on the
14 bottom of the wet read, "If okay with the
15 anesthesia, will proceed"?

16 A. Well, yeah, because that's basically how we
17 handle things, too. I mean, we send things, it's
18 okay for us to go ahead with surgery, but if
19 anesthesia isn't happy with it, then we don't do
20 the surgery or we conference with them.

21 Q. When you say conference with them, how do you
22 conference with anesthesia in a situation like
23 this where there's an abnormal finding on the
24 chest x-ray and an EKG that is concerning?

25 A. Well, talk to anesthesia and say, you know, after

1 you evaluate the patient, if you're happy with
2 the findings and are willing to go ahead with it,
3 I'm more than happy to do the surgery.

4 Q. Doctor, are you aware from the deposition
5 testimony of Dr. Bartulica that he did not tell
6 either Mr. Armstrong or Mrs. Armstrong that there
7 was an abnormality on the EKG?

8 MR. RISPO: Objection.

9 MR. FRASURE: Objection. Go
10 ahead.

11 A. As far as I know, he did not.

12 Q. Are you aware that he did not tell them there was
13 a finding on the chest film?

14 A. As far as I know, he says he did not.

15 Q. Do you not believe that he had an obligation to
16 advise his patient that there were some findings
17 that might indicate a problem?

18 A. Well, it depends on what you mean by indicate a
19 problem. I mean, to me, you know, as you know,
20 I've done these before.

21 Q. Yes.

22 A. And I think that this is kind of a red herring.
23 I mean, if he went and said to the patient, well,
24 you know, there's a minor finding, there's a
25 minor finding on your chest x-ray, there's a

1 minor finding on your EKG and I really don't
2 think, and anesthesia doesn't really think that
3 it's going to cause you any problems but if you
4 want to you can go get it fully worked up, I
5 doubt the patient would have said I'll go do it.

6 As opposed to we have these findings here.
7 If we put you to sleep, you may die but we'll go
8 ahead with the surgery if you want to; but it
9 depends how you present it to the patient. If
10 they're very minor findings, which in this case
11 were both present before she had her last surgery
12 which apparently nobody talked to them about
13 either, I mean, the whole point is I don't think,
14 I think that when we have these relatively minor
15 findings like this, we often don't mention them
16 to the patient, so if you want to put it that
17 way, I don't think it was his --

18 Q. So you don't believe the standard of care
19 required, first of all, Dr. Bartulica to get to
20 the root of what, first of all, these two
21 abnormal findings were. That was anesthesia's
22 job?

23 A. Yes.

24 Q. And he didn't have a conversation with the
25 anesthesiologist, so he couldn't have

1 communicated the anesthesiologist's thinking to
2 the patient, correct?

3 A. Well, the anesthesiologist's thinking was we can
4 go ahead with the surgery or we wouldn't have
5 gone ahead with the surgery.

6 Q. Well, let me ask you a couple other questions in
7 this venue, I suppose.

8 Do you expect that when there is a finding on
9 a chest film, and we can read it right out of the
10 chart, whether it was atelectasis or right lower
11 lobe consolidation, do you expect that the
12 anesthesiologist will look at the plain chest
13 film?

14 A. Only if they feel from their physical findings, I
15 mean a chest film is a chest film. Physical
16 findings are still more important and if he's
17 satisfied, I mean these are, having minor
18 atelectasis is not that unusual a finding and if
19 somebody then listens and their physical
20 examination is to their satisfaction to go ahead
21 with the type of anesthesia that he was planning,
22 then there wouldn't be any particular reason to
23 look at it; however, I would think that, as an
24 attending physician, that if the anesthesiologist
25 had a real question about it, I would figure that

1 they would go look at the film.

2 Q. Wouldn't you want the anesthesiologist to make a
3 decision, since you are testifying that the GYN
4 won't be doing it, as to what that represents for
5 the patient?

6 A. I think that the anesthesiologist takes that all
7 into account, reading what's there, takes the
8 physical findings and puts in his or her own mind
9 whether this is a counterindication to surgery
10 without further workup.

11 Q. You do realize that Mrs. Armstrong had decreased
12 breath sounds on the morning of surgery?

13 A. Yes.

14 Q. And you don't consider that a symptom for which
15 the surgeon or the anesthesiologist should have
16 concerned themselves?

17 A. Well, you're asking me about, first of all, I
18 don't know that necessarily the surgeon knew that
19 she had decreased breath sounds. The
20 anesthesiologist, if the anesthesiologist felt
21 that she had decreased breath sounds, then it was
22 his business to -- and felt it was his business,
23 if he felt that that was significant, to
24 investigate it.

