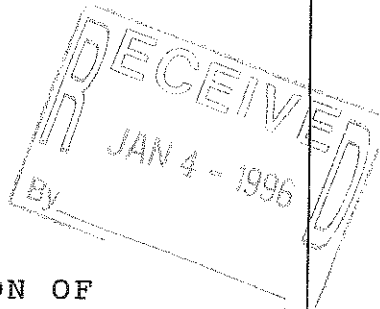


574

IN THE COURT OF COMMON PLEAS
MAHONING COUNTY, OHIO
CASE NO. 95-CV-335



MARY E. ADAMCHICK, ET AL)

Plaintiffs)

vs.)

WILLIAM J. CLEARY, JR., M.D.)

ET AL.)

Defendants)

DEPOSITION OF

WILLIAM CLEARY, JR., MD

Deposition taken before me, Micheline

Simoni, Notary Public within and for the State of

Ohio, on the 14th day of December, 1995, at 1:00 PM,

pursuant to agreement, taken at the law offices of

Harrington, Huxley, Smith, Mitchell and Reed, 1200

Mahoning Bank Building, Youngstown, Ohio, to be used

in accordance with the Ohio Rules of Civil Procedure

or the agreement of the parties in the aforesaid

cause of action pending in the Court of Common Pleas

within and for the County of Mahoning and State of

Ohio.

SIMONI COURT REPORTING
WARREN/YOUNGSTOWN, OHIO
(216) 399-1400, 746-0934

A P P E A R A N C E S

On Behalf of the Plaintiff:

John G. Lancione, Attorney at Law

SPANGENBERG, SHIBLEY, LANCIONE & LIBER

On Behalf of the Defendant, William J.

Cleary, Jr., MD:

Eldon S. Wright, Attorney at Law

HARRINGTON, HUXLEY, SMITH, MITCHELL & REED

On Behalf of the Defendant, St. Elizabeth Medical
Center and Dr. Abdu:

Douglas J. Kress, Attorney at Law

COMSTOCK, SPRINGER & WILSON

I N D E X

DEPONENT -- WILLIAM J. CLEARY, JR., MD PAGE NO.

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INDEX OF OBJECTIONS

DEPONENT -- WILLIAM J. CLEARY, JR., M.D.

(NO OBJECTIONS MADE BY COUNSEL)

P R O C E E D I N G S

WILLIAM J. CLEARY, JR., M.D

having been duly sworn according to law, on his
oath, testified as follows:

CROSS EXAMINATION BY MR. LANCIONE:

Q. Would you state your full name for the record,
please?

A. William James Cleary, Jr.

Q. Okay. Doctor, have you had your deposition
taken before?

A. I have had a deposition taken before, yes.

MR. LANCIONE: Okay. The only rule
is that we understand each other. If you don't
understand any of my questions, please ask me to
clarify and if I don't understand any of your
answers I'll do the same. Okay?

THE WITNESS: Thank you.

Q. Where is your present practice located?

A. 607 Home Savings and Loan Building,
Youngstown, Ohio.

Q. What is the nature of your practice?

A. I'm a physician, licensed in the State of

SIMONI COURT REPORTING

1 Ohio.

2 Q. What is the nature of your particular medical
3 practice at this time?

4 A. What do you mean by "nature," Sir?

5 Q. What do you do, as a doctor?

6 A. I take care of patients. I'm an internist.

7 Q. And how long have you been practicing that
8 specialty?

9 A. 1961.

10 Q. And, are you practicing at any of the local
11 hospitals? Do you have admitting
12 privileges?

13 A. I have privileges at local hospitals, yes.

14 Q. All of them here in Youngstown?

15 A. I have privileges at Youngstown Hospital
16 Association, which is called Western
17 Reserve Care System, and I also have
18 privileges at St. Elizabeth's Hospital
19 Health Center.

20 Q. With respect to Mrs. Adamchick, how long had
21 you been seeing her as a physician?

22 A. Since April 27, 1992.

1 Q. And, for what condition were you treating her?

2 A. Number one, massive goiter with obvious shift
3 of the trachea to the right, clinically
4 euthyroid; two, heart enlargement without
5 symptoms; three, overweight; four,
6 osteoporosis with widow's hump; five,
7 diabetes mellitus. That was the
8 diagnosis of 4-27-92.

