

IN THE COURT OF COMMON PLEAS
OF CUYAHOGA COUNTY, OHIO

RICHARD RICHNAFSKY, et al,

Plaintiffs,

against,

UNIVERSITY HOSPITALS OF CLEVELAND, et al,

Defendants.

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DEPOSITION OF

DENNIS F. DEVEREUX, M.D.

April 6, 2006

1:45 p.m.

St. Francis Hospital  
1 Webster Place, The Atrium  
Poughkeepsie, New York 12603

Patrick M. DeGiorgio, Notary Public of the State of New York

| Page 2                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Page 4                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
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| <p>1<br/>2 APPEARANCES:<br/>3<br/>4 ATTORNEYS FOR PLAINTIFFS<br/>5 BECKER &amp; MISHKIND CO., L.P.A.<br/>6 PAMELA PANTAGES, ESQUIRE<br/>7 Skylight Office Tower<br/>8 1660 W. 2nd Street<br/>9 Suite 660<br/>10 Cleveland, Ohio 44113<br/>11<br/>12 ATTORNEYS FOR DEFENDANT, SHUKRI EL-KHAIRI<br/>13 ROETZEL &amp; ANDRESS, L.P.A.<br/>14 BEVERLY A. SANDACZ, ESQUIRE<br/>15 1375 East Ninth Street<br/>16 One Cleveland Center<br/>17 Ninth Floor<br/>18 Cleveland, Ohio 44114<br/>19<br/>20<br/>21<br/>22<br/>23<br/>24<br/>25</p>                                                                                                                                                                                                                                                                                                                           | <p>1<br/>2 estate of Susan Richnafsky, her children<br/>3 and her husband. My purpose today is to<br/>4 ask you some questions with regards to a<br/>5 report that you have issued dated<br/>6 December 20th, 2006.<br/>7 A. Okay.<br/>8 Q. Have you ever been deposed<br/>9 before?<br/>10 A. Yes.<br/>11 Q. The ground rules will probably<br/>12 be the same. Let me highlight the<br/>13 important ones. If I ask you a question<br/>14 that you don't understand, let me know<br/>15 and I'll attempt to rephrase it.<br/>16 A. Okay.<br/>17 Q. I want to be able to leave<br/>18 here knowing all of your opinions and I<br/>19 know the basis of all of your opinions.<br/>20 A. Okay.<br/>21 Q. Do you understand that this is<br/>22 my only opportunity to take your --<br/>23 explore those opinions?<br/>24 A. Yes.<br/>25 Q. So I'm going to be relying on</p> |
| Page 3                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Page 5                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <p>1<br/>2 Deposition of Dennis F. Devereux, M.D.<br/>3 April 6, 2006<br/>4 MS. SANDACZ:<br/>5 Mark that please.<br/>6 (REPORT WAS RECEIVED AND MARKED<br/>7 AS DEFENDANT'S EXHIBIT A FOR<br/>8 IDENTIFICATION)<br/>9 DENNIS F. DEVEREUX, M.D., a<br/>10 non-party witness herein, after having<br/>11 been first duly sworn by Patrick M.<br/>12 DeGiorgio, a Notary Public of the State<br/>13 of New York, was examined and testified<br/>14 as follows:<br/>15 EXAMINATION<br/>16 BY-MS.SANDACZ:<br/>17 Q. Can you please state your full<br/>18 name for the record?<br/>19 A. Dennis F. Devereux, M.D.<br/>20 Q. What is your work address?<br/>21 A. 1 Webster Place, The Atrium,<br/>22 Poughkeepsie, New York 12603.<br/>23 Q. Doctor, I'm Beverly Sandacz. I<br/>24 represent Dr. El-Khairi and his<br/>25 professional offices on behalf of the</p> | <p>1<br/>2 what your testimony is today at trial.<br/>3 A. Okay.<br/>4 Q. Do you know when trial is<br/>5 scheduled for this matter?<br/>6 A. No.<br/>7 Q. We are here at Saint Francis<br/>8 Hospital; is that correct?<br/>9 A. Yes.<br/>10 Q. I'm assuming adjacent to it is<br/>11 The Cancer Center?<br/>12 A. Yes.<br/>13 Q. The Cancer Center, is that<br/>14 separate and apart from the hospital?<br/>15 A. Yes.<br/>16 Q. I understand that's a physician<br/>17 owned facility; right?<br/>18 A. Yes.<br/>19 Q. And you are the medical<br/>20 director of the facility?<br/>21 A. Yes.<br/>22 Q. I understand that you are a<br/>23 surgical oncologist by education and<br/>24 training; correct?<br/>25 A. Yes.</p>                                                                                                                                           |

| Page 6                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Page 8                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
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| <p>1</p> <p>2 Q. Is there any particular area of</p> <p>3 surgical oncology that you focus in?</p> <p>4 A. I do about 30 percent breast</p> <p>5 cancer, and pancreatic cancer, liver</p> <p>6 cancer, colorectal cancer, melanoma and</p> <p>7 sarcoma cancers.</p> <p>8 Q. Do you ever do any surgeries</p> <p>9 that involve the breast, the thoracic</p> <p>10 area?</p> <p>11 A. I have, yes, but no longer do</p> <p>12 that at this time.</p> <p>13 Q. When was the last time you --</p> <p>14 when was the last time that you ever</p> <p>15 performed surgery in the thoracic cavity?</p> <p>16 A. Probably three months ago.</p> <p>17 Q. What was that related to?</p> <p>18 A. Lung cancer.</p> <p>19 Q. Were you the primary doctor?</p> <p>20 A. No.</p> <p>21 Q. When was the last time that</p> <p>22 you were the primary physician in among</p> <p>23 cancers of the thoracic cavity, surgery?</p> <p>24 A. 1978.</p> <p>25 Q. I take it since 1978 you've</p> | <p>1</p> <p>2 Q. And/or you were treating the</p> <p>3 cancer that has been diagnosed?</p> <p>4 A. Yes.</p> <p>5 Q. Do you do any general surgery?</p> <p>6 A. Very little.</p> <p>7 Q. When was the last time you</p> <p>8 performed an appendectomy?</p> <p>9 A. Three weeks ago.</p> <p>10 Q. And I am taking that that was</p> <p>11 in conjunction with some type of cancer</p> <p>12 surgery?</p> <p>13 A. No. I take emergency room</p> <p>14 call and we do hernias and</p> <p>15 appendectomies, gallbladders surgeries.</p> <p>16 Q. How often do you take call?</p> <p>17 A. Once a week.</p> <p>18 Q. Do you perform laparoscopic</p> <p>19 surgery?</p> <p>20 A. Yes.</p> <p>21 Q. The last appendectomy that you</p> <p>22 did, was that laparoscopic?</p> <p>23 A. No.</p> <p>24 Q. By in large your focus of your</p> <p>25 practice is in caring for patients that</p>                                                                                                         |
| Page 7                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Page 9                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <p>1</p> <p>2 focused mainly on these areas that you've</p> <p>3 described for me, 30 percent breast</p> <p>4 cancer, and pancreatic cancer, liver</p> <p>5 cancer, colorectal cancer, melanoma and</p> <p>6 sarcoma cancers?</p> <p>7 A. Correct.</p> <p>8 Q. Describe for me the nature of</p> <p>9 your practice?</p> <p>10 A. Approximately 30 percent breast,</p> <p>11 30 percent colorectal and the rest as I</p> <p>12 mentioned before, pancreatic, liver,</p> <p>13 colorectal cancer, melanoma and sarcoma</p> <p>14 cancers.</p> <p>15 Q. That was fair, and I was</p> <p>16 looking for something else. Do you take</p> <p>17 care of patients who are known cancer</p> <p>18 patients?</p> <p>19 A. By in large the majority that</p> <p>20 are referred to me with either a mass,</p> <p>21 lump or known already by diagnosis of</p> <p>22 cancer, yes.</p> <p>23 Q. You are investigating the</p> <p>24 possibility of cancer?</p> <p>25 A. Yes.</p>            | <p>1</p> <p>2 are either suspected of having cancer or</p> <p>3 have been diagnosed as cancer?</p> <p>4 A. Correct.</p> <p>5 Q. The only times that you</p> <p>6 actually performed the type of general</p> <p>7 surgery is the one time of the week that</p> <p>8 you are on call and if there's a patient</p> <p>9 that requires such procedures?</p> <p>10 A. Correct.</p> <p>11 Q. Have you ever had a patient</p> <p>12 where an abdominal CT scan is obtained</p> <p>13 and there's some incidental forming of</p> <p>14 nodules?</p> <p>15 A. Yes.</p> <p>16 Q. How often has that occurred?</p> <p>17 A. Multiple.</p> <p>18 Q. I would assume those incidents</p> <p>19 findings could be a multitude of things</p> <p>20 including normal tissue up to cancer?</p> <p>21 A. Correct.</p> <p>22 Q. The ability to draw any</p> <p>23 conclusion from that abdominal CT would</p> <p>24 be dependent, in fact, on the level which</p> <p>25 it is able to visualize the chest, fair</p> |

| Page 10                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Page 12                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
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| <p>1<br/>2 enough?<br/>3 A. Say that again?<br/>4 Q. Abdominal CT scans primarily<br/>5 looking in the abdominal region?<br/>6 A. Correct.<br/>7 Q. And the ability to see into<br/>8 the chest would depend upon how far that<br/>9 abdominal scan goes up into the thoracic<br/>10 cavity?<br/>11 A. Correct.<br/>12 Q. The ability to make any<br/>13 conclusions or have any increased<br/>14 suspicion based upon that abdominal CT<br/>15 scan is limited in some regards as to<br/>16 how much it visualizes the chest?<br/>17 A. Correct.<br/>18 Q. You have a website called<br/>19 Dennisdeverauxempowereddoctor.com?<br/>20 A. That's not actually my website.<br/>21 The fellow that put together a group<br/>22 called PROS, which was a radiology<br/>23 oncology group, put me in it and listed<br/>24 me as a radiation oncologist. I'm not a<br/>25 radiation oncologist. I've asked him to</p> | <p>1<br/>2 the publications have not been published,<br/>3 but as far as the training, it's very<br/>4 accurate.<br/>5 Q. On your curriculum vitae, and I<br/>6 don't know if I have the updated one or<br/>7 not with me, but on your curriculum vitae<br/>8 do you recall if there's any<br/>9 publications, abstracts or any type of<br/>10 peer review journal that you have<br/>11 contributed to that addresses the issues<br/>12 as we are here today?<br/>13 A. The issues as of today, no.<br/>14 Q. And did you rely on any kind<br/>15 of literature in formulation of your<br/>16 opinions in this case?<br/>17 A. Only from the American College<br/>18 of Surgeons standards.<br/>19 Q. Do you know what that is?<br/>20 A. I have a copy of it here.<br/>21 It's ST-25, Statement of Principals<br/>22 Underlying Perioperative Responsibility.<br/>23 That's statements by the American College<br/>24 of Surgeons.<br/>25 Q. Did you secure that on your</p> |
| Page 11                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Page 13                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <p>1<br/>2 take it off, but he hasn't.<br/>3 Q. Is there any significance to<br/>4 empowereddoctor.com?<br/>5 A. Supposedly the patient is<br/>6 empowered because they know more about<br/>7 the doctor and they can therefore pick<br/>8 and choose a little more selectively the<br/>9 kind of physician that they would like to<br/>10 have taking care of them.<br/>11 Q. Are you Board certified in any<br/>12 particular area?<br/>13 A. General surgery and recertified<br/>14 three times.<br/>15 Q. Last time?<br/>16 A. 2004.<br/>17 Q. I've been provided with a<br/>18 curriculum vitae from Miss Pantages. I<br/>19 assume -- did you or your office provide<br/>20 her with that curriculum vitae?<br/>21 A. I think my office, yes.<br/>22 Q. Is that up to date as far as<br/>23 your academic training?<br/>24 A. Yes. But it's not accurate<br/>25 with some of the publications. Some of</p> | <p>1<br/>2 own or was that provided to you?<br/>3 A. I secured it on my own.<br/>4 Q. You are a member of the<br/>5 American College of Surgeons?<br/>6 A. Yes.<br/>7 Q. Statement on Principals<br/>8 Underlying Perioperative Responsibility are<br/>9 guidelines, would you agree with me on<br/>10 that?<br/>11 A. It's more than guidelines.<br/>12 It's their recommendations. Statements of<br/>13 the college. They feel if we are<br/>14 Fellows of the American College of<br/>15 Surgeons we are going to follow these<br/>16 principals.<br/>17 Q. Is it your position these set<br/>18 forth the standard of care?<br/>19 A. Yes. This is my position that<br/>20 they do.<br/>21 Q. Do you know what the American<br/>22 College of Surgeons' position is on any<br/>23 statements or recommendations that they<br/>24 put out? Did they also claim they set<br/>25 forth the standard of care?</p>                                                             |