25 Q. Doctor, didn't PAT report to Dr. Bartulica on the

1 5th that there were decreased breath sounds with
2 right lower lobe atelectasis? You can look.

3 A. Fine. And even if they did, as I said, this is
4 what, this is exactly why you have an
5 anesthesiologist is the anesthesiologist
6 determines whether this is something that is a
7 counterindication to surgery.

8 Q. Do you want to look and see --

9 A. Well, I'll take your word for it. That's not
10 going to change my opinion. My opinion is that
11 the anesthesiologist listens, listens to the
12 breath sounds on the morning or should, listens
13 in the morning. Maybe after the patient clears,
14 coughs or clears and if he or she is satisfied
15 that, with this, then as far as I'm concerned,
16 that's perfectly okay.

17 Q. In retrospect, do you now know today what that
18 atelectasis represents?

19 A. Probably some congestive heart failure.

20 Q. Pleural effusions from the heart failure, would
21 you agree with that?

22 A. Well, I, you know, that's what it sounds like to
23 me.

24 Q. You practice at this facility but let's assume
25 that you're not downtown, you're at University

1 Circle, if you were going to be doing a total
2 abdominal hysterectomy at University Circle,
3 would you have the preadmission testing done down
4 there or up here, just to give me --

5 A. Depends on the case.

6 Q. You've been a surgeon for a fairly good number of
7 years, doctor.

8 When you receive a wet read, you know that's
9 not the final read, don't you?

10 A. Well, most of the time we don't -- right. I mean
11 sometimes we get called for it, but then there is
12 a, usually we assume that if there's anything
13 abnormal, they're going to tell us about it from
14 the wet read.

15 Q. And sometimes they don't catch everything on the
16 wet read. Would you agree with that?

17 A. Sure.

18 Q. And that's why we have final reads, correct?

19 A. Correct.

20 Q. Now, unfortunately -- never mind, I'm going to
21 take that back. I know you guys have Decrad at
22 UH so we're going to leave that out of the
23 combination.

24 Did you notice in the medical chart the date
25 and time of the transcription of the final read

1 on the chest film in this case?

2 A. I can't say that I did.

3 Q. Would you look it up for me just so that you
4 don't have to take my word for it? It should be
5 probably in that one. Your first skinny packet
6 you got would have Amherst Hospital on it.

7 MR. FRASURE: It's under 2.

8 A. Is this it, August 5th? It says, "Right lower
9 lobe consolidation and effusion. Follow up to
10 resolution."

11 Q. Are you looking at the final read?

12 A. I don't know.

13 Q. If you could show it to me, I'll indicate which
14 one you're looking at.

15 Right. Why don't you read it starting at the
16 top.

17 A. "Radiology report."

18 Q. Yes.

19 A. "August 5th. Clinical information: Cough.
20 Symptoms: Chest tube used. Cardiomegaly seen in
21 the chest. Right lower lobe consolidation.
22 Associated pleural effusions are seen.
23 Possibility of pneumonia is considered. Follow
24 up to resolution is recommended, right lower
25 lobe. Impression, right lower lobe consolidation

1 and effusion. Follow up to resolution."

2 Q. And do you see the time it's transcribed?

3 A. 10, is that 10:12 and 56 seconds on 8/6/99.

4 Q. So the day following the PAT examination, the
5 hard copy is transcribed?

6 A. Right.

7 Q. Doctor, as you sit here today, do you know
8 whether or not that was in Mrs. Armstrong's
9 medical chart on the 7th?

10 A. I have no idea.

11 Q. Aside from that question, if you were the OB/GYN
12 and were advised that there's a finding of
13 cardiomegaly on this film, what would you think
14 the standard of care would have required you to
15 do in response to that?

16 A. Well, first thing I would think that, at least
17 from this report, the cardiomegaly must not be
18 very important because it's not in the impression
19 which is usually all I read in the chest film
20 anyway and it's not, you know, I get these, I get
21 mammograms, I get chest films, I get ultrasounds
22 all the time and the only thing I normally read
23 is the impression; so the way I read these
24 things, I wouldn't even have known about the
25 cardiomegaly because it wasn't even mentioned in

1 the impression, which means the radiologist must
2 not have been very impressed with it.

3 Q. Well, by definition wouldn't cardiomegaly mean
4 she had an enlarged heart?

5 A. Yeah, but there's different degrees of
6 cardiomegaly and all I'm saying is the
7 cardiologist -- the radiologist for whatever
8 reason did not mention it in the impression and
9 usually the impression is what they're impressed
10 with.