9 Q. Can you tell me generally over the following
10 period of time until she was admitted
11 into St. Elizabeth's in 1994, what was
12 the course of your care and treatment of
13 those various conditions?

14 A. Would you be more specific, possibly?

15 Q. Well, let's start with number one and tell me
16 what your treatment was for that
17 condition.

18 A. All right. I basically pursued diagnostic
19 studies to find out the functioning of
20 the gland, and then I recommended that
21 she receive treatment for it in the form
22 of radioactive iodine.

1 Q. And what was the result?

2 A. The results were that she had hyperthyroidism
3 and that the radioactive iodine corrected
4 that.

5 Q. Was there any impairment in her general
6 functioning by reason of the size of this
7 tumor?

8 A. What functioning are you referring to?

9 Q. Pulmonary function, nutritional function?

10 A. Excuse me. One at a time, Sir. She stated
11 that she had been having progressively
12 more difficulty in swallowing, and she
13 was having a little bit more stridor.

14 Q. She said that or you observed that clinically?

15 A. She noted.

16 Q. You didn't make any such observation in your
17 clinical examination of the patient?

18 A. In my physical examination I made no notation
19 of stridor.

20 Q. Okay. What about her other conditions that
21 you were treating; the diabetes, for
22 example? Was there any treatment of

1 that -- diet or medication?

2 A. I did not advise on that.

3 Q. Did you refer her to anyone else?

4 A. She was referred to me for a specific problem.

5 Q. And, there was no treatment for the diabetes;
6 is that it?

7 A. There was.

8 Q. What was that?

9 A. Insulin.

10 Q. And what was the prescription for that?

11 A. Her family physician was giving her
12 Ultralente, 24 units a day.

13 Q. What led to her hospitalization in February of
14 1994?

15 A. She was referred to me by her family
16 physician.

17 Q. And who was that?

18 A. Dr. David D'Amore.

19 Q. Where is he located?

20 A. His offices, 1249 Miller Street, Masury, Ohio.

21 Q. And what was the reason for the referral?

22 A. He wished to have an update of the thyroid

1 functioning and, if you would like, I
2 could read my note.

3 Q. Sure.

4 A. Patient referred by Dr. D'Amore to update her
5 thyroid status. It is noted that in
6 February she fell, fractured her femur.
7 Was in the hospital for six weeks. She
8 never felt quite right since then. Eight
9 weeks ago she had a change in her insulin
10 to Humulin insulin. Five weeks ago she
11 passed out and eventually found it was
12 due to dysrhythmia and had, on November 8
13 a pacemaker.

14 She also -- she was on various
15 medications, and my impression was a
16 question of increased thyroid size, and
17 then I felt that she appeared to be
18 euthyroid. That was my clinical
19 impression at that time.

20 Q. Was this at an office visit or just as a
21 result of a consultation with her doctor?

22 A. No, it was a consultation in my office on

1 examination of the patient.

2 Q. What did you recommend?

3 A. My notes state that I would await the results
4 of the TSH. Number two, if the thyroid
5 is low, then place on Synthroid. If the
6 gland does not go down thereafter, then
7 decide on surgery. Number three, if lab
8 is normal then contact Dr. D'Amore and
9 family as to possible surgery because of
10 decrease in size of tracheal deviation.

11 Q. Was that the visit that she reported to you as
12 having stridor?

13 A. I have no mention of it in my note.

14 Q. What was the date of that office visit?

15 A. 12-8-93.

16 Q. When had you last seen her in the office
17 before that time?

18 A. November 16, 1992.

19 Q. Okay. Well, after the visit of December,
20 1993, did you receive some results of the
21 testing?

22 A. I did.

1 Q. And, what was the significance of those
2 results, if any?

3 A. What testing in particular are you referring
4 to, Sir?

5 Q. For the thyroid function.

6 A. On December 8, 1993, the TSH was zero. Excuse
7 me -- it was 0.06.

8 Q. Is that normal?

9 A. No.

10 Q. What is the significance of that?

11 A. At that time I did not know.

12 Q. Okay. Did you later make some determination
13 as to what that meant?

14 A. Yes.

15 Q. What was that?

16 A. I made a determination that she was euthyroid.

17 Q. Then did you recommend any course of
18 treatment?

19 A. I did.

20 Q. What was that?

21 A. Number one, patient does not appear to be
22 autonomous; number two, advise surgery.

1 Consider before surgery several
2 diagnostic studies. Number three, family
3 will review with Dr. D'Amore regarding
4 surgery and where it will be done.