| Page 14                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Page 16                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
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| <p>1</p> <p>2 A. I don't know.</p> <p>3 Q. Is there any other medical</p> <p>4 literature that you relied on for the</p> <p>5 purposes of your opinions in this case?</p> <p>6 A. No.</p> <p>7 Q. Do you believe there's any</p> <p>8 authoritative medical literature as it</p> <p>9 relates to the issues in this case?</p> <p>10 MS. PANTAGES:</p> <p>11 Objection. You can answer.</p> <p>12 A. Which component of the case?</p> <p>13 MS. SANDACZ:</p> <p>14 Q. I understand that you have</p> <p>15 issued a report dated December 20th,</p> <p>16 2005. The issues in that, as I</p> <p>17 understand them, there are two criticisms</p> <p>18 that you have that relate to standard of</p> <p>19 care, so my question to you is do you</p> <p>20 find that there is any medical literature</p> <p>21 that is authoritative as it relates to</p> <p>22 these issues?</p> <p>23 MS. PANTAGES:</p> <p>24 Continuing objection.</p> <p>25 A. Would you explain what</p>      | <p>1</p> <p>2 Q. In any of those lectures have</p> <p>3 you held yourself out as an expert in</p> <p>4 general surgery?</p> <p>5 A. No. I lecture on medical and</p> <p>6 surgical oncologic issues.</p> <p>7 Q. Same question as it relates to</p> <p>8 any type of peer review literature or</p> <p>9 textbook literature, have you held</p> <p>10 yourself out to those types of</p> <p>11 specialties as to be having expertise in</p> <p>12 areas of general surgery?</p> <p>13 MS. PANTAGES:</p> <p>14 Objection. You can answer.</p> <p>15 A. Only in that surgical oncology</p> <p>16 not having its own Board certification is</p> <p>17 included under general surgery as its</p> <p>18 overlying peer review group, if you will.</p> <p>19 In other words, it would be general</p> <p>20 surgery and surgical oncology would come</p> <p>21 under that. It wouldn't have its own</p> <p>22 Board certification. Therefore, under</p> <p>23 general surgery, yes, I've lectured under</p> <p>24 general surgery and consider myself an</p> <p>25 expert in general surgery because of the</p> |
| Page 15                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Page 17                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <p>1</p> <p>2 authoritative means?</p> <p>3 MS. SANDACZ:</p> <p>4 Q. Is that something that can --</p> <p>5 it's something that sets forth a standard</p> <p>6 of care?</p> <p>7 A. Other than the American College</p> <p>8 of Surgeons literature, no. Not that it</p> <p>9 doesn't exist, it's just that I'm aware</p> <p>10 of.</p> <p>11 Q. That's fine.</p> <p>12 A. Let me get a clarification on</p> <p>13 this. Do you also mean by that</p> <p>14 experience or training or education? Do</p> <p>15 you mean publications?</p> <p>16 Q. I'm talking about medical</p> <p>17 literature, whether it be journals,</p> <p>18 textbooks, any other med-line surgery,</p> <p>19 anything, any type of body that would</p> <p>20 contain medical literature, investigations?</p> <p>21 A. Okay. No, I'm not.</p> <p>22 Q. I can't recall, and I'll ask</p> <p>23 you straight up, do you perform any</p> <p>24 lectures to any professional societies?</p> <p>25 A. Yes.</p> | <p>1</p> <p>2 classification I've just described.</p> <p>3 MS. SANDACZ:</p> <p>4 Q. You would agree with me any</p> <p>5 lecture or peer review or publications</p> <p>6 you have focused on the issues of</p> <p>7 surgical oncologic issues?</p> <p>8 MS. PANTAGES:</p> <p>9 Objection. I don't understand</p> <p>10 the question.</p> <p>11 A. Several of the publications</p> <p>12 there have been on general surgery</p> <p>13 themselves, trauma surgery.</p> <p>14 MS. SANDACZ:</p> <p>15 Q. Doctor, when was the last time</p> <p>16 you issued any type of publication on</p> <p>17 general surgical issues?</p> <p>18 A. I have to look at my</p> <p>19 curriculum vitae. 1991.</p> <p>20 Q. Okay.</p> <p>21 A. We reference '71. That would</p> <p>22 be the last one in general surgery.</p> <p>23 That was on wound healing.</p> <p>24 Q. How do you define standard of</p> <p>25 care?</p>                                                                                                                                                                                               |

| Page 18                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Page 20                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
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| <p>1</p> <p>2 A. Well, that's a very good</p> <p>3 question. I guess I would define it as</p> <p>4 a -- as it was taught to me in my</p> <p>5 training and as highlighted in the</p> <p>6 principals of perioperative responsibility</p> <p>7 and that is that for me a standard of</p> <p>8 care is how I would like to be and how</p> <p>9 I would like to have my family treated</p> <p>10 by a physician and/or surgeon which</p> <p>11 extends past just the immediate issue for</p> <p>12 which they're being seen or treated.</p> <p>13 Q. I don't understand the last</p> <p>14 part of that answer.</p> <p>15 A. Let me give you an example</p> <p>16 then. If my family member were to go in</p> <p>17 for a cold or a cough to see a primary</p> <p>18 care physician or to get their -- have</p> <p>19 an appendectomy and something else was</p> <p>20 discovered, hypertension for example, or</p> <p>21 diabetes that the patient was unaware of,</p> <p>22 a standard of care for all of us would</p> <p>23 not stop at the -- would not limit</p> <p>24 ourselves to the reason that the patient</p> <p>25 originally presented. It would have to</p> | <p>1</p> <p>2 director of the Saint Francis Cancer</p> <p>3 Center. Any other administrative</p> <p>4 positions?</p> <p>5 A. No.</p> <p>6 Q. How much of your time do you</p> <p>7 spend in administrative issues?</p> <p>8 A. Probably 30 percent of the</p> <p>9 time.</p> <p>10 Q. Is there a Director of General</p> <p>11 Surgery at Saint Francis Hospital?</p> <p>12 A. Yes.</p> <p>13 Q. Is there a Director of General</p> <p>14 Surgery at Vassar?</p> <p>15 A. Yes.</p> <p>16 Q. So there are two distinct</p> <p>17 roles, Director of General Surgery and</p> <p>18 Director of Surgical Oncology?</p> <p>19 A. I'm not Director of General</p> <p>20 Surgery. Surgical oncology only.</p> <p>21 Q. Do you have any teaching or</p> <p>22 academic positions?</p> <p>23 A. Yes.</p> <p>24 Q. What?</p> <p>25 A. I was an academic surgeon for</p>                          |
| Page 19                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Page 21                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <p>1</p> <p>2 extend on the complete management of</p> <p>3 evaluation of or referral to someone who</p> <p>4 specialized in treating these recently</p> <p>5 discovered issues over and above what</p> <p>6 they were seen for.</p> <p>7 Q. Would that be true as to</p> <p>8 general surgeons, surgical oncologists,</p> <p>9 physicians, family practitioners?</p> <p>10 A. General surgeons, surgical</p> <p>11 oncologists, physicians, family</p> <p>12 practitioners, even psychiatrists, anyone,</p> <p>13 yes.</p> <p>14 Q. We are here at Saint Francis</p> <p>15 Hospital?</p> <p>16 A. Yes.</p> <p>17 Q. You also have privileges at the</p> <p>18 neighboring hospital.</p> <p>19 A. Yes.</p> <p>20 Q. What's that?</p> <p>21 A. Vassar Brothers Hospital.</p> <p>22 Q. Any other hospitals?</p> <p>23 A. No.</p> <p>24 Q. Any particular positions? We</p> <p>25 mentioned before you are a medical</p>                                                                                                                                                                                                                                                  | <p>1</p> <p>2 over twenty years. I was on staff with</p> <p>3 Boston University and at Rutgers Medical</p> <p>4 School where I was Chief of Cancer</p> <p>5 Surgery for ten years.</p> <p>6 Q. Do you currently hold any</p> <p>7 academic positions?</p> <p>8 A. No longer.</p> <p>9 Q. How long has that been the</p> <p>10 case?</p> <p>11 A. Since 1993.</p> <p>12 Q. Are you involved in any type</p> <p>13 of research?</p> <p>14 A. Clinical research, yes.</p> <p>15 Q. Is that in association with any</p> <p>16 type of academics?</p> <p>17 A. Well, yeah. National Study,</p> <p>18 NSABP.</p> <p>19 Q. Dealing with breast cancer?</p> <p>20 A. Yes.</p> <p>21 Q. Ever been involved in the</p> <p>22 National Comprehensive Cancer Network?</p> <p>23 A. Yes. NCCN, yes.</p> <p>24 Q. Are you part of the committee</p> <p>25 group that heads that or contributes to</p> |

| Page 22                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Page 24                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
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| <p>1<br/>2 that?<br/>3 A. No.<br/>4 Q. Okay.<br/>5 A. I'm a member of the Association<br/>6 of Academic Surgery and American Radium<br/>7 Society and the Society of University<br/>8 Surgeons and a lot of academic<br/>9 affiliations.<br/>10 Q. Do you know any of the parties<br/>11 in this case?<br/>12 A. No.<br/>13 Q. Do you know any of the experts<br/>14 that have been identified?<br/>15 A. No.<br/>16 Q. Let's do this for housekeeping<br/>17 matters. You have been kind enough to<br/>18 show me before the deposition started a<br/>19 copy of your file.<br/>20 A. Correct.<br/>21 Q. Is this a complete copy of<br/>22 your file?<br/>23 (Document submitted)<br/>24 A. Yes.<br/>25 MS. PANTAGES:</p>                                                                                                                                                                                                    | <p>1<br/>2 accompanying any type of package?<br/>3 A. It may have been the<br/>4 correspondence in the binder.<br/>5 Q. And do you recall whether that<br/>6 letter enclosed anything else other than<br/>7 medical records?<br/>8 A. No.<br/>9 Q. Do you know whether or not<br/>10 that letter predated the first letter<br/>11 that you have in your file which is<br/>12 dated November 23, 2005?<br/>13 A. Yes.<br/>14 Q. How were you contacted in this<br/>15 case?<br/>16 A. By Mr. Burnett.<br/>17 Q. What was the gist of the<br/>18 conversation when he contacted you?<br/>19 A. That's interesting, because Miss<br/>20 Pantages and I were talking and she asked<br/>21 do you know how he contacted you and I<br/>22 said no, I don't. I don't know how he<br/>23 got my name. The context of the<br/>24 conversation was he explained the case to<br/>25 me, gave me some details and asked me if</p>                                                            |
| Page 23                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Page 25                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <p>1<br/>2 For the record, there's a<br/>3 binder of medical records that's not<br/>4 here. These are supplementations. These<br/>5 are extras that we weren't sure that he<br/>6 had or not. My paralegal sent these.<br/>7 There's a separate binder of records that<br/>8 he doesn't have with him today.<br/>9 MS. SANDACZ:<br/>10 Q. I see here there's two<br/>11 correspondence that were sent to you and<br/>12 it appears that the contents in which is<br/>13 contained in those letters are, in fact,<br/>14 in front of us. Is it your position<br/>15 that there's another set of records<br/>16 somewhere out?<br/>17 A. I think she is right.<br/>18 MS. PANTAGES:<br/>19 Yes, there is.<br/>20 A. There is a binder. I'm moving<br/>21 my office around so things are a little<br/>22 messed up right now.<br/>23 MS. SANDACZ:<br/>24 Q. Do you have another<br/>25 correspondence that I assume would be</p> | <p>1<br/>2 I would review the case.<br/>3 Q. Do you know what the details<br/>4 were?<br/>5 A. I told him I couldn't comment<br/>6 on it until I saw all the details which<br/>7 is when I just received the binder that<br/>8 I can't seem to put my finger on now.<br/>9 Q. Other than he gave you details<br/>10 of the case, did he give you -- I see<br/>11 in addition to that there's a time line<br/>12 here in your file that actually has a<br/>13 date on it of March of '06. Did he<br/>14 give you anything similar to this in the<br/>15 letter?<br/>16 A. I don't know.<br/>17 Q. Can you do me a favor, can you<br/>18 look in your office and let Miss Pantages<br/>19 know and then I'd like to get a copy,<br/>20 not of the medical records, but I'd like<br/>21 to get a copy of the correspondence?<br/>22 A. I'll locate that.<br/>23 (REQUESTED INFORMATION HERE)<br/>24 A. I'm sorry, I didn't have that<br/>25 ready for today. I'll get a copy of</p> |