11 Q. Did you see the chest film in this case?

12 A. I haven't seen the chest film.

13 Q. Are you capable of reading a plain film chest
14 x-ray?

15 A. Yes.

16 Q. Should a GYN be capable of looking at a plain
17 film chest x-ray?

18 A. Well, you can look at it. I mean, obviously it's
19 only if things are maybe -- you know, I haven't
20 looked at many chest films in the last 25 years.

21 Q. Because you rely on your radiologists and your
22 anesthesiologists to do the same?

23 A. I mean, I don't know if the anesthesiologists
24 look at it. I think mainly we rely on the
25 radiologists.

1 Q. In your reading of Dr. Bartulica's chart, do you
2 have any reason to believe that there are any
3 missing records?

4 A. No.

5 Q. Seem like a complete chart to you?

6 A. Yes.

7 Q. Were you able to find a consultation note in
8 Dr. Bartulica's chart where he is advising
9 Mr. and Mrs. Armstrong together about the risks
10 of this particular procedure and the necessity
11 for the same?

12 A. No.

13 Q. You can't find a note that says that?

14 A. Not that I can recall.

15 Q. Would you in fact, doctor, chart a conversation
16 where a decision had been made to proceed to
17 surgery and note in that note the attendance of
18 the spouse and your patient?

19 A. I usually do, yes.

20 Q. Are you critical of Dr. Celerio at all in this
21 case?

22 A. No. I mean, I don't consider him, as far as how
23 things were handled after the arrest and
24 everything, I don't feel that I have the
25 expertise to be critical or noncritical, I mean,

1 as to how he handled things after everything hit
2 the fan.

3 Q. Okay. I wasn't talking about after it hit the
4 fan. Do you have any criticisms of Dr. Celerio's
5 failure to follow up on an EKG which has been
6 interpreted by a cardiology group as perhaps
7 showing evidence of an MI of indeterminate age?
8 Are you critical of him for that?

9 A. Well, I think he did follow up on it in that he
10 asked appropriate questions of the patient.

11 Q. Are you saying she had no cardiac symptoms on the
12 preanesthesia checklist?

13 A. I'm saying that he asked her about things, about
14 her cardiac history, about her chest history and
15 he was satisfied that she was a fit candidate for
15 anesthesia.

17 Q. Was he correct?

18 MR. FRASURE: In hindsight?

19 A. In hindsight --

20 Q. Well, was he correct?

21 A. In foresight, as far as I can see, I don't see
22 any reason from the findings that were on this
23 patient that this patient couldn't have gone to
24 surgery. I've operated on people and anesthesia
25 has put people to sleep with a lot worse findings

1 than these.

2 Q. Do you have an opinion, doctor, as to whether or
3 not if Mrs. Armstrong had undergone a cardiac
4 consult, whether they would have been able to
5 determine her underlying pathology?

6 A. From what I read, and if you look up there, the
7 Harrison's is missing up there because I read it
8 today and it's apparently extremely difficult to
9 diagnose amyloidosis without a biopsy of the
10 heart.

11 Q. Would you, you went to Harrison's because it's a
12 textbook you have that you like in internal
13 medicine. Is that a fair statement?

14 A. No. I walked in here today and that's what's up
15 on the wall.

16 Q. Okay. So you just sort of picked that textbook?

17 A. Well, I mean, it's a good textbook. It's the one
18 I used. I think this is the 10th edition. I go
19 back to probably about the 4th edition when I was
20 in medical school.

21 Q. I'm just going to ask you this question outright.
22 You'll probably say no because I forgot who you
23 work for; but in terms of national reputation,
24 would you agree that the Cleveland Clinic
25 Foundation has one of the finest cardiology

1 treatment and diagnostic centers in this county?

2 A. Well, I would think so, yes.

3 Q. How about the Mayo Clinic? What do you think of
4 their caliber?

5 A. Certainly by reputation.

6 Q. You've had the opportunity to read Dr. Celerio's
7 deposition. We've already established that?

8 A. Yes.

9 Q. You are aware that he has some criticisms of
10 Dr. Bartulica?

11 A. Yes.

12 Q. Do you agree with any of the criticisms that
13 Dr. Celerio has about Dr. Bartulica?

14 A. No.

15 MR. FRASURE: Objection.

16 Q. Do you think any of his criticisms are
17 reasonable?

18 A. As I said, I think that this patient, as she
19 presented, with the symptoms she presented, with
20 the history she presented would not be one that
21 would set off alarm bells in my mind as a
22 gynecologist to, you know, make a big point to
23 call the anesthesiologist and say, you know, I
24 really want you to go over this patient with a
25 fine-toothed comb.