5 Q. When did you next receive any communication or
6 information regarding whether or not she
7 was going to have the surgery?

8 A. I cannot give the exact date in January.

9 Q. All right. Tell me what you found out
10 sometime in January.

11 A. I was advised by Dr. D'Amore by telephone that
12 it was the joint wishes of him and the
13 family and patient to proceed ahead with
14 surgery in Youngstown.

15 Q. Okay. What was the reason for the surgery?
16 What was the reason for the
17 recommendation?

18 A. To remove a mechanical problem arising out of
19 a massive goiter.

20 Q. What was the mechanical problem that was
21 affecting the patient?

22 A. Massive deviation of the trachea to one side

1 of her neck.

2 Q. Was it causing breathing problems, swallowing
3 problems?

4 A. It was my opinion, yes.

5 Q. Not swallowing -- breathing?

6 A. Yes, Sir.

7 Q. What plans had you made at her request
8 regarding the surgery?

9 A. I spoke with the surgeon that had been
10 recommended and requested.

11 Q. Who was that?

12 A. It was Dr. Rashid Abdu.

13 Q. Was he requested by the patient and her
14 physician?

15 A. Yes.

16 Q. Do you know what transpired between the
17 patient and Dr. Abdu?

18 A. No, I do not. I was not privy to their
19 conversation.

20 Q. What part did you play in the admission to the
21 hospital for purposes of having the
22 surgery?

1 A. I did not admit her.

2 Q. Did you have any part at all in her admission?

3 A. I did not admit her, Sir.

4 Q. During her admission did you have any
5 physician-patient relationship with her?

6 A. During her hospitalization, you mean?

7 Q. Yes.

8 A. Yes, I did.

9 Q. When did that first take place?

10 A. In the post-operative phase of her health.

11 Q. What time in particular? What day?

12 A. I don't have access to the hospital chart, so
13 I cannot give you the specific dates and
14 times.

15 Q. Did the hospital send you any copies of the
16 records?

17 A. I do not have a record with me.

18 Q. Have you looked at the hospital records in
19 this case?

20 A. Yes, I have.

21 Q. When did you look at them?

22 A. I cannot say. It's been in 1995, but I cannot

1 be more specific than that, Sir.

2 Q. Did you look at them today?

3 A. I did.

4 Q. Were you able to tell whether or not you
5 treated the patient or acted in the
6 capacity as her physician on any
7 particular day?

8 A. I was a physician involved in her care during
9 her hospitalization.

10 Q. On February 9, for example --

11 A. I would have to refer to the chart.

12 Q. Why don't you do that?

13 MR. WRIGHT: He can use this copy of
14 the chart. What particular --

15 MR. LANCIONE: The day of the 9th.

16 MR. WRIGHT: The progress note or --

17 MR. LANCIONE: Well, if he could
18 look at the records and see if he was acting in the
19 capacity as her physician during that day.