| Page 26                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Page 28                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
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| <p>1<br/>2 that, absolutely.<br/>3 Q. I would assume that when you<br/>4 -- when Mr. Burnett spoke with you he<br/>5 told you that Mrs. Richnafsky had indeed<br/>6 passed away from lung cancer?<br/>7 A. Yes.<br/>8 MS. PANTAGES:<br/>9 Off the record.<br/>10 (OFF THE RECORD DISCUSSION)<br/>11 MS. SANDACZ:<br/>12 Q. Your counsel, Miss Pantages,<br/>13 has handed me what appears to be a<br/>14 letter dated October 7th, 2005 addressed<br/>15 to you which includes Bedford Medical<br/>16 Center emergency room and inpatient<br/>17 records. Do you happen to know what<br/>18 admission that was?<br/>19 A. Which?<br/>20 Q. Was it just a small binder or<br/>21 big binder?<br/>22 A. It was a -- probably a couple<br/>23 inches, inch half.<br/>24 Q. Do you know whether it<br/>25 contained multiple admissions or just one</p> | <p>1<br/>2 Q. Did you read them cover to<br/>3 cover?<br/>4 A. Yes.<br/>5 Q. Also enclosed is a check<br/>6 payable for \$2,000 as a retainer. Was<br/>7 that for the purpose of review of these<br/>8 records?<br/>9 A. Yes.<br/>10 Q. Is that by the hour? How does<br/>11 that work?<br/>12 A. It's by the hour.<br/>13 Q. How much per hour?<br/>14 A. \$500 per hour.<br/>15 Q. So they gave you \$2,000 up<br/>16 front which covers the first four hours?<br/>17 A. Correct.<br/>18 Q. And just to continue with the<br/>19 housekeeping, you also have a letter from<br/>20 Mr. Burnett dated November 23, 2005<br/>21 enclosing the deposition transcript of Dr.<br/>22 El-Khairi?<br/>23 A. Correct.<br/>24 Q. Did you read Dr. El-Khairi's<br/>25 deposition transcript from cover to cover?</p>                                                                                                                          |
| Page 27                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Page 29                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <p>1<br/>2 admission?<br/>3 A. I don't know, but I do<br/>4 remember prominently the deposition of the<br/>5 -- as well as materials of the emergency<br/>6 room. I remember that for sure.<br/>7 Q. You don't have the recollection<br/>8 whether there were medical records for<br/>9 one admission or multiple admissions to<br/>10 Bedford Medical Center?<br/>11 A. I don't know.<br/>12 Q. Enclosed were records of Dr.<br/>13 El-Khairi; correct?<br/>14 A. Yes.<br/>15 Q. And also the deposition<br/>16 transcript of Daniel Kranitz?<br/>17 A. Emergency room physician?<br/>18 Q. Yes.<br/>19 A. Yes.<br/>20 Q. Did you read all of these<br/>21 records that you were sent?<br/>22 A. Yes.<br/>23 Q. Including the deposition<br/>24 transcript of Dr. Kranitz?<br/>25 A. Yes.</p>                                                      | <p>1<br/>2 A. Yes.<br/>3 Q. Also contained in your records<br/>4 is a correspondence dated March 22, 2006<br/>5 from the office of Becker &amp; Mishkind, and<br/>6 specifically Mary Campobasso. Included in<br/>7 this correspondence Mary Campobasso puts<br/>8 supplemental pages missing from your copy<br/>9 of records. There are various things.<br/>10 A. Okay.<br/>11 Q. I wanted to copy that because<br/>12 I want to know what you had prior to<br/>13 writing your reports. Enclosed is a copy<br/>14 of the expert record of Dr. David<br/>15 Ettinger (proper noun subject to<br/>16 correction) from the Sidney Kim (proper<br/>17 noun subject to correction) Medical<br/>18 Comprehensive Cancer Center at Johns<br/>19 Hopkins. Do you know him?<br/>20 A. No.<br/>21 Q. Ever read any of his --<br/>22 MS. SANDACZ:<br/>23 Strike that.<br/>24 Q. What's his area or specialty?<br/>25 A. Medical oncology.</p> |



| Page 30                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Page 32                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
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| <p>1</p> <p>2 Q. And any specific area?</p> <p>3 A. Did a lot of work, expert work</p> <p>4 of lung cancer.</p> <p>5 Q. The fact that you know he's</p> <p>6 got quite a bit of writing and expertise</p> <p>7 in lung cancer, have you ever seen any</p> <p>8 of his publications?</p> <p>9 A. I don't believe so.</p> <p>10 Q. I take it you've looked at his</p> <p>11 curriculum vitae?</p> <p>12 A. I have.</p> <p>13 Q. You studied at Johns Hopkins?</p> <p>14 A. Yes. I had a fellowship of</p> <p>15 pathology there when I was a student.</p> <p>16 Q. There's a report of Dr. Matthew</p> <p>17 Walsh; correct?</p> <p>18 A. Yes.</p> <p>19 Q. Do you know Dr. Walsh?</p> <p>20 A. No.</p> <p>21 Q. You are smiling. Why is that?</p> <p>22 A. I read his paragraph that I</p> <p>23 better -- I better not say.</p> <p>24 Q. You can say it.</p> <p>25 A. I shall remain silent.</p>                                                                                                                                                      | <p>1</p> <p>2 depositions and before trial and we were</p> <p>3 getting some additional records in</p> <p>4 afterwards such as Dr. Hamilton's chart</p> <p>5 and some others, so it's not those were</p> <p>6 missing from his binder, just for the</p> <p>7 sake of completion she wanted to verify</p> <p>8 that if the original chart had those.</p> <p>9 MS. SANDACZ:</p> <p>10 Okay. Absent me being able to</p> <p>11 do a complete review of the medical</p> <p>12 records that the doctor apparently has in</p> <p>13 some other location in his office, I</p> <p>14 appreciate your comments, but I can't --</p> <p>15 I have to take it face value what's</p> <p>16 here. Off the record.</p> <p>17 (OFF THE RECORD DISCUSSION)</p> <p>18 Q. The other thing enclosed in</p> <p>19 your records, Doctor, the date on this is</p> <p>20 3/21/06 and it is also by the author of</p> <p>21 the same dated letter, March 22nd 2006</p> <p>22 letter, is a two-page outlined time line</p> <p>23 of events.</p> <p>24 A. Right.</p> <p>25 Q. Did you read that?</p> |
| Page 31                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Page 33                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <p>1</p> <p>2 Q. You obviously have an opinion</p> <p>3 as to Dr. Walsh's report and for my</p> <p>4 edification and understanding as well as</p> <p>5 Dr. Walsh's understanding, what do you</p> <p>6 take an issue with?</p> <p>7 A. I don't agree with the idea</p> <p>8 that a standard of care does not require</p> <p>9 a written documentation. I don't think</p> <p>10 Dr. Walsh practices medicine like that.</p> <p>11 Q. Okay.</p> <p>12 A. Just for your edification.</p> <p>13 Q. I'm sure Miss Pantages will ask</p> <p>14 him. Also enclosed is Dr. Walsh's</p> <p>15 curriculum vitae?</p> <p>16 A. Correct.</p> <p>17 MS. PANTAGES:</p> <p>18 For the record, you indicated</p> <p>19 that the letter of March 22nd, 2006</p> <p>20 reflects records that were missing from</p> <p>21 the original binder. I'm not sure -- I</p> <p>22 know that's what the paralegal said, but</p> <p>23 she was just making sure that everyone's</p> <p>24 binder was complete, all the experts were</p> <p>25 complete before their discovery</p> | <p>1</p> <p>2 A. Yes.</p> <p>3 Q. Is there anything else in your</p> <p>4 file other than what we have talked</p> <p>5 about?</p> <p>6 A. The missing binder.</p> <p>7 Q. Okay. And you're going to</p> <p>8 look for the correspondence?</p> <p>9 A. I'll find it.</p> <p>10 MS. SANDACZ:</p> <p>11 If there is any way, Pam, that</p> <p>12 you can tell me what you are saying</p> <p>13 these records that are included in the</p> <p>14 March 22nd letter are included and you</p> <p>15 are just trying to reinforce that they</p> <p>16 are, fine, let me know.</p> <p>17 Q. I'm going to hand you what has</p> <p>18 been marked as Defendant's Exhibit A.</p> <p>19 Can you identify that for me?</p> <p>20 (Document submitted)</p> <p>21 A. Yes. That was a letter dated</p> <p>22 December 20th, 2005 which I wrote to Mr.</p> <p>23 Burnett.</p> <p>24 Q. Given the date of December</p> <p>25 20th, 2005, this would have post-dated</p>                                                                                                                    |

| Page 34                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Page 36                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
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| <p>1<br/>2 the initial correspondence of October 7th<br/>3 and then the November 23 correspondence<br/>4 and enclosures in both?<br/>5 A. Correct.<br/>6 Q. Subsequent are the -- is a<br/>7 letter from March 22nd of '06. Those<br/>8 records and expert reports and the time<br/>9 line of events, fair enough?<br/>10 A. Correct.<br/>11 MS. SANDACZ:<br/>12 I'm going to mark this.<br/>13 (TIME LINE WAS RECEIVED AND<br/>14 MARKED AS DEFENDANT'S EXHIBIT B FOR<br/>15 IDENTIFICATION)<br/>16 Q. Handing you what has been<br/>17 marked as Defendant's Exhibit B. What is<br/>18 that?<br/>19 (Document submitted)<br/>20 A. This is a time line provided<br/>21 for me on Susan Richnafsky prepared by<br/>22 Pamela Pantages.<br/>23 Q. I'm going to hand you a --<br/>24 well, Exhibit B is a two-page document?<br/>25 A. Yes.</p>                                                              | <p>1<br/>2 that. Is that your handwriting and<br/>3 highlighting?<br/>4 A. Yes, it is.<br/>5 Q. There's also a notation at the<br/>6 bottom about some additional fees due and<br/>7 owing to you for your continued review?<br/>8 A. Yes.<br/>9 Q. That's also your handwriting?<br/>10 A. Yes.<br/>11 Q. You have done expert review in<br/>12 the past, expert review?<br/>13 A. Yes.<br/>14 Q. How many times have you been<br/>15 asked to serve as an expert in medical<br/>16 legal cases?<br/>17 A. Does that mean testify?<br/>18 Q. Just in general.<br/>19 A. In general I would say a<br/>20 dozen.<br/>21 Q. Of those dozen times, have they<br/>22 all been for the plaintiff?<br/>23 A. No.<br/>24 Q. How many times have you<br/>25 reviewed a case for the defendant,</p>                                                                                                                 |
| Page 35                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Page 37                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <p>1<br/>2 MS. SANDACZ:<br/>3 We'll mark this.<br/>4 (FAX WAS RECEIVED AND MARKED AS<br/>5 DEFENDANT'S EXHIBIT C FOR IDENTIFICATION)<br/>6 Q. I'm going to hand you what has<br/>7 been marked as Defendant's Exhibit C<br/>8 which I believe is a three-page document.<br/>9 Can you identify that?<br/>10 (Document submitted)<br/>11 A. This is a fax that was sent to<br/>12 John Burnett which included the statement<br/>13 on perioperative -- Principals of<br/>14 Perioperative Responsibility by the<br/>15 American College of Surgeons.<br/>16 Q. The copy that you have, third<br/>17 page of Defendant's Exhibit C, has a<br/>18 piece of paper over top of it?<br/>19 A. Yes.<br/>20 Q. Did the copy that went to Mr.<br/>21 Burnett have that piece of paper on top<br/>22 of it?<br/>23 A. Yes.<br/>24 Q. There's some highlighting of<br/>25 number 8 and some handwriting underneath</p> | <p>1<br/>2 healthcare provider, hospital?<br/>3 A. I would say four times.<br/>4 Q. Any of the cases that you<br/>5 reviewed, approximately dozen, did any of<br/>6 those involve general surgery issues and<br/>7 communication issues?<br/>8 A. Again, they are all involved<br/>9 with cancer cases, because surgical<br/>10 oncology comes under general surgery and<br/>11 I would say they all had to do with<br/>12 general surgery cases. They all had to do<br/>13 with communication issues or lack of.<br/>14 Q. Have you served as an expert<br/>15 in a lung cancer case?<br/>16 A. No.<br/>17 Q. Never?<br/>18 A. No.<br/>19 Q. When was the last time you<br/>20 reviewed a case on behalf of a defendant<br/>21 physician or healthcare provider?<br/>22 A. May I go and look?<br/>23 MS. PANTAGES:<br/>24 Give her your best estimate.<br/>25 The reason is we have no way of knowing</p> |