1 So I, if I, you know, my feeling is, as I
2 feel I'm a prudent physician, and presented with
3 the history that this woman gave me and the fact
4 of what she had been through before, I would have
5 sent her down for, you know, for cardiac
6 clearance -- not cardiac clearance, anesthetic
7 clearance as a normal matter of course and
8 probably would have had no contact with the
9 anesthesiologist, wouldn't even know who was
10 doing the anesthesia until the morning of
11 surgery.

12 Q. Did you read the nursing notes for the morning of
13 August 7th, 1999?

14 A. I probably did.

15 MR. FRASURE: August 2nd? 7th,

16 I'm sorry.

17 Q. August 7th, the morning of the surgery.

18 A. Is that under this adult pediatric -- adult
19 history/physical?

20 Q. Just her plain old in-room nursing notes?

21 A. I don't, I probably looked at them but I don't
22 know which ones they are specifically.

23 Q. Well, I guess the reason I'm asking --

24 MR. FRASURE: Here, it's under --

25 Q. Mark might be able to find it for you.

1 A. Nurses' notes? It could be under nurses' notes.

2 Q. I know that's a strange place to put them, isn't
3 it?

4 Okay. Can you read, doctor, what
5 Mrs. Armstrong's expressions were in terms of her
6 physical condition that morning out of the
7 nurses' notes?

8 MR. FRASURE: What page?

9 A. If you tell me a page specifically --

10 Q. 000067.

11 MR. FRASURE: The numbers are at
12 the bottom.

13 Q. They should all have the same page numbers, but I
14 don't know.

15 You see when she's admitted at 8:30, the
16 patient is expressing she's feeling nervous and
17 is having palpitations. Do you see that?

18 A. Correct, yes.

19 Q. Do you believe that's something that
20 Dr. Bartulica should have read and at least taken
21 an interest in?

22 A. Well, I hardly ever read the nurses' notes
23 myself, so, you know, for these kinds of things.
24 I come in and the nurse tells me whether she
25 thinks there's any problem and I can't say I sit

1 and read the nurses' notes, no.

2 Q. Do you know whether or not Dr. Bartulica actually
3 ever came to Nancy Armstrong's room that morning
4 before surgery?

5 A. I have no idea.

6 Q. Do you think he should?

7 MR. FRASURE: Come to her room?

8 Q. Yes. Do you talk with your patients before they
9 come down to the OR?

10 A. I mean --

11 MR. FRASURE: That morning as
12 opposed to some other day?

13 Q. That morning, that's right, as opposed to any
14 other day.

15 A. I always talk to my patients. They don't come to
16 a room. I see them in the preanesthetic area and
17 I always talk to the patient. In fact, I think
18 in most cases at University Hospitals they won't
19 take the patient into the operating room until
20 the surgeon has come by, so I always --

21 Q. I think you might be right.

22 A. -- so actually I see the patient always, you
23 know, to say hello and any last-minute questions,
24 and that's that.

25 Q. And by last minute, I mean, when you say last

1 minute, you want to come look at the chart, make
2 sure you've crossed all the Ts and dotted all the
3 Is and that your patient is ready for surgery?

4 A. That's right.

5 Q. Have you reviewed records in Dr. Bartulica's
6 chart from a Dr. Boye-Doe?

7 A. Yes.

8 Q. When did you review those?

9 A. Well, if they're -- well, I think I did. I mean,
10 I know I did but since I've only -- unless --
11 since I only have these two packets, it must be
12 in here.

13 Q. Well, I'll take a look and see if I can find them
14 for you. You can take a look and see if you can
15 find them in there.

16 A. Because I know I did see them. Here they are. I
17 believe they're some typed records in here. Here
18 they are. I knew I saw them. They're the typed
19 records. Okay. I got them.

20 Q. All right. The only reason I asked if you had
21 them, it's going to be clear at trial, when I
22 originally received Dr. Bartulica's records, they
23 didn't come with this. I didn't get this until
24 later, but I want to ask you a question about it.

25 A. Okay.

1 Q. There is a note from Dr. Boye-Doe dated 1/7/98.
2 Not from. In his chart.

3 A. 1/7/98.

4 Q. Did I say '89?

5 A. 1/7/98, okay.

6 Q. And I'm reading it, and I don't think it's any
7 big mystery because fortunately he types it. It
8 says, "Patient had previously been told that she
9 would need to have a cardiac consult and an
10 echocardiogram before her surgery due to being on
11 Redux and also she's having continued chest pain
12 and shortness of breath."