20 MR. WRIGHT: All right.

21 A. Would you be so kind enough to ask me the
22 question again?

1 Q. On the 9th of February, did you participate as
2 a physician in the care and treatment of
3 Mrs. Adamchick?

4 A. I did.

5 Q. And describe the relationship for me -- what
6 you did.

7 A. I examined the patient and I made a decision
8 as to the form of therapy that I was to
9 take care of.

10 Q. And what was that?

11 A. To manage her diabetes, to follow her cardiac
12 status, and also her thyroid functioning.

13 Q. And, what documents that in the patient's
14 hospital record?

15 A. It was dated 2-8-94, and the time is 12:50
16 p.m., Sir.

17 Q. Is that a progress note?

18 A. No, Sir.

19 Q. What is it?

20 A. It's an order.

21 Q. Was that the day of surgery?

22 A. Yes, Sir.

1 Q. Okay. What is that order?

2 A. "Dr. Cleary for medical management of diabetes
3 and cardiac."

4 Q. And the physician's orders -- is that where
5 that is?

6 A. Yes, Sir.

7 Q. Did you see the patient on the 9th?

8 A. I did.

9 Q. Was she in the intensive care unit at that
10 time?

11 A. Yes.

12 Q. Is there a progress note that you wrote?

13 A. Yes.

14 Q. How is that identified?

15 A. By my signature.

16 Q. Does it have a time of day --

17 A. Yes.

18 Q. -- attached to it?

19 A. Yes.

20 Q. Is it the 10:30 note?

21 A. Yes, Sir.

22 Q. Begins, "Doing very well"?

1 A. Yes, Sir.

2 Q. And your signature is up on the left, then?

3 A. Yes, Sir.

4 Q. Did you participate in the decision for her to
5 be moved from the intensive care unit?

6 A. I was asked if in the areas that I was caring
7 for if there was any reason why she
8 should not be transferred.

9 Q. Okay. And those specific areas were what?

10 A. As I had stated to you earlier.

11 Q. What about the area involving her
12 tracheostomy?

13 A. I was not involved in that.

14 Q. Who was?

15 A. Basically, the care givers were the surgeon,
16 Dr. Abdu; he used in consultation an ear,
17 nose, and throat physician, Dr. Batista,
18 and a pulmonologist was also involved --
19 not in the care of the tracheostomy, but
20 in pulmonary management.

21 Q. So, insofar as your input into the question of
22 whether or not she should be transferred

1 out of the intensive care unit, you were
2 not passing on the question of the
3 tracheostomy and its management?

4 A. That's correct.

5 Q. Okay. Where was she transferred to?

6 A. I cannot give you the exact room number, but
7 it was an intermediate unit. I would
8 have to search this in detail, but I
9 cannot tell you the room number.

10 Q. And did you continue to see her on a daily
11 basis?

12 A. Yes, I did.

13 Q. On the 10th did you prepare and write a
14 progress note?

15 A. I did.

16 Q. And that is the 11:00 a.m. note?

17 A. Yes, Sir.

18 Q. And, can you read that for me?

19 A. "Continuing improvement. Few rhonchi
20 bilateral. Sinus rhythm, no ectopy.
21 Plan: One, transfer; two, same
22 medication; three, tomorrow TSH, probably

1 thereafter Synthroid; four, discontinue
2 Foley; five, slowly increase activity;
3 six, keep on nitrate."

4 Q. Was she then transferred once again to a
5 regular room after that?

6 A. It is my understanding, without very careful
7 searching of this, she was transferred
8 from an intermediate unit to a general
9 medical-surgical floor.

10 Q. You apparently then saw her again on -- or saw
11 her on the 11th?

12 A. I did.

13 Q. Was she at that time on the regular surgical
14 floor -- medical-surgical -- or do you
15 know?

16 A. I honestly do not know.

17 Q. Okay. Can you read that note from the 11th of
18 February for me?

19 A. "9:35 a.m. No new problem. Examination the
20 same. Number one, use oral diabetic
21 therapy; two, start Synthroid; three,
22 Dr. Abdu to handle plans regarding

1 tracheostomy."

2 Q. What was the issue or what was the plan with
3 respect to the tracheostomy?

4 A. I do not know.

5 Q. Did you have anything to do with checking her
6 nutritional status or whether or not she
7 was taking nutrition orally at this time
8 on the 11th?

9 A. I do not know without careful research of the
10 chart to find out exact details of that.

11 Q. Did you have anything to do with ordering the
12 type of monitoring that was going to be
13 necessary with respect to the management
14 of the tracheostomy?

15 A. No, Sir.

16 Q. It appears that you saw her the morning of the
17 12th, also, which was the day that she
18 had the cardio-respiratory arrest.
19 Apparently it was at 7:15 in the morning,
20 February 12.

21 A. Are you asking a question?

22 Q. Yes.

1 A. Yes, I did.

2 Q. Could you read that note for me?

3 A. "For time being will keep on oral diabetic
4 therapy and minimal T-4. Will recheck in
5 a few days T-3 T-4 TSH. Clinically she
6 is not hyperthyroid."

7 Q. Do you know when you were notified of the code
8 that had been called on Saturday for her
9 apparent cardio-respiratory arrest?

10 A. It was on Saturday.

11 Q. Do you know when you were told about it?

12 A. I do not.

13 Q. Was the first time that you saw her next on
14 the 13th at 6:45 a.m., approximately?

15 A. It is the first that I have notations of.

16 Q. Do you have any recollection of seeing her
17 before then?

18 A. I honestly do not remember.

19 Q. Okay. Could you read that note for me?

20 A. "6:15 a.m. Essentially no change since team
21 yesterday. Some upper extremity
22 decerebrate, none in the lower

1 extremities. Pupils equal and reactive.
2 No nuchal rigidity. Bilateral Babinski,
3 few rhonchi bilateral, regular rhythm
4 (pacemaker). One, continue ventilator
5 and increase suctioning; two, monitoring
6 gases; three, same fluids; four,
7 monitoring sugars and PRN insulin. As in
8 any patient with hypoxic encephalopathy,
9 which I feel she has, the prognosis is
10 not clear."