| Page 38                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Page 40                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
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| <p>1<br/>2 what the status of those other cases are,<br/>3 so it would be improper for you to<br/>4 answer, unless you know that the cases<br/>5 are either a matter of public record or<br/>6 disposed of, but I would caution you not<br/>7 to talk about them in detail.<br/>8 A. I do not know. May I get the<br/>9 dates?<br/>10 MS. PANTAGES:<br/>11 Give her a general estimation.<br/>12 A. Two last year in 2005.<br/>13 MS. SANDACZ:<br/>14 Q. And those involved what type of<br/>15 cancer issues?<br/>16 A. One was a sarcoma and the<br/>17 other one was a breast cancer.<br/>18 Q. And where were they venued at,<br/>19 New York, New Jersey?<br/>20 A. Pennsylvania and West Virginia.<br/>21 Q. What other states have you<br/>22 served as an expert in?<br/>23 A. New Jersey.<br/>24 Q. How about New York?<br/>25 A. Yes.</p> | <p>1<br/>2 Q. As to anybody in particular or<br/>3 everybody?<br/>4 A. As to Dr. El-Khairi.<br/>5 Q. Anybody else?<br/>6 A. Or the emergency room doctor.<br/>7 Q. Dr. Kranitz?<br/>8 A. Yes.<br/>9 Q. And Dr. Kranitz?<br/>10 A. And/or. I've got materials on<br/>11 both of them. Essentially from my<br/>12 perspective was asking me if the ball was<br/>13 dropped and where did I -- who or where<br/>14 did I see it being dropped?<br/>15 MS. PANTAGES:<br/>16 Just for the record, with<br/>17 respect to -- I'm not sure what the<br/>18 specific conversation was, but because of<br/>19 the issues in the case and because of<br/>20 the expert competency requirement I'd like<br/>21 to state for the record Dr. Devereux was<br/>22 consulted for the purposes of this case<br/>23 to render opinions with respect to Dr.<br/>24 El-Khairi and the general surgery standard<br/>25 of care.</p> |
| Page 39                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Page 41                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <p>1<br/>2 Q. Ohio obviously?<br/>3 A. Now.<br/>4 Q. Is this the first Ohio case<br/>5 that you've had?<br/>6 A. Yes.<br/>7 Q. Of those twelve cases that you<br/>8 have reviewed, how many of those have you<br/>9 written a report similar to Defendant's<br/>10 Exhibit A?<br/>11 A. "Similar" meaning responding to<br/>12 questions asked me by an attorney or<br/>13 similar "meaning" the content?<br/>14 Q. Similar meaning responding to<br/>15 questions asked by attorneys.<br/>16 A. All of them.<br/>17 Q. Was your intent with<br/>18 Defendant's Exhibit A to answer a<br/>19 question that had been posed to you by,<br/>20 I'm assuming, Mr. Burnett?<br/>21 A. Yes.<br/>22 Q. What was the question that he<br/>23 had asked you?<br/>24 A. The question was, was there a<br/>25 deviation of standard of care?</p>               | <p>1<br/>2 MS. SANDACZ:<br/>3 Pam, I appreciate your<br/>4 comments, but the doctor has just<br/>5 testified contrary to that and based upon<br/>6 his discussions with Mr. Burnett.<br/>7 MS. PANTAGES:<br/>8 He can't render opinions as to<br/>9 emergency management care. He's a<br/>10 general surgeon.<br/>11 MS. SANDACZ:<br/>12 I thought that's the judicial<br/>13 decision that the judge decides. I'm not<br/>14 going to argue with you. The testimony<br/>15 stands as it does.<br/>16 Q. It was based upon your issuance<br/>17 of Defendant's Exhibit A which is a<br/>18 report of December 20th, 2005, you felt<br/>19 Dr. El-Khairi dropped the ball as opposed<br/>20 to Dr. Kranitz?<br/>21 MS. PANTAGES:<br/>22 Objection.<br/>23 A. Yes. I was provided with<br/>24 materials of Dr. Kranitz just as a<br/>25 documentation of Dr. Kranitz had conferred</p>                            |

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1  
2 and passed on information to Dr.  
3 El-Khairi that this woman had had a lung  
4 mass.

5 MS. SANDACZ:

6 Q. Before I get into this --  
7 (interrupted)

8 A. I wasn't making judgements  
9 about Dr. Kranitz. I was looking at his  
10 notes.

11 Q. I thought you told me that you  
12 were asked by Mr. Burnett to determine  
13 whether Dr. El-Khairi or Dr. Kranitz  
14 dropped the ball. Is that different now?

15 A. I don't know -- he provided me  
16 with testimony of Dr. Kranitz and as I  
17 said, I thought that was for me to look  
18 at everybody and try to render an opinion  
19 on this missing binder material which I  
20 will find of what happened and try to  
21 draw some conclusion of that and I did  
22 that.

23 Q. As it relates to the care that  
24 was provided to her during the period in  
25 question?

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1 A. Yes.

2 Q. How many depositions have you  
3 given in those twelve cases that you've  
4 reviewed?

5 A. I think four.

6 Q. Only four depositions?

7 A. Yes.

8 Q. How many times have you  
9 testified in trial?

10 A. I think four.

11 Q. Okay.

12 A. One in New Jersey, one in New  
13 York and one in Pennsylvania -- may have  
14 been two in Pennsylvania.

15 Q. Ever testified in federal  
16 court?

17 A. No.

18 Q. Ever have any jurisdiction  
19 require you to put any type of listing  
20 of cases that you've reviewed and serve  
21 as an expert in?

22 A. No.

23 Q. Do you have such a document  
24 that you keep of your own?  
25

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1 A. No.

2 Q. You mentioned to me you charged  
3 a retainer of \$2,000, \$500 an hour for  
4 the review of materials that were  
5 provided to you?

6 A. Yes.

7 Q. How much do you charge for the  
8 issuance of a report?

9 A. Depends how long it takes.

10 Q. Is it still \$500 an hour?

11 A. Yes. Unless it's on the tail  
12 or something incomplete that I have done  
13 that I said was coming from a letter and  
14 bill that I had already submitted. For  
15 example, if I then go back and look at a  
16 -- if it takes me two more hours to do  
17 something, but it was part of the  
18 original review that, for example, I  
19 looked at some films that someone sent me  
20 and it took about five minutes to do  
21 that. Those films, review of those films  
22 were already included on an original bill  
23 that was sent. I reviewed them and sent  
24 a supplemental letter.  
25

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1 Q. Do you charge for deposition  
2 testimony?

3 A. Depends on the time away from  
4 the hospital.

5 Q. Because Mrs. Pantages indicated  
6 to me that your deposition charge is  
7 \$5,000.

8 A. I can't operate all day waiting  
9 to do this.

10 Q. So that is the charge, \$5,000  
11 for a deposition?

12 A. Yes.

13 Q. What's the charge for trial  
14 testimony assuming you have to travel to  
15 another jurisdiction, is there a charge  
16 portal to portal?

17 A. Probably \$10,000 because I  
18 won't be able to operate the day before  
19 I go and the day that I am there.

20 Q. I was just looking back on  
21 Defendant's Exhibit C. I thought there  
22 was -- there is another notation about  
23 your charges. On the bottom it says I  
24 spent two hours going through the ACS  
25

| Page 46                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Page 48                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
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| <p>1 materials. What materials did you look<br/>2 at, this particular material --<br/>3 (interrupted)<br/>4<br/>5 A. All the online materials and I<br/>6 actually did a lot of internet work on<br/>7 standards of care. I read a lot of<br/>8 materials that were not applicable, so<br/>9 once I finished all that I copied from<br/>10 the American College -- that is very hard<br/>11 to find if you start looking for<br/>12 standards of care on their website, it's<br/>13 very difficult to find that. Anyway,<br/>14 that's what the charge was.<br/>15 Q. In your review of the American<br/>16 College of Surgeons website or area where<br/>17 you were on -- where you obtained this<br/>18 statement on the principals underlying<br/>19 perioperative responsibility, did you see<br/>20 anything by the American College of<br/>21 Surgeons as it relates to their position<br/>22 as whether these statements set forth the<br/>23 standard of care or guidelines and/or<br/>24 recommendations?<br/>25 A. Not that I recall. I just</p> | <p>1 Pantages' law firm other than the \$2,000<br/>2 retainer and the \$910 invoice that<br/>3 accompanied Defendant's Exhibit C?<br/>4<br/>5 A. No.<br/>6 Q. Did you feel like you had<br/>7 everything that you needed to render<br/>8 opinions in this case?<br/>9 A. Yes. I believe so, yes.<br/>10 Q. You would agree with me that<br/>11 if an expert is going to render opinions<br/>12 in this case he needs to find out as<br/>13 many facts about what happened in the<br/>14 case?<br/>15 A. Yes.<br/>16 Q. You would agree with me there<br/>17 are times in medicine that two physicians<br/>18 would disagree on opinions on evaluations?<br/>19 A. Yes.<br/>20 Q. Even though they choose<br/>21 different courses of treatment and/or<br/>22 evaluations, they both can be practicing<br/>23 within reasonable and appropriate<br/>24 standards of care?<br/>25 A. Absolutely.</p>                                                                                      |
| Page 47                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Page 49                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <p>1 know that the American College of<br/>2 Surgeons, when you become a fellow, FACS,<br/>3 you agree to follow their guidelines and<br/>4 principals.<br/>5<br/>6 Q. Is it your position that<br/>7 because the American College of Surgeons<br/>8 puts out recommendations or statements<br/>9 that you as a surgeon must follow those,<br/>10 otherwise you deviate from the standard?<br/>11 A. It's my opinion that you do,<br/>12 yes.<br/>13 Q. Do you know whether or not the<br/>14 American College of Surgeons maintains<br/>15 that opinion?<br/>16 A. Well, I can't imagine why else<br/>17 they would publish them if they didn't --<br/>18 these are not laws of course. You are<br/>19 supposed to follow them if you're an<br/>20 FACS.<br/>21 Q. If you do not follow them, you<br/>22 deviate from the standard of care in your<br/>23 opinion?<br/>24 A. I believe so.<br/>25 Q. Have you invoiced Miss</p>                                                                                                                            | <p>1<br/>2 Q. You would agree with me based<br/>3 upon your training and experience you<br/>4 would develop personal preferences or<br/>5 biases as to practices and procedures?<br/>6 A. Yes.<br/>7 Q. Just because somebody doesn't<br/>8 perform the same type of practice that<br/>9 you do, that other physician can still be<br/>10 acting within a standard of care?<br/>11 A. Could.<br/>12 Q. You could conceive of a<br/>13 situation where a physician doesn't follow<br/>14 the same type of practice that you do,<br/>15 but still be within the standard of care?<br/>16 A. As unappealing as that sounds,<br/>17 yes.<br/>18 Q. Why is that unappealing?<br/>19 A. Because I don't know if all of<br/>20 our behavior is defensible in a court of<br/>21 law. I also was sued for not documenting<br/>22 on the issue that I had personal<br/>23 recollection happened. My patient was<br/>24 demented, didn't remember anything. But<br/>25 I didn't write it down.</p> |