13 You see that note?

14 A. Yes.

15 Q. Did Dr. Bartulica have an obligation to share
16 this chart information with Dr. Celerio?

17 A. Well, in the scenario that has happened, the
18 patient, between the time of this note and the
19 time of this surgery, has undergone a four-hour
20 operative procedure, so obviously the people were
21 happy with her problems before then. I don't
22 think he has any reason to think that there would
23 be any, that since she had a procedure, you know,
24 a few months before that lasted for four hours
25 and was a major procedure that, I would just

1 assume that everybody was happy with these things
2 before then. You don't redo everything again.

3 Q. That really wasn't my question.

4 Dr. Celerio was not the anesthetist at
5 Mrs. Armstrong's prior procedure, was he?

6 A. No. I don't think so.

7 Q. And, doctor, you are not trained sufficiently to
8 be able to determine whether or not the induction
9 medications used by Dr. Celerio were more or less
10 toxic than the ones used in her previous
11 procedure, correct?

12 A. No. That is correct.

13 Q. All right. So my question is: Didn't
14 Dr. Bartulica have an obligation to share with
15 Dr. Celerio that a prior physician who was
16 managing her said that before any abdominal
17 surgery -- it doesn't say any kind of surgery.
18 It says abdominal surgery -- she needs a cardiac
19 consult and an echocardiogram.

20 Do you see that? You see it. I'm asking you
21 do you agree --

22 A. Wait.

23 MR. FRASURE: I don't see
24 abdominal here.

25 A. I don't see abdominal surgery anywhere here.

1 Q. Well, what surgery was he referring to previously
2 that they were considering doing? We'll do it
3 that way.

4 A. Well, yeah, before that surgery, but I mean
5 surgery is surgery. I mean, and also --

6 Q. Correct.

7 A. -- and also, I mean, let's put it this way: I
8 mean, Dr. Boye-Doe is a gynecologist, and I don't
9 think that necessarily --

10 Q. Correct.

11 A. -- I don't think that necessarily I would defer
12 to an internist to determine whether the patient
13 needed a cardiac consult or not.

14 Q. Well, once again we're back to the chicken and
15 the egg. There's no proof that Dr. Richardson
16 gave her a physical examination for clearance for
17 the surgery, is there?

18 A. Well, but Dr. Richardson saw her several times
19 before she had her other surgeries.

20 Q. Correct.

21 A. And he obviously cleared her for surgery then.
22 So if he didn't think that she needed a cardiac
23 consult before femoral bypass, why does she need
24 a cardiac consult before a hysterectomy?

25 Q. Because might not he have been in a position to

1 make that determination if he was told about the
2 cardiomegaly, the pleural effusions and the EKG?

3 A. I don't, but wait a minute. You're saying,
4 you're the one who's putting eggs after the
5 chicken here in that, you know, none of those, I
6 am saying Dr. Boye-Doe may very well feel that
7 somebody needs cardiac clearance and the
8 internist very often will say don't worry about
9 it, everything's okay and this woman saw
10 Dr. Richardson at least once, maybe more times
11 before she had other surgeries and he didn't feel
12 that she needed to see a cardiologist.

13 Q. That wasn't even my question. The question,
14 straightforward, is do you believe that
15 Dr. Bartulica had an obligation to Dr. Celerio to
16 advise that another gynecologist previously said
17 that she would need a cardiac consult and an
18 echocardiogram before surgery?

19 MR. FRASURE: Under these
20 circumstances?

21 MS. TAYLOR-KOLIS: Yes.

22 A. No.

23 Q. He had no obligation?

24 A. Under the circumstances of this case.

25 Q. So I take it based on these answers you're not

1 going to be criticizing Dr. Celerio at trial,
2 correct?

3 A. No, I'm not going to be criticizing Dr. Celerio
4 at trial.

5 MS. TAYLOR-KOLIS: Off the record.

6 - - - -

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

9 - - - -

10 Q. Doctor, I just have a couple of clean-up
11 questions.

12 Doctor, just as a point of clarification,
13 when you and I were discussing life expectancy
14 and things of that nature earlier, you have an
15 opinion more likely than not that if Nancy had
16 not undergone anesthesia on August 7th, 1999 she
17 wouldn't have died that day, correct?

18 A. More likely than not she wouldn't have died that
19 day.

20 Q. All right. And my last question, sort of one of
21 those if you know ones. You know, you told me
22 you took the Harrison's 10th edition but you have
23 the Harrison's 12th. Is there some reason you
24 didn't want the more current version?

25 A. I think it's because that's two volumes as

1 opposed to one and maybe I just grabbed --
2 seriously.

3 Q. You could be right. I could be wrong.

4 A. I walked in here and there was a meeting going
5 on, so I wanted to -- it was at lunch today -- I
6 wanted to get in and out as quick as possible.