11 Q. Does an airway obstruction enter into the
12 etiology of the hypoxic encephalopathy in
13 this case?

14 A. In this case, it was my understanding it was.

15 Q. Do you know what the mechanism was of the
16 airway obstruction?

17 A. It was my understanding it was inspissated
18 mucous.

19 Q. Do you know who was responsible for monitoring
20 the patient's respiratory ability?

21 A. Would you define that further?

22 Q. Who was responsible for taking care of her

1 tracheostomy?

2 A. Well, as far as the nursing service, you mean?

3 Q. Yes, the nursing service. Do you know what
4 they do at St. Elizabeth's to take care
5 of the tracheostomy?

6 A. I'm not aware exactly their protocol for this.

7 Q. Do you know whether or not they do have a
8 protocol?

9 A. It is my understanding they do.

10 Q. Did you order any X-ray after the 12th -- any
11 chest X-rays after the 12th of February?

12 MR. WRIGHT: You mean he, himself
13 ordered?

14 MR. LANCIONE: Yes.

15 A. I have no recollection of having done so.

16 MR. WRIGHT: Well, he asked you from
17 the chart. Did you see anything in the record that
18 indicated one way or the other about it?

19 A. I have no knowledge from review of the chart
20 that I ordered such after the date that
21 you requested.

22 Q. Okay. May I take a look at your records,

1 Doctor? Did you have any discussions
2 with members of the Adamchick family
3 after her cardio-respiratory arrest?

4 A. I spoke to the family.

5 Q. Do you know who Donna is? Is there somebody
6 named Donna?

7 A. I met the husband and the daughter.

8 Q. Do you know whether the daughter's name is
9 Donna?

10 A. I do not know.

11 Q. Does the name Donna Jo Wharry, W H A R R Y,
12 ring a bell? I saw the name "Donna" in
13 there. I did not see a last name.

14 A. I have no record of the daughter's name.

15 Q. Do you know whether or not she was a nurse?

16 A. I believe she was a medical professional, but
17 I do not know the extent of her
18 professionalism.

19 MR. LANCIONE: Okay. That's all,
20 Doctor. Thank you.

21 CROSS EXAMINATION BY MR. KRESS:

22 MR. KRESS: Doctor, we met a little

1 while ago. I'm here on behalf of St. Elizabeth's
2 Hospital and Dr. Abdu. I have a couple questions
3 for you.

4 Q. First of all, do you have any criticism of any
5 of the care or treatment that was
6 provided by any of the nursing staff or
7 the residents of St. Elizabeth's Hospital
8 during Mrs. Adamchick's admission in
9 February of 1994?

10 A. Would you be kind enough to be more specific
11 than that?

12 Q. Do you feel any of the care any of those
13 people gave was inappropriate during that
14 time?

15 A. I have no comment to make about that. If I
16 did, I have no memory of it and I have no
17 record of putting it in the hospital
18 record.

19 Q. Okay. So, you have no memory of any
20 criticism?

21 A. I have none at this time. I have no
22 recollection of it.

1 Q. Okay. With regard to Dr. Abdu, do you have
2 any criticism of the care or treatment
3 that he provided to Mrs. Adamchick?

4 A. I do not.

5 MR. KRESS: That's all I have,
6 Doctor. Thank you.

7 FURTHER CROSS EXAMINATION BY MR. LANCIONE:

8 Q. Dr. Cleary, have you specifically reviewed
9 carefully the nursing notes for the
10 several days prior to the 12th of
11 February when Mrs. Adamchick had her
12 cardio-respiratory arrest?

13 A. I did read them.

14 Q. Did you review them to determine whether or
15 not her respiratory function and her
16 secretions were being adequately
17 monitored?

18 A. I did not make judgments as to what the form
19 of therapy was.

20 Q. Did you make any particular notation and do
21 you have any recollection of the nature
22 and extent of her secretions during the

1 several days leading up to the time that
2 she had her cardio-respiratory arrest? I
3 mean, do you have any recollection now as
4 to that?