| Page 50                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Page 52                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
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| <p>1</p> <p>2 Q. Did you believe you deviated</p> <p>3 from the standard of care when</p> <p>4 documenting the conversation that you and</p> <p>5 this demented patient had?</p> <p>6 A. The court -- the agreement with</p> <p>7 the lawyers where my lawyer said you are</p> <p>8 dead meat -- (interrupted)</p> <p>9 Q. My question is do you believe</p> <p>10 you deviated from the standard of care in</p> <p>11 a situation where you did not document a</p> <p>12 conversation with a woman that you --</p> <p>13 even though you had a personal</p> <p>14 recollection of having it and where</p> <p>15 obvious a litigation arose from that, do</p> <p>16 you believe that you deviated from the</p> <p>17 standard of care?</p> <p>18 A. Yes. Because I changed my</p> <p>19 behavior as a result of it.</p> <p>20 Q. Okay.</p> <p>21 A. At the time between me and the</p> <p>22 patient, no, because I recollect I know</p> <p>23 that I told him. I know absolutely that</p> <p>24 I told him and therefore I did inform</p> <p>25 the patient. And I knew that I did and</p>                                                                               | <p>1</p> <p>2 A. I have no idea.</p> <p>3 Q. You don't hold that premise?</p> <p>4 A. I hold the premise that you</p> <p>5 can't prove that you didn't.</p> <p>6 Q. Having documentation helps you</p> <p>7 establish that you had a conversation</p> <p>8 such as in your case, fair enough?</p> <p>9 A. Yes.</p> <p>10 Q. But my question is that if you</p> <p>11 don't document it, does that indicate</p> <p>12 that you didn't do it?</p> <p>13 A. You can't prove it and it</p> <p>14 indicates to me that you can't prove it.</p> <p>15 Q. In and of itself you do not</p> <p>16 believe if it's not documented that you</p> <p>17 didn't do it?</p> <p>18 A. Not if you have firm</p> <p>19 recollection that you did do it. There's</p> <p>20 got to be some memory, whether it's</p> <p>21 written memory or biochemical memory.</p> <p>22 Q. You can have memory of things</p> <p>23 based upon your routine care?</p> <p>24 MS. PANTAGES:</p> <p>25 That doesn't make sense. Dr.</p> |
| Page 51                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Page 53                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <p>1</p> <p>2 so I did not believe -- because I did</p> <p>3 fall within the standard of care that I</p> <p>4 told him that he would need more surgery.</p> <p>5 He didn't remember that. Even though he</p> <p>6 didn't have a complication from that, he</p> <p>7 ended up having metastatic disease and</p> <p>8 not a local recurrence, but because of</p> <p>9 pathology reports that I was very close</p> <p>10 to the tumor line it needed to be</p> <p>11 resected. I told him he needed to have</p> <p>12 it resected and he didn't get that done</p> <p>13 and he went on and had some bladder and</p> <p>14 prostate problems, had all those taken</p> <p>15 care of and didn't have it done, ended</p> <p>16 up with liver disease in the liver and</p> <p>17 the family thought that came from</p> <p>18 recurrence in the rectum which it didn't.</p> <p>19 That was at Rutgers Medical School and</p> <p>20 the law attorney told me you are not</p> <p>21 going to win this because you didn't</p> <p>22 document that conversation with him.</p> <p>23 Q. Do you believe that if</p> <p>24 something is not documented that it isn't</p> <p>25 done?</p> | <p>1</p> <p>2 El-Khairi testified in this case --</p> <p>3 (interrupted)</p> <p>4 MS. SANDACZ:</p> <p>5 Pam, I object. That's it.</p> <p>6 You do not get to add and edit the</p> <p>7 answers. You objected and now let the</p> <p>8 doctor answer.</p> <p>9 MS. PANTAGES:</p> <p>10 Don't lecture me.</p> <p>11 MS. SANDACZ:</p> <p>12 I'm going to lecture you.</p> <p>13 MS. PANTAGES:</p> <p>14 The evidence in this case --</p> <p>15 (interrupted)</p> <p>16 MS. SANDACZ:</p> <p>17 Do not tell me about the</p> <p>18 evidence. State your objection and that's</p> <p>19 it. You can't say what the evidence is,</p> <p>20 period. This is not for you to give your</p> <p>21 witness information.</p> <p>22 MS. PANTAGES:</p> <p>23 I am not.</p> <p>24 MS. SANDACZ:</p> <p>25 I'm hearing you testify.</p>                                                                                                                                                                             |

| Page 54                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Page 56                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
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| <p>1</p> <p>2 MS. PANTAGES:</p> <p>3 The evidence in this case is</p> <p>4 that the doctor has testified that he has</p> <p>5 no memory of a conversation and based</p> <p>6 upon his custom and routine he believes</p> <p>7 he that he did it. I'm objecting to the</p> <p>8 form of your question on the grounds that</p> <p>9 it does not conform with the evidence in</p> <p>10 this case.</p> <p>11 MS. SANDACZ:</p> <p>12 Pam, next time you object, and</p> <p>13 that's it. If you don't I'm going to</p> <p>14 stop the deposition and we will call the</p> <p>15 court and we will address that to the</p> <p>16 court. You do not have the ability and</p> <p>17 it's absolutely improper for you to go on</p> <p>18 and talk about what the evidence is or</p> <p>19 what you perceived the evidence to be.</p> <p>20 This is my opportunity to ask this doctor</p> <p>21 what he knows. I don't need you to tell</p> <p>22 him what you believe it shows. Next</p> <p>23 time, you object and that's it.</p> <p>24 Otherwise we will take this up with the</p> <p>25 court. Repeat the question.</p> | <p>1</p> <p>2 Q. You don't believe you can rely</p> <p>3 on your routine practice to indicate</p> <p>4 whether or not you did something in a</p> <p>5 particular instance?</p> <p>6 A. Absolutely not.</p> <p>7 Q. That's true for all physicians,</p> <p>8 fair enough?</p> <p>9 A. I don't know.</p> <p>10 Q. Do you believe that's a</p> <p>11 standard of care that you can't rely on</p> <p>12 your routine practice to establish an</p> <p>13 action by a particular physician?</p> <p>14 A. Correct. No, it stands for</p> <p>15 everything. You and I can't -- you don't</p> <p>16 know that you closed the garage door</p> <p>17 unless you specifically remember doing it</p> <p>18 in my opinion and you don't know that</p> <p>19 you signed a chart or you don't know you</p> <p>20 said something to a patient unless you</p> <p>21 specifically remember doing it, otherwise</p> <p>22 it's not a memory by definition.</p> <p>23 Q. And not believable?</p> <p>24 A. And not believable. That's why</p> <p>25 people go back and check the iron. They</p>                                                             |
| Page 55                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Page 57                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <p>1</p> <p>2 (QUESTION REPEATED BY REPORTER)</p> <p>3 MS. PANTAGES:</p> <p>4 Same objection.</p> <p>5 MS. SANDACZ:</p> <p>6 Q. Do you understand the question?</p> <p>7 A. Yes. You can't have memory of</p> <p>8 your normal practice, I don't believe.</p> <p>9 You have memory of it, you remember it</p> <p>10 happened, but you can't have memory of</p> <p>11 it. Memory means you specifically</p> <p>12 remembered it.</p> <p>13 Q. So you do not believe that a</p> <p>14 person can rely on his general routine</p> <p>15 and practice to fill in on issues, for</p> <p>16 example, I left my house yesterday</p> <p>17 morning, I closed my garage, I do not</p> <p>18 remember specifically closing my garage,</p> <p>19 but I know I did it because I do it</p> <p>20 every day?</p> <p>21 MS. PANTAGES:</p> <p>22 Objection. That's a different</p> <p>23 question.</p> <p>24 A. No.</p> <p>25 MS. SANDACZ:</p>                                                                                                                                                                                     | <p>1</p> <p>2 are not sure that they turned the iron</p> <p>3 off or the stove off. People's houses</p> <p>4 burn down all the time because of that.</p> <p>5 Q. If a physician relies on his</p> <p>6 routine practice to determine whether or</p> <p>7 not he did something, you have the --</p> <p>8 you are of the belief that personally is</p> <p>9 unbelievable because they do not have a</p> <p>10 specific memory of what they did, did I</p> <p>11 characterize that correctly?</p> <p>12 A. No, you didn't. I said you</p> <p>13 can't rely on that person's word if they</p> <p>14 don't remember it. Not that they are</p> <p>15 unbelievable. That person should be also</p> <p>16 doubting their own practice. I think</p> <p>17 they can say I may have done it based on</p> <p>18 my usual routine, may, yeah. I think</p> <p>19 you may have done, I agree, but don't</p> <p>20 tell me you did it unless you</p> <p>21 specifically remember it or wrote it</p> <p>22 down. That's my position.</p> <p>23 Q. So you cannot rely on somebody</p> <p>24 else's routine?</p> <p>25 A. No. I can't rely on my own</p> |

| Page 58                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Page 60                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
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| <p>1<br/>2 unless I specifically remember. We all<br/>3 forget things all the time.<br/>4 Q. We can agree, Doctor, that you<br/>5 are not critical of the diagnosis of the<br/>6 acute appendicitis in this case; is that<br/>7 correct?<br/>8 A. Correct.<br/>9 Q. You are not critical of the<br/>10 decision of Dr. El-Khairi to intervene<br/>11 with surgical intervention here?<br/>12 A. No.<br/>13 Q. Is that correct?<br/>14 A. That's correct.<br/>15 Q. You are not critical of the<br/>16 actual surgery performed by Dr. El-Khairi?<br/>17 A. No.<br/>18 Q. Is that correct?<br/>19 A. When I say "no," I mean, no,<br/>20 there's no criticism of it.<br/>21 Q. I just wanted to make sure we<br/>22 are on the same page.<br/>23 A. Okay.<br/>24 Q. As it relates to the follow-up<br/>25 care for the surgical issues you are not</p>                                                                                                          | <p>1<br/>2 her for her post-operative visit, surgical<br/>3 issues, appendicitis, you do not have any<br/>4 criticisms of Dr. El-Khairi's care, is<br/>5 that fair?<br/>6 A. As long as you limit it to<br/>7 that, yes. As long as you limit it to<br/>8 that.<br/>9 Q. I'm going to refer now to<br/>10 Defendant's Exhibit A.<br/>11 A. Okay.<br/>12 Q. You have outlined two<br/>13 particular criticisms of Dr. El-Khairi; is<br/>14 that correct?<br/>15 A. Correct.<br/>16 A. Yes.<br/>17 Q. Let's go through the first one.<br/>18 It's your opinion, according to<br/>19 Defendant's Exhibit A, that Dr. El-Khairi<br/>20 fell below the standard of care in not<br/>21 telling Mrs. Richnafsky that she had<br/>22 pulmonary masses and that she needed<br/>23 follow-up for these; correct?<br/>24 A. Yes.<br/>25 Q. Explain that to me.</p>                                                                                                                                                                                                                                          |
| Page 59                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Page 61                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <p>1<br/>2 critical of Dr. El-Khairi as well; is<br/>3 that correct?<br/>4 A. I am critical of the follow-up<br/>5 care.<br/>6 Q. As to the surgical issues.<br/>7 A. As to the surgical issues?<br/>8 Q. You are not critical of Dr.<br/>9 El-Khairi; is that correct?<br/>10 A. Well, getting back to the<br/>11 American College of Surgeons Underlying<br/>12 Principles of Perioperative Responsibility,<br/>13 this is sort of a fine line here. I'm<br/>14 not trying to annoy you here, but<br/>15 responsibility extends through the period<br/>16 of convalescence, that's the surgical<br/>17 period.<br/>18 Q. How does that relate to what<br/>19 Dr. El-Khairi did in this case?<br/>20 A. I think this woman had to have<br/>21 her lung mass followed up with and<br/>22 documented and etcetera, etcetera.<br/>23 Q. Let me make sure I'm clear.<br/>24 I'm only speaking at to the surgical<br/>25 follow-up. In other words, evaluating</p> | <p>1<br/>2 A. Dr. El-Khairi should have told<br/>3 Mrs. Richnafsky that she had a pulmonary<br/>4 mass and she needed follow-up with a<br/>5 pulmonologist or thoracic surgeon, maybe a<br/>6 radiologist, a number of different venues.<br/>7 This pulmonary mass needed to be<br/>8 evaluated as per the radiology report.<br/>9 Q. When is Dr. El-Khairi -- when<br/>10 should Dr. El-Khairi have told Miss<br/>11 Richnafsky that she had pulmonary masses<br/>12 and needed to have a follow-up with a<br/>13 pulmonologist or thoracic surgeon or any<br/>14 other physician?<br/>15 A. I think he had several<br/>16 opportunities to do so or to tell her<br/>17 husband. Either the -- either during the<br/>18 hospitalization or in the post-operative<br/>19 period when he saw her in his office.<br/>20 Q. We know during the post-op<br/>21 period there was one visit November 28th<br/>22 and during the hospital there were a few<br/>23 occasions when Dr. El-Khairi had seen<br/>24 Mrs. Richnafsky. Tell me which occasion<br/>25 you believe Dr. El-Khairi should have</p> |