7 Q. All right. I was being funny so it doesn't
8 really matter that much but suffice it to say
9 based upon the totality of the testimony you've
10 given today, anything which you will be able to
11 testify to at trial about amyloidosis is because
12 you had to do some research on it. It isn't just
13 standard knowledge that you had from your
14 day-in/day-out practice, correct?

15 A. That's correct, yes.

16 Q. We need to just be sure that we know every
17 opinion that you have that you're going to
18 testify to, so let me run through them briefly
19 and then you tell me what I've missed.

20 You're going to come into court and testify
21 that Dr. Paul Bartulica did not deviate from the
22 accepted standards of medical care?

23 A. That is correct.

24 Q. If you were so asked by somebody in this case, I
25 don't know, anybody but your own, well, maybe

1 your own lawyer, you have an opinion that
2 Dr. Celerio did not deviate from the accepted
3 standards of medical care?

4 A. I would say that I would have, as far as
5 approving her for surgery, I did not think he
6 deviated from the standards of care. As far as
7 his conduct during the surgery, I would not feel
8 qualified to testify.

9 Q. So you are not ACLS certified?

10 MR. FRASURE: American Cardiac --

11 A. I think I am, yes. We did that.

12 Q. Maybe you are. Suffice it to say even though
13 you're ACLS, you do not feel you're in a position
14 to address resuscitative efforts?

15 A. Not of this magnitude. I mean, I could
16 resuscitate if someone drops off from a heart
17 attack, but not from this.

18 Q. And I'd like, since you never put it in your
19 report, okay, would you agree with me that your
20 report doesn't render a criticism against
21 Dr. Richardson?

22 MR. FRASURE: Do you have it
23 there, doctor?

24 Q. You can take a look at it.

25 A. No, it does not. Of course I had not read

1 Dr. Richardson's records at the time I wrote the
2 report.

3 Q. Well, let me ask you this question since we're
4 talking about fairness and completeness.

5 You hadn't read his records or his deposition
6 until this past weekend?

7 A. This weekend, correct.

8 Q. Did you not discern, based upon the testimony of
9 the doctor you were being asked to testify on
10 behalf of, that his defense in this case is that
11 somebody else medically cleared her?

12 A. Correct.

13 Q. Well, wouldn't you have wanted to see the records
14 and/or the testimony at some time, at a much
15 sooner date than between last summer and today?

16 A. No. I, after reading Dr. Richardson's records,
17 after reading Dr. Richardson's records, I, to me
18 a clearance can very well be given over the
19 telephone. I mean, I get those kind of
20 clearances all the time.

21 Q. But he testified he didn't give her surgical
22 clearance, didn't he?

23 A. Well, but I think he did.

24 Q. Okay.

25 A. I mean, if you want -- you asked me and I told

1 you. If somebody calls up, somebody calls up an
2 internist or a general medical doctor and says
3 I'm doing surgery and I want you to tell me how
4 to handle her, how to handle her anticoagulation
5 and you say oh, just change this and then say
6 well, I didn't say she could have surgery, I
7 mean, you could have said don't do surgery, this
8 lady's too sick, this lady needs workup. By you
9 saying just do this, handle it this way, you are
10 giving consent, you are saying to this doctor
11 that this lady is okay for surgery.

12 Q. So are you saying that he should have withheld
13 consent, even hypothetically this consent he
14 didn't participate in?

15 A. No. I personally don't think there was any reason
16 that he, based on his records or what he had done
17 before, there was any reason he couldn't have,
18 shouldn't have given her clearance.

19 Q. So to be fair, then, you don't think that he
20 deviated from the accepted standards of medical
21 care because you're saying based upon everything
22 that was in his chart, it would have been okay
23 for him to clear her for surgery that day?

24 A. I'm saying based on what he says in his
25 deposition, not on what it says in his chart. If

1 he says in his deposition that he didn't mean, he
2 didn't mean to clear her for surgery, that's what
3 he said. He says I wasn't clearing her for
4 surgery, I was just telling him how to handle,
5 how to handle the anticoagulation. If he indeed
6 really truly means that, he deviated from the
7 standard of care.

8 If judging on, by his records, he said I
9 think this lady, he would have agreed this lady
10 was okay for surgery, I would have said that's
11 perfectly all right. I've seen nothing in his
12 records, I see nothing in his records that would
13 lead me to believe that this lady couldn't have
14 had surgery.

15 Q. There's nothing in his records up, you know, to
16 the point of the telephone call he received from
17 Dr. Bartulica, and that's what you're testifying
18 to, that would have prevented him from clearing
19 her for surgery if that's what the jury chooses
20 to believe, correct?