5 A. Would you be so kind enough to repeat the
6 question again?

7 (QUESTION ON PAGE 28 AT LINE 20 READ BY THE REPORTER)

8 A. Yes.

9 Q. And what was that?

10 A. On February 9 I stated that she had few
11 rhonchi.

12 Q. Okay, and then further?

13 A. No, Sir.

14 MR. LANCIONE: That's all I have.

15 MR. KRESS: I don't have anything
16 more.

17 (WHEREUPON THE DEPOSITION OF WILLIAM J. CLEARY,
18 JR., M.D., WAS CONCLUDED AT 2:00 PM)

REPORTER'S CERTIFICATE

I, Micheline Simoni, a Notary Public within and for the State of Ohio, duly commissioned and qualified, do hereby certify that the above-named William J. Cleary, Jr., MD, was by me first duly sworn to testify the truth, and that this deposition was written in the presence of the witness and transcribed, the deposition was taken at the time and place in the agreement specified.

I certify that I am not of counsel or relative to either party or otherwise interested in this action.

I further certify that the above and foregoing is a true and complete transcript of all the testimony and proceedings had in this deposition, as shown by stenotype notes written in the presence of the witness at the time of this deposition.

IN WITNESS WHEREOF, I have set my hand and Seal of Office at Warren, Ohio, this 2nd day of January, 1996.



Micheline Simoni

My Commission Expires 11-8-98

SIMONI COURT REPORTING

CORRECTION SHEET

PAGE NO.	LINE NO.	CORRECTION
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SIMONI COURT REPORTING

SIGNATURE PAGE

I, William J. Cleary, Jr., have read or have had the opportunity to read the foregoing deposition and find it true and correct to the best of my knowledge, information and belief, unless otherwise specified and listed on page 31, and I hereby subscribe my signature thereto, this _____ day of _____, 1996.

WILLIAM J. CLEARY, JR., M.D.

Before me, a Notary Public, in and for the State of Ohio, personally appeared William J. Cleary, Jr., who deposes and says that he has read or has had the opportunity to read the foregoing deposition, and that he finds it true and correct to the best of his knowledge, information and belief, unless otherwise specified and excepted to on page 31 of the deposition.

Sworn to and subscribed before me this _____ day of _____, 1996.

NOTARY PUBLIC

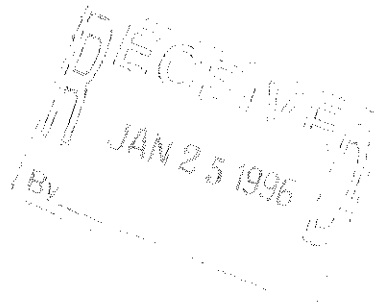
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January 24, 1996



Attorney John G. Lancione
SPANGENBERG, SHIBLEY, LANCIONE & LIBER
Attorneys at Law
2400 National City Center
1900 E. 9th Street
Cleveland, OH 44114-3400

re: Mary E. Adamchick, et al.
versus
William J. Cleary, Jr., et al.
Case No. 95-CV-335

Dear Mr. Lancione:

Enclosed are the Correction Page and Signature Page received from William Cleary, Jr., M.D., after his review of his deposition, which are to be inserted into your copy of same.

Very truly yours,

SIMONI COURT REPORTING


Micheline Simoni

MS:sec
Enclosures

cc: Atty. Eldon S. Wright
Atty. Douglas J. Kress

CORRECTIONS

Page

Line

19

17

Doctor POTESTA (Potesta)

SIGNATURE PAGE

I, William J. Cleary, Jr., have read or have had the opportunity to read the foregoing deposition and find it true and correct to the best of my knowledge, information and belief, unless otherwise specified and listed on page 31, and I hereby subscribe my signature thereto, this 6th day of January, 1996.

Wm J Cleary Jr M.D.

WILLIAM J. CLEARY, JR., M.D.

Before me, a Notary Public, in and for the State of Ohio, personally appeared William J. Cleary, Jr., who deposes and says that he has read or has had the opportunity to read the foregoing deposition, and that he finds it true and correct to the best of his knowledge, information and belief, unless otherwise specified and excepted to on page 31 of the deposition.

Sworn to and subscribed before me this _____ day of _____, 1996.

NOTARY PUBLIC

SIMONI COURT REPORTING