| Page 62                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Page 64                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
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| <p>1<br/>2 told Mrs. Richnafsky about the abdominal<br/>3 mass seen on the CT scan?<br/>4 A. It was his call, not my call.<br/>5 I didn't see her. He would have known<br/>6 whether she was capable mentally of<br/>7 understanding it or not. He could have<br/>8 called for a pulmonologist or someone to<br/>9 see her while she was in the hospital if<br/>10 he -- or as an outpatient.<br/>11 Q. Certainly reasonable to have<br/>12 these two lung masses evaluated on an<br/>13 outpatient basis?<br/>14 A. Yes.<br/>15 Q. He could have taken based upon<br/>16 whatever he felt was appropriate, whether<br/>17 she was --<br/>18 MS. SANDACZ:<br/>19 Strike that.<br/>20 Q. You believe he should have told<br/>21 her during the hospital based upon<br/>22 whatever he felt -- (interrupted)<br/>23 A. Not during the hospital.<br/>24 Either then or post-operatively.<br/>25 Q. If he told her post-operatively</p>                                                                                                                           | <p>1<br/>2 many opportunities and ways to do this,<br/>3 not just my way.<br/>4 Q. Is it reasonable --<br/>5 (interrupted)<br/>6 A. And then as I said, I would<br/>7 not have considered it a deviation from<br/>8 the standard of care.<br/>9 Q. So Dr. El-Khairi could have<br/>10 told her in the hospital and told her at<br/>11 her office -- her office visit, he could<br/>12 have made a consultation in the hospital,<br/>13 he could have called up the pulmonologist<br/>14 as an outpatient?<br/>15 A. Exactly.<br/>16 Q. Can he also tell the patient<br/>17 and instruct the patient to follow-up<br/>18 with her primary care physician?<br/>19 A. Yes.<br/>20 Q. So it would be reasonable,<br/>21 hypothetically, if Dr. El-Khairi had told<br/>22 Mrs. Richnafsky that she had these two<br/>23 lung masses seen on the abdominal CT scan<br/>24 obtained in the ER in November 2001 and<br/>25 she needed to follow-up with her primary</p>  |
| Page 63                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Page 65                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <p>1<br/>2 he would have met the standard of care?<br/>3 A. Yes. If he would have told<br/>4 her and made sure she went to and got to<br/>5 a pulmonologist or called a pulmonologist<br/>6 himself from the office he would have met<br/>7 the standard of care, yes.<br/>8 Q. You are adding something. You<br/>9 indicated to me according to your report<br/>10 that he deviated from the standard of<br/>11 care not telling her. Now you are<br/>12 adding he should have called the<br/>13 pulmonologist or picked up the phone?<br/>14 A. Yeah, like I do. We call out<br/>15 doctors and tell them Mrs. Smith has<br/>16 something that needs to be evaluated.<br/>17 Q. I don't see that in your<br/>18 report here.<br/>19 A. I thought you just asked me<br/>20 when he should have done what he didn't<br/>21 do and I'm saying he could have done<br/>22 that, handled that, performed that in a<br/>23 number ways. Either telling the patient<br/>24 himself or calling a consultant himself.<br/>25 What I'm trying to say is there were</p> | <p>1<br/>2 care physician, is it your opinion that<br/>3 Dr. El-Khairi would have met the standard<br/>4 of care?<br/>5 A. Yes.<br/>6 Q. Based upon your belief that he<br/>7 did not meet the standard of care you do<br/>8 not believe that Dr. El-Khairi told Mrs.<br/>9 Richnafsky about the two pulmonary masses<br/>10 seen on the abdominal CT scan; is that<br/>11 correct?<br/>12 A. Say that again?<br/>13 Q. You've indicated to me that if<br/>14 hypothetically Dr. El-Khairi told Mrs.<br/>15 Richnafsky about the two pulmonary masses<br/>16 as seen on the abdominal CT scan and<br/>17 told her to follow-up with the primary<br/>18 care physician he would have met the<br/>19 standard of care?<br/>20 A. Yes.<br/>21 Q. By virtue of your opinion that<br/>22 Dr. El-Khairi did not meet the standard<br/>23 of care, is it your opinion that Dr.<br/>24 El-Khairi did not tell Mrs. Richnafsky?<br/>25 A. You're saying it to my mind</p> |

| Page 66                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Page 68                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
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| <p>1<br/>2 backwards.<br/>3 Q. I'm trying to flip it.<br/>4 A. I know and I don't know what<br/>5 that would mean.<br/>6 Q. Your report says --<br/>7 (interrupted)<br/>8 A. I'm saying he didn't tell her<br/>9 he did not meet -- he didn't meet the<br/>10 standard of care.<br/>11 Q. If he told her he met the<br/>12 standard of care?<br/>13 A. Yes.<br/>14 Q. You are taking the position<br/>15 that you do not believe he told her?<br/>16 A. By his own admission. He<br/>17 doesn't remember it. He testified he has<br/>18 no direct memory of doing that and he<br/>19 didn't write it down. I'm taking him at<br/>20 his word.<br/>21 Q. What else did Dr. El-Khairi say<br/>22 what his custom and practice is as it<br/>23 relates to reviewing items with a patient<br/>24 when they come in for the post-operative<br/>25 visit?</p>                                                                                                                    | <p>1<br/>2 A. To prove it. You can say may.<br/>3 It's a conditional. It's like I may<br/>4 have. I hoped I turned the iron off.<br/>5 I hoped I closed the garage door. But I<br/>6 can't remember doing it he said. You're<br/>7 smiling again.<br/>8 Q. I know.<br/>9 A. That's his words, not mine.<br/>10 He didn't write it down.<br/>11 Q. You do not believe Dr.<br/>12 El-Khairi told Mrs. Richnafsky?<br/>13 A. Yeah, and he's not sure of it<br/>14 either.<br/>15 Q. Do you know when Dr. -- what<br/>16 sources of information Dr. El-Khairi<br/>17 received regarding the CT scan showing<br/>18 the two pulmonary masses?<br/>19 A. The information of Dr. Kranitz,<br/>20 he said he told Dr. El-Khairi that the<br/>21 woman had masses on her CT scan.<br/>22 Q. Do you recall anything else<br/>23 that Dr. Kranitz told Dr. El-Khairi?<br/>24 A. Other than she had appendicitis<br/>25 of etcetera, etcetera. She had a white</p> |
| Page 67                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Page 69                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <p>1<br/>2 A. He said he thought by his<br/>3 customary practice he would have told<br/>4 her. He didn't say he did tell her.<br/>5 He said he would have told her which his<br/>6 customary practice. That's not good<br/>7 enough for me though.<br/>8 Q. So you have taken a stance on<br/>9 a factual issue whether or not Dr.<br/>10 El-Khairi told her -- (interrupted)<br/>11 A. By his admission. You are<br/>12 saying factual. You are saying I was<br/>13 there and therefore I know it for a<br/>14 fact. I'm just telling you what his<br/>15 testimony was. I'm not putting words in<br/>16 his mouth. You are smiling now. I<br/>17 didn't put words in his mouth.<br/>18 Q. I know.<br/>19 A. He said I don't remember, but<br/>20 I think I probably did based on my<br/>21 usually practice.<br/>22 Q. This all comes back to your<br/>23 belief that you cannot rely on your<br/>24 custom and practice to establish that you<br/>25 did something?</p> | <p>1<br/>2 count of 17,000. He conveyed that<br/>3 information to Dr. El-Khairi.<br/>4 Q. Do you recall whether or not<br/>5 Dr. Kranitz had any recollection or<br/>6 memory or otherwise about his -- anything<br/>7 else in that conversation with Dr.<br/>8 El-Khairi?<br/>9 A. I can't remember specifically<br/>10 what you are referring to. If you want<br/>11 to show me.<br/>12 Q. I want to know what your<br/>13 memory is?<br/>14 A. I don't know. Without<br/>15 referring to what I read I can't tell<br/>16 you.<br/>17 Q. Okay.<br/>18 A. He may have said several things<br/>19 that are just not coming to mind. He<br/>20 certainly let -- according to his<br/>21 testimony Dr. El-Khairi knew about the<br/>22 pulmonary metastasis.<br/>23 Q. Do you know what Dr. Kranitz's<br/>24 testimony was about telling anyone else<br/>25 about these lung masses?</p>                                                                 |

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| <p>1</p> <p>2 A. I'm not sure without looking at</p> <p>3 the binder quite honestly. I don't</p> <p>4 remember if he told the husband or</p> <p>5 another physician.</p> <p>6 Q. Would that be important for you</p> <p>7 to know whether or not the husband or</p> <p>8 another physician was informed of the</p> <p>9 existence of two pulmonary nodules, masses</p> <p>10 seen on the abdominal CT scan?</p> <p>11 A. It would be, yes.</p> <p>12 Q. Because it would be important</p> <p>13 that if Mr. Richnafsky or even, in fact,</p> <p>14 Mrs. Richnafsky knew of that, then she</p> <p>15 would have known regardless whether Dr.</p> <p>16 El-Khairi told her about it, fair enough?</p> <p>17 MS. PANTAGES:</p> <p>18 Objection.</p> <p>19 A. If someone would have told them</p> <p>20 about the presence of pulmonary metastasis</p> <p>21 -- (interrupted)</p> <p>22 MS. PANTAGES:</p> <p>23 You keep saying presence of</p> <p>24 pulmonary metastases. Doctor, do you</p> <p>25 mean masses? THE WITNESS:</p> | <p>1</p> <p>2 Q. Also whether or not Dr.</p> <p>3 El-Khairi told her about it again, she</p> <p>4 would have known?</p> <p>5 MS. PANTAGES:</p> <p>6 Hypothetically? Beyond the</p> <p>7 question.</p> <p>8 A. I don't understand.</p> <p>9 MS. SANDACZ:</p> <p>10 Q. I don't know if that's</p> <p>11 hypothetical, but if you wanted it to be</p> <p>12 hypothetical -- (interrupted)</p> <p>13 A. I don't have the binder here</p> <p>14 to make sure Dr. Kranitz told her or her</p> <p>15 husband or another physician on someone</p> <p>16 else. She needed to be told by someone.</p> <p>17 If someone told her hypothetically that</p> <p>18 she had pulmonary metastases I would have</p> <p>19 thought the standard of care from that</p> <p>20 doctor's relationship with her would have</p> <p>21 been good. My point is if Dr. El-Khairi</p> <p>22 didn't know that then it was his</p> <p>23 responsibility to tell her or whoever the</p> <p>24 surgeon was. It didn't have to be</p> <p>25 El-Khairi.</p>           |
| Page 71                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Page 73                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <p>1</p> <p>2 Pulmonary masses, correct, I</p> <p>3 would have considered that's a fair</p> <p>4 warning. I would have made notes in my</p> <p>5 binder.</p> <p>6 MS. SANDACZ:</p> <p>7 Q. Based upon that being fair</p> <p>8 warning that even if Dr. El-Khairi did or</p> <p>9 did not tell the patient, the patient was</p> <p>10 on notice of that?</p> <p>11 MS. PANTAGES:</p> <p>12 Objection.</p> <p>13 MS. SANDACZ:</p> <p>14 Q. Is that correct?</p> <p>15 MS. PANTAGES:</p> <p>16 What's the question?</p> <p>17 A. I'm sorry?</p> <p>18 MS. SANDACZ:</p> <p>19 Q. You indicated to me that if</p> <p>20 Mrs. Richnafsky was told that she had</p> <p>21 these two lung masses by anyone, then it</p> <p>22 would have been fair warning; correct?</p> <p>23 A. Yes. It would have been good</p> <p>24 that she would have been told,</p> <p>25 absolutely.</p>                                                                                                                                                     | <p>1</p> <p>2 Q. Okay.</p> <p>3 A. Somebody has to take care of</p> <p>4 the patient and not just the</p> <p>5 appendectomy.</p> <p>6 Q. If Miss Richnafsky was told by</p> <p>7 somebody at the hospital that she had two</p> <p>8 lung masses that needed to be further</p> <p>9 evaluated, it puts the responsibility on</p> <p>10 her to follow that up if she so chooses?</p> <p>11 MS. PANTAGES:</p> <p>12 Objection.</p> <p>13 A. I would have to know that she</p> <p>14 was not medicated with something. In</p> <p>15 other words, if she got medication in the</p> <p>16 emergency room and was told she is</p> <p>17 mentally ill and incompetent just like</p> <p>18 they are for consent to surgery, but she</p> <p>19 was compus mentus and she was told that</p> <p>20 she has a pulmonary mass, I don't care</p> <p>21 who told her. She needed to have it</p> <p>22 evaluated by somebody and some doctor's</p> <p>23 responsibility was to convey that</p> <p>24 information to her.</p> <p>25 MS. SANDACZ:</p> |