21 A. Say that again.

22 Q. Sure, because I don't want to be confused.

23 What I just heard you say is that based upon
24 everything in his chart, you believe it was
25 acceptable for him to clear her for surgery?

1 A. Yes.

2 Q. Okay. Dr. Richardson, correct? That's who we're
3 referring to?

4 A. Yes.

5 MS. TAYLOR-KOLIS: I think we're
6 done.

7 MR. FRASURE: Ron?

8 MR. RISPO: No questions.

9 MR. FRASURE: We'll read, please.

10

11

DAVID BURKONS, M.D.

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C E R T I F I C A T E

The State of Ohio,) SS:
County of Cuyahoga.)

I, Pamela S. Greenfield, a Notary Public within and for the State of Ohio, authorized to administer oaths and to take and certify depositions, do hereby certify that the above-named witness was by me, before the giving of their deposition, first duly sworn to testify the truth, the whole truth, and nothing but the truth; that the deposition as above-set forth was reduced to writing by me by means of stenotypy, and was later transcribed into typewriting under my direction; that this is a true record of the testimony given by the witness; that said deposition was taken at the aforementioned time, date and place, pursuant to notice or stipulations of counsel; that I am not a relative or employee or attorney of any of the parties, or a relative or employee of such attorney or financially interested in this action; that I am not, nor is the court reporting firm with which I am affiliated, under a contract as defined in Civil Rule 28(D).

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office, at Cleveland, Ohio, this 21st day of May, A.D. 2000.



Pamela Greenfield, Notary Public, State of Ohio
1750 Midland Building, Cleveland, Ohio 44115
My commission expires June 30, 2003

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Dr. David M. Burkons

University Suburban Gynecologists, Inc.
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August 24, 2001

Joseph A. Farchione, Jr.
Reminger & Reminger
113 St. Clair Avenue NE
Cleveland, Ohio 44114-1273

RE: Armstrong v. Bartulica
File No. 3321-02-44153-00

Dear Mr. Farchione,

I have reviewed the records sent me in the above captioned case. This was done so as to determine if in my professional opinion, the care rendered Nancy Armstrong by Dr. Paul Bartulica on and before 8/7/99 met acceptable medical standards.

In way of review, Nancy Armstrong was **44** years old when she first saw Dr. Paul Bartulica on 1/6/95. Her visit was because of pelvic pain of long-standing duration for which she had been seeing another physician. She also had some medical problems secondary to post surgical blood clots and was on Coumadin followed by Dr. H. S. Richardson.

After several visits she was scheduled for a TAH/BSO at Amherst Hospital. She apparently saw her medical doctor, H. S. Richardson for medical clearance. He recommended changing her Coumadin to Lovinox preoperatively.

On 8/7/99 she was admitted to Amherst Hospital for surgery. She had preoperative testing there and was seen preoperatively by the anesthesiologist Dr. Briccio Celerio and was cleared for surgery.

Soon after the surgery began, it became apparent that the patient was having cardiac decompensation and in fact went into arrest. The surgery was halted and vigorous resuscitations were undertaken in the operating room and later in the ICU. Unfortunately the patient died.

An autopsy was performed which attributed the death to probable cardiac arrhythmia secondary to massive cardiomegaly. Subsequent pathologic review found that the patient had the rare condition of marked cardiac amyloidosis.

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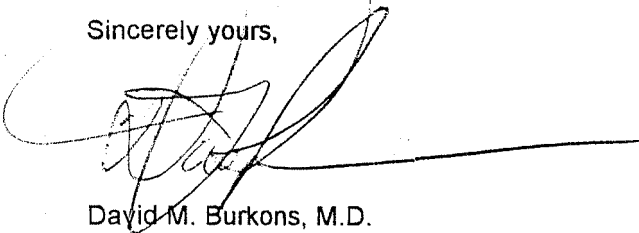
DISCUSSION:

To begin with, the surgery that Dr. Bartulica proposed for Mrs. Armstrong was indicated. She had had long-standing pelvic pain and her ultrasound was suspicious for adenomyosis. Furthermore, the patient was cleared for surgery by her general medical doctor and the attending anesthesiologist. If either of these physicians had objected to proceeding with the surgery or had requested further testing, Dr. Bartulica would have certainly obliged.

Thus, while Mrs. Nancy Armstrong's death was indeed tragic, in my professional opinion it was not caused by any deviation of standards by Dr. Paul Bartulica, M.D.

If you have any further questions on this matter, please feel free to contact me.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'David M. Burkons', followed by a long horizontal line extending to the right.

David M. Burkons, M.D.