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| <p>1</p> <p>2 Q. If the patient was told by</p> <p>3 someone, perhaps Dr. Kranitz, that she</p> <p>4 had two masses in her lungs that showed</p> <p>5 up on the abdominal CT scan that needed</p> <p>6 to be further evaluated, regardless of</p> <p>7 whatever Dr. El-Khairi did, it would not</p> <p>8 have changed the outcome -- whatever</p> <p>9 Dr. --</p> <p>10 MS. SANDACZ:</p> <p>11 Strike that.</p> <p>12 Q. If Miss Richnafsky was told</p> <p>13 that there were two lung masses seen on</p> <p>14 the abdominal CT scan and that it needed</p> <p>15 further follow-up, you would agree with</p> <p>16 me Dr. El-Khairi's actions at his office,</p> <p>17 whether he did or didn't say it, tell</p> <p>18 her, did not proximately result in this</p> <p>19 woman's death?</p> <p>20 MS. PANTAGES:</p> <p>21 Objection. He's a standard of</p> <p>22 care expert. He's not offering opinions</p> <p>23 on proximate cause.</p> <p>24 MS. SANDACZ:</p> <p>25 We are not talking about</p>                                                                                                                                          | <p>1</p> <p>2 that's a good move, but it falls to me</p> <p>3 to make sure she gets the follow-up for</p> <p>4 that. It doesn't let me off the hook.</p> <p>5 If the emergency room told her she has</p> <p>6 diabetes, it's not my problem, I'm just a</p> <p>7 surgeon, no, these principals tell you</p> <p>8 that it is your problem. You are not</p> <p>9 off the hook because somebody else told</p> <p>10 her to do it. You billed for it, you</p> <p>11 collected money for it, you had to be</p> <p>12 responsible for making sure that that</p> <p>13 potential life-threatening problem got</p> <p>14 evaluated.</p> <p>15 MS. SANDACZ:</p> <p>16 Q. Let's assume hypothetically Mrs.</p> <p>17 Richnafsky comes to the emergency room</p> <p>18 having similar abdominal pain, CT scan is</p> <p>19 done, shows two lung masses in the lower</p> <p>20 lobe and the emergency room physician</p> <p>21 tells her that she needs to follow-up</p> <p>22 with her primary care physician and get</p> <p>23 further evaluation. There's no need for</p> <p>24 a surgical intervention. Patient goes</p> <p>25 off on her way. Whose responsibility is</p> |
| Page 75                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Page 77                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <p>1</p> <p>2 proximate cause in that sense.</p> <p>3 MS. PANTAGES:</p> <p>4 Objection.</p> <p>5 A. Emergency room physicians as I</p> <p>6 understand it really are not responsible</p> <p>7 for follow-up care issues like this, they</p> <p>8 just -- they are not around to see it,</p> <p>9 they are not around to follow-up and to</p> <p>10 make sure it was done. That's why the</p> <p>11 primary caregiver, in this case a</p> <p>12 surgeon, who sees the patient, etcetera,</p> <p>13 etcetera, is responsible for following up</p> <p>14 on that. Whether it's lung masses,</p> <p>15 hypertension, diabetes, whatever. If the</p> <p>16 patient is seen in the ER, that ER</p> <p>17 doctor says yes, it looks like she has</p> <p>18 diabetes, tells me she has diabetes, goes</p> <p>19 to the operating room, she doesn't know</p> <p>20 she has diabetes, then it's my</p> <p>21 responsibility to get the diabetes seen</p> <p>22 and evaluated even though the emergency</p> <p>23 room doctor told her she has diabetes.</p> <p>24 If the emergency room doctor tells her</p> <p>25 she had diabetes, he's informed her,</p> | <p>1</p> <p>2 that now for the follow-up with the</p> <p>3 primary care physician -- with the</p> <p>4 follow-up for these masses?</p> <p>5 MS. PANTAGES:</p> <p>6 Objection. Assumes facts not</p> <p>7 in evidence.</p> <p>8 A. Primary care physician.</p> <p>9 MS. SANDACZ:</p> <p>10 Q. Even though the primary care</p> <p>11 physician -- (interrupted)</p> <p>12 A. Primary care physician if the</p> <p>13 ER doctor called him and told him. In</p> <p>14 other words, the passage of the</p> <p>15 information has to start and initiate</p> <p>16 with the emergency room doctor calling</p> <p>17 either the surgeon, internist, primary</p> <p>18 care doctor, somebody to let them know</p> <p>19 Mrs. Jones was seen here, she doesn't</p> <p>20 need surgery, but I've discovered</p> <p>21 something else. I have a chest X-ray</p> <p>22 and found a breast mass. There has to</p> <p>23 be some form of communication.</p> <p>24 Q. Let's add in that factual</p> <p>25 scenario I gave, patient comes in,</p>                                                                                                                                 |

| Page 78                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Page 80                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
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| <p>1<br/>2 abdominal problems, do a CT scan,<br/>3 determine there's no surgical issue,<br/>4 emergency room physician tells the patient<br/>5 about these two lung masses and that<br/>6 there's a need for follow-up with the<br/>7 primary care physician for further<br/>8 evaluation. The emergency room picks up<br/>9 the phone and calls the primary care<br/>10 physician and gets the person on call and<br/>11 tells that person that there are abnormal<br/>12 findings on the CT that the patient needs<br/>13 follow-up. Patient is discharged. Whose<br/>14 responsibility is it now?<br/>15 A. Primary guy on call.<br/>16 Q. What's the primary care's duty<br/>17 as with respect to the follow up of that<br/>18 patient?<br/>19 MS. PANTAGES:<br/>20 Objection. States facts not in<br/>21 evidence.<br/>22 A. To evaluate the problem<br/>23 whatever your doctor told him.<br/>24 MS. SANDACZ:<br/>25 Q. Does the primary care physician</p>                     | <p>1<br/>2 Q. You are telling me the<br/>3 emergency room physician doesn't have to<br/>4 follow-up with the patient?<br/>5 A. Right.<br/>6 Q. Who in that scenario that I<br/>7 gave you where the patient goes home,<br/>8 there's information already to the primary<br/>9 care physician and the patient is holding<br/>10 the same information, whose responsibility<br/>11 is it now?<br/>12 A. Primary care physician.<br/>13 Q. What does the primary care<br/>14 physician have to do in order to satisfy<br/>15 his duty?<br/>16 A. Call the patient. Call the<br/>17 patient in for a discussion and document<br/>18 it. I told her that the ER doctor told<br/>19 me that you had a breast mass, lung<br/>20 mass, whatever is. I have got charts<br/>21 out here that I have called and left<br/>22 messages for patients. Three times the<br/>23 patient don't call back, I then send them<br/>24 a registered letter. I keep the number<br/>25 of registered letters there with the</p> |
| Page 79                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Page 81                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <p>1<br/>2 have a duty to call the patient up to<br/>3 get a schedule? How does that primary<br/>4 care physician -- (interrupted)<br/>5 A. I can't answer that. I'm not<br/>6 a primary care doctor.<br/>7 MS. PANTAGES:<br/>8 Just note a continuing<br/>9 objection to this line of questioning.<br/>10 MS. SANDACZ:<br/>11 Q. Does the patient have any<br/>12 responsibility to go see the primary care<br/>13 physician after the discussion with the<br/>14 emergency room physician?<br/>15 A. You know, I don't know what<br/>16 the patient's responsibility is. There's<br/>17 no sort of recommended principals relating<br/>18 to that that I'm aware of because I<br/>19 don't read it, but I can tell you in<br/>20 practice emergency room doctors, unless I<br/>21 go back down to the emergency room and<br/>22 say that lady we admitted the other night<br/>23 did have appendicitis, they can't<br/>24 follow-up on these myriad of patients<br/>25 they see.</p> | <p>1<br/>2 little sticker in the chart because it is<br/>3 my responsibility.<br/>4 Q. Do you think that the patient<br/>5 has any responsibility?<br/>6 A. I don't know.<br/>7 Q. Certainly -- (interrupted)<br/>8 A. I can't tell you the patients<br/>9 that are deaf, dumb and blind, do they<br/>10 have responsibility? It always falls<br/>11 back to us and it should. It should<br/>12 fall back to us.<br/>13 Q. In that scenario that I gave<br/>14 you that the patient is armed with the<br/>15 information, primary physician or on call<br/>16 physician is armed with the information,<br/>17 it's your opinion that the patient has<br/>18 absolutely no responsibility for any<br/>19 reason, whether deaf, dumb and blind?<br/>20 A. That's my position.<br/>21 Q. The primary care physician has<br/>22 a duty to follow-up with the patient and<br/>23 call the patient -- (interrupted)<br/>24 A. Or the surgeon or the internist<br/>25 or the psychiatrist. Even if it's a</p> |

| Page 82                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Page 84                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
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| <p>1</p> <p>2 psychiatrist, with a lung mass they are</p> <p>3 not off the hook. Standard of care is</p> <p>4 really to me for all physicians, not just</p> <p>5 surgeons, not just internists.</p> <p>6 Q. But you've eliminated the ER</p> <p>7 physician out of that standard of care?</p> <p>8 A. I'm not an ER physician. I</p> <p>9 can't say what their standards of care or</p> <p>10 recommendations by the College of ER</p> <p>11 Medicine recommends that they do. As I</p> <p>12 said before, I know in general practice</p> <p>13 they usually do do the follow-up. They</p> <p>14 have no secretary to do it. They are</p> <p>15 incapable of doing it.</p> <p>16 Q. But the other physicians,</p> <p>17 whether the family physicians, internal</p> <p>18 medicine, surgeon, psychiatrist that are</p> <p>19 in general practice, they have the same</p> <p>20 standard of care which is to pick up the</p> <p>21 phone and call the patient or make sure</p> <p>22 that the patient gets -- (interrupted)</p> <p>23 A. Once the ER doctor calls and</p> <p>24 we receive that information the ball is</p> <p>25 now in our court to follow-up on it.</p> | <p>1</p> <p>2 Objection.</p> <p>3 A. Hypothetically, yes, but Dr.</p> <p>4 El-Khairi didn't say that.</p> <p>5 MS. SANDACZ:</p> <p>6 Q. Do you know why Dr. Kranitz,</p> <p>7 emergency room physician, called Dr.</p> <p>8 El-Khairi's group?</p> <p>9 A. I don't. I believe they were</p> <p>10 on call that night.</p> <p>11 Q. Do you believe it was for the</p> <p>12 further purpose of evaluating the lesion</p> <p>13 on the lung CT or for the acute</p> <p>14 appendicitis?</p> <p>15 A. Appendicitis.</p> <p>16 Q. As a general surgeon they are</p> <p>17 not going to be somebody that orders a</p> <p>18 CT scan to evaluate the lung masses, that</p> <p>19 would be the purview of some other</p> <p>20 physicians, pulmonologists, etcetera?</p> <p>21 A. Yes.</p> <p>22 Q. Do you recall in Mrs.</p> <p>23 Richnafsky's medical records that you</p> <p>24 reviewed whether or not she had a primary</p> <p>25 care physician?</p>                      |
| Page 83                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Page 85                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <p>1</p> <p>2 Q. If a physician is told by</p> <p>3 emergency -- let's assume that Dr.</p> <p>4 El-Khairi is told by the emergency room</p> <p>5 physician that the emergency room</p> <p>6 physician has called the primary care</p> <p>7 physician, told the primary care physician</p> <p>8 about it and that the primary care</p> <p>9 physician is going to follow-up, is there</p> <p>10 a responsibility for Dr. El-Khairi in</p> <p>11 that aspect other than reminding the</p> <p>12 patient to follow-up?</p> <p>13 MS. PANTAGES:</p> <p>14 Objection.</p> <p>15 A. Hypothetically as long as one</p> <p>16 doctor follows up on it, I don't care</p> <p>17 who it is. As I said before, I don't</p> <p>18 care who does the follow-up, one of us</p> <p>19 has to make sure she gets care for that.</p> <p>20 MS. SANDACZ:</p> <p>21 Q. Reminding the patient, telling</p> <p>22 the patient to follow-up with the primary</p> <p>23 care physician, is that enough for the</p> <p>24 surgeon's standpoint?</p> <p>25 MS. PANTAGES:</p>                                                                                                                        | <p>1</p> <p>2 A. Yes.</p> <p>3 Q. Do you know who that was?</p> <p>4 A. I don't recall his name.</p> <p>5 Q. Do you recall whether or not</p> <p>6 Dr. Kranitz had a telephone conversation</p> <p>7 with a primary care physician or with</p> <p>8 somebody on call?</p> <p>9 A. From the primary care stand</p> <p>10 point he had a conversation, of course,</p> <p>11 with the surgeons. I don't recall if he</p> <p>12 had a conversation with the primary care</p> <p>13 physician.</p> <p>14 Q. Would that be important in your</p> <p>15 rendering opinions in this case to know</p> <p>16 that?</p> <p>17 A. No actually.</p> <p>18 Q. Why not?</p> <p>19 A. Because he past the information</p> <p>20 onto Dr. El-Khairi and Dr. El-Khairi with</p> <p>21 whomever else should have decided who was</p> <p>22 going to do the follow-up for this</p> <p>23 patient.</p> <p>24 Q. Are you critical of anybody</p> <p>25 else in this case or just solely Dr.</p> |