:dmv

B

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May 16, 2002

Dr. David M. Burkons
 University Suburban Gynecologists, Inc.
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Re: *James J. Armstrong, Adm., etc. v. EMH Regional Healthcare, et al.*
 Lorain County Common Pleas Case No. 00CV126180
 BDB File No. 39888-0183

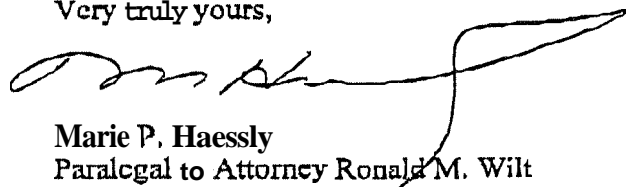
Dear Dr. Burkons;

Enclosed for your review are the following records concerning the above-referenced matter:

1. Expert report of Geoffrey Mendelsohn, M.D.;
2. Expert report of Richard W. Watts, M.D., F.A.C.P., F.A.C.C.;
3. Expert report of Kenneth G. Smithson, D.O., Ph.D.;
4. Curriculum vitae of Kenneth G. Smithson, D.O., Ph.D.;
5. Expert report of David Charles Brandon, M.D.;
6. Deposition transcript of Briccio Celerio, M.D.;
7. Deposition transcript of Paul Bartulica, M.D.;
8. Deposition transcript of Lisa Armstrong; and
9. Deposition transcript of William S. Richardson, M.D.

Ron Wilt believes it would be advisable for you to review Dr. Richardson's office records. A copy of those records are in route from our Canton office. I would be happy to FedEx the records to your home so that they will be available for your review upon your return from Chicago. If that is acceptable, please contact me upon receipt of this letter to advise the delivery address. Thank you.

Very truly yours,



Marie P. Haessly
 Paralegal to Attorney Ronald M. Wilt

Enclosures
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Burkons
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May 17, 2002

Dr. David M. Burkons
University Suburban Gynecologists, Inc.
1611 South Green Road, Suite 204
South Euclid, OH 44121

Re: ***James J. Armstrong, Adm., etc. v. EMH Regional Healthcare, et al.***
Lorain County Common Pleas Court Case No. 00CV126180
BDB File No. 39888-0183

Dear Dr. Burkons:

Enclosed for your review are the office records of W. Stanton Richardson, M.D. regarding the above-referenced matter. The expert report of Dr. London will be faxed to you shortly.

If you have any questions or if I may be of further assistance, please do not hesitate to contact me. Thank you.

Very truly yours,

Marie P. Haessly
Paralegal to Attorney Ronald M. Will

Enclosure
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FRIEDMAN ETAL

**Andrew M. London
6 Old Lyme Rd.
Lutherville, MD 21093**

May 29, 2001

**Donna Taylor-Kolis CO. L.P.A.
Attorneys at Law
Third Floor-Standard Building
1370 Ontario Street
Cleveland, Ohio 44113-1791**

Re: Armstrong v. Bartulica**Dear Mrs. Taylor-Kolis,**

I have reviewed the records of Nancy Armstrong. These include the office records of Dr. Bartulica as well as pre-surgical testing, laboratory results, the operative report and the autopsy report. I have also had a chance to review the deposition of Dr. Bartulica. Based on the review of the above records, I find that there is negligence and a breach in the standard of care given to Mrs. Armstrong in allowing her surgery to proceed in the face of unresolved abnormal laboratory results-specifically an abnormal EKG and chest x-ray.

The bases of my conclusions are based on the records and Dr. Bartulica's deposition. In particular, there was deviation from the evaluation of the abnormal chest x-ray, which was reported to him as abnormal pre-operatively by pre-surgical testing and mandated an investigation to be sure that there was no pathology that would jeopardize her during a surgical procedure. The surgery was not an emergency and could have been put off until evaluation and resolution of the infiltrate and effusion was completed. It was also within the standard of care for Dr. Bartulica to be aware of the EKG and with the abnormality present, it would have been imperative to have the EKG evaluated by a cardiologist and cleared for surgery in that there was a question of a myocardial infarction.

I did not have the records from her previous physician at the time of the review. Based on the deposition, there was a recommendation that Nancy Armstrong have an

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echocardiogram because of exposure to Redux. This was not done and may not have been the responsibility to Dr. Bartulica to do, but he did have the responsibility to have a cardiologist or internist determine if the evaluation was necessary.

I feel that had these evaluations been done before the surgery, that she would have been treated appropriately and would have survived her surgical procedure. It is my medical opinion that the above deviations were a direct and proximate cause of the death of Nancy Armstrong.

Thank you for asking me to review the records of Mrs. Armstrong. If I may be of further assistance, please do not hesitate to contact me.

Sincerely,



Andrew M. London