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| <p>1<br/>2 El-Khairi?<br/>3 A. As far as I recollect, Dr.<br/>4 El-Khairi dropped the ball.<br/>5 Q. And in your opinion did anybody<br/>6 else drop the ball in this case?<br/>7 A. Not in my opinion, no.<br/>8 Q. Do you know whether or not the<br/>9 hospital, Bedford Medical Center, sends<br/>10 out the emergency room chart to any of<br/>11 the physicians who have been identified<br/>12 by the patient as either primary care<br/>13 physician or attending physician or<br/>14 anything like that?<br/>15 A. I don't know.<br/>16 Q. Do you know what the hospital's<br/>17 policy or practice is as it relates to<br/>18 sending out formal radiology reports and<br/>19 who those go to, whether primary care<br/>20 physicians, surgeons or otherwise?<br/>21 A. I don't know what their formal<br/>22 policy is, no.<br/>23 Q. We can agree, Doctor, that the<br/>24 formal CT scan report that was prepared<br/>25 and transcribed on November 20th, unlikely</p> | <p>1<br/>2 evaluation. According to the 11/18/01<br/>3 dictation letter of Dr. Kranitz, he<br/>4 states Dr. Young additionally mentions<br/>5 there was questionable lung masses.<br/>6 Q. Look at the second page of<br/>7 that ER dictation. I believe that's also<br/>8 transcribed on 11/20, is it not?<br/>9 A. Typed on 11/20, right.<br/>10 Q. Do you know what date Miss<br/>11 Richnafsky left the hospital?<br/>12 A. No. I don't recall that.<br/>13 Q. If she left or was discharged<br/>14 on 11/20/01, do you have any way of<br/>15 knowing whether or not that was on the<br/>16 chart and available for anybody's review<br/>17 at the time?<br/>18 A. I can't really tell here. He<br/>19 spoke with Dr. Lane, physician on call<br/>20 for this Dr. Hillard at the hour of<br/>21 12:55 p.m. I'm not quite sure.<br/>22 Q. I think my question to you was<br/>23 do you know whether or not that dictated<br/>24 discharge summary or summary of the<br/>25 emergency room care by Dr. Kranitz was</p> |
| Page 87                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Page 89                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <p>1<br/>2 that was in Mrs. Richnafsky's hospital<br/>3 chart before she was discharged?<br/>4 MS. PANTAGES:<br/>5 If you want to look at the<br/>6 records you are welcome to.<br/>7 A. The date on that was 11/18/01?<br/>8 MS. SANDACZ:<br/>9 Q. The date of the procedure. If<br/>10 you look on the left-hand bottom corner<br/>11 there's a T for transcript which says<br/>12 11/20/01. I think 9 something in the<br/>13 morning?<br/>14 A. 9:03.<br/>15 Q. Do you know whether or not<br/>16 that made it to Mrs. Richnafsky's<br/>17 hospital chart?<br/>18 A. I don't know.<br/>19 Q. Do you know whether there was<br/>20 any other written documentation that was<br/>21 available on Mrs. Richnafsky's chart with<br/>22 regards to the findings of the two lung<br/>23 masses on the abdominal CT scan?<br/>24 A. It could have been the<br/>25 emergency room report, emergency room</p>                                                                              | <p>1<br/>2 available and on the chart by the time<br/>3 Miss Richnafsky was discharged on 11/20?<br/>4 A. I don't know if it was on the<br/>5 chart.<br/>6 Q. Do you know what the hospital's<br/>7 practice or policy is regarding emergency<br/>8 room records whether they are encompassed<br/>9 in the regular chart or are kept down in<br/>10 the emergency room?<br/>11 A. I don't know anything about<br/>12 that.<br/>13 Q. I think you mentioned earlier<br/>14 you don't know what Mrs. Richnafsky's<br/>15 mental state or whether she was coherent<br/>16 or not while she was in the emergency<br/>17 room?<br/>18 A. I'm just saying I don't know.<br/>19 Q. Do you know what her level of<br/>20 pain was while she was in the emergency<br/>21 room?<br/>22 A. According to the nurses notes<br/>23 it said moderate pain.<br/>24 Q. As you sit here, do you know<br/>25 whether or not she was coherent enough to</p>                                                                                   |

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1  
2 freely engage in conversation with anyone,  
3 including her husband or Dr. Kranitz or  
4 Dr. El-Khairi when she was in the  
5 emergency room?  
6 A. Yeah, she was coherent when she  
7 came in.  
8 Q. Did she remain coherent  
9 throughout the emergency room stay as you  
10 recall?  
11 A. As I recall, yes. He  
12 explained the risks and benefits to her  
13 in his admitting papers. He said he  
14 explained it and the patient agreed.  
15 That means she must have been compus  
16 mentus, meaning she agreed.  
17 Q. Certainly if Dr. Kranitz told  
18 the patient that she had these two lung  
19 masses seen on the abdominal CT scan  
20 which needed follow-up -- (interrupted)  
21 A. One would have thought she  
22 would have understood it.  
23 Q. And as you indicated fair  
24 warning to her?  
25 A. Certainly a heads up to her.

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1  
2 Q. I would imagine in the course  
3 of your practice, particularly in that  
4 one case that you were explaining to us  
5 that you were -- a claim that had been  
6 filed against you, that patients  
7 oftentimes do not follow-up with their  
8 recommendations of their physicians?  
9 A. Well, yeah. This guy happened  
10 to be mentally not with it and I got  
11 distracted and didn't write a note about  
12 it had been discussed, or if a patient  
13 is medicated they will frequently not  
14 remember anything that you told them.  
15 Q. But if they are --  
16 (interrupted)  
17 A. And if they are not medicated  
18 and alert, most of the patients will seek  
19 follow-up from someone.  
20 Q. Although they may not seek  
21 follow-up with you, they may go to  
22 another care provider, that could be a  
23 scenario; right?  
24 A. Yeah. But it's still my  
25 responsibility to make sure they got that

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1 follow-up care.  
2 Q. I've asked you about your  
3 opinion in this case that Dr. El-Khairi  
4 did not tell Miss Richnafsky and I wanted  
5 to make sure I understand the basis of  
6 that. The basis is he did not document  
7 it and he can't remember it and he can't  
8 rely on his routine and practice to prove  
9 that he, in fact, told Mrs. Richnafsky?  
10 A. That's my position.  
11 Q. Anything else about your  
12 opinions that you've outlined in  
13 Defendant's Exhibit A that we have not  
14 discussed?  
15 A. No.  
16 Q. Do you know anything about Miss  
17 Richnafsky's pattern of conduct as it  
18 relates to physicians?  
19 A. No.  
20 Q. Do you have any opinion, and I  
21 don't see it outlined, but I take it  
22 based upon the fact that it is not  
23 outlined in your report that you do not  
24 have an opinion whether or not Mrs.  
25

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1 Richnafsky would have followed up if she  
2 had been told?  
3 A. I don't have an opinion.  
4 Q. Do you know if anybody was  
5 present during Miss Richnafsky's  
6 post-operative visit with Dr. El-Khairi?  
7 A. I don't know.  
8 Q. Do you know whether or not Mr.  
9 Richnafsky was present in the emergency  
10 room when Dr. Kranitz believes he told  
11 Mrs. Richnafsky that she had two lung  
12 nodules seen on the abdominal CT scan  
13 that needed follow-up?  
14 MS. PANTAGES:  
15 Objection.  
16 A. I don't know.  
17 MS. SANDACZ:  
18 Q. If Dr. Kranitz did not document  
19 that he told Mrs. Richnafsky about these  
20 two lung masses and that he had followed  
21 up with the patient, are you critical of  
22 Dr. Kranitz for not documenting it?  
23 A. Per Dr. Kranitz's testimony he  
24 told Dr. El-Khairi about the lung masses.  
25



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| <p style="text-align: right;">Page 94</p> <p>1</p> <p>2 Q. I understand that. You are</p> <p>3 also aware that Dr. Kranitz believes that</p> <p>4 he told Mrs. Richnafsky about these lung</p> <p>5 masses?</p> <p>6 A. I believe so, yes.</p> <p>7 Q. Now, if Dr. Kranitz did not</p> <p>8 document that in his records, do you not</p> <p>9 believe him or is it based upon the fact</p> <p>10 that he has a specific recollection?</p> <p>11 A. Based upon the fact that he</p> <p>12 has a specific recollection of telling</p> <p>13 Dr. El-Khairi.</p> <p>14 Q. The whole issue of</p> <p>15 documentation is that if you don't have a</p> <p>16 specific memory then the absence of</p> <p>17 documentation indicates that it wasn't</p> <p>18 done and you can't rely on your practice?</p> <p>19 A. Yes. That's what I believe.</p> <p>20 Q. I don't mean to be redundant,</p> <p>21 I'm just trying to understand your</p> <p>22 position.</p> <p>23 A. Okay.</p> <p>24 Q. Do you know what Dr. Kranitz</p> <p>25 told the on call physician, Dr. Lane, but</p>                                 | <p style="text-align: right;">Page 96</p> <p>1</p> <p>2 Kranitz's testimony.</p> <p>3 Q. I'll represent to you that it's</p> <p>4 not in the file in front of you. It's</p> <p>5 part of the letter that Miss Pantages was</p> <p>6 able to pull out. As you sit here</p> <p>7 tonight you don't know Dr. Kranitz told</p> <p>8 Dr. Lang about the two lung masses?</p> <p>9 A. Not without looking at the</p> <p>10 testimony or letter.</p> <p>11 Q. You don't remember whether or</p> <p>12 not Dr. Lang told Dr. Kranitz that he</p> <p>13 would follow-up?</p> <p>14 A. I don't know.</p> <p>15 Q. Based upon your review of the</p> <p>16 emergency room records, you believe that</p> <p>17 Miss Richnafsky had a primary care</p> <p>18 physician?</p> <p>19 A. I think she didn't have a</p> <p>20 primary care physician.</p> <p>21 Q. What's that based on?</p> <p>22 A. Materials that I was provided.</p> <p>23 I don't think she had a primary care</p> <p>24 physician.</p> <p>25 MS. PANTAGES:</p>                                                                                                                        |
| <p style="text-align: right;">Page 95</p> <p>1</p> <p>2 I believe it's really Dr. Lang, what the</p> <p>3 results of the abdominal CT scan showed?</p> <p>4 A. Lang was covering for Hillard</p> <p>5 at 12:55 p.m. That's what he stated and</p> <p>6 the woman had acute appendicitis.</p> <p>7 Q. Did he also tell Dr. Lang that</p> <p>8 he was covering for Dr. Hillard that the</p> <p>9 patient had two lung masses seen on the</p> <p>10 abdominal CT scan that needed follow-up?</p> <p>11 A. It says here that Dr. Young</p> <p>12 mentioned that there appears to be</p> <p>13 questionable lung masses. I spoke with</p> <p>14 Dr. Lang, discussed the case and care.</p> <p>15 He requested Dr. Kovorsky (proper noun</p> <p>16 subject to correction) to take care of</p> <p>17 this patient.</p> <p>18 Q. Did Dr. Kranitz tell Dr. Lang</p> <p>19 about the two lung masses seen on CT</p> <p>20 scan?</p> <p>21 A. Not clear.</p> <p>22 Q. Do you know what he testified</p> <p>23 to as to his recollection, routine</p> <p>24 practice?</p> <p>25 A. I'd have to take a look at Dr.</p> | <p style="text-align: right;">Page 97</p> <p>1</p> <p>2 I don't think it's reflected in</p> <p>3 the chart anywhere.</p> <p>4 MS. SANDACZ:</p> <p>5 Q. Who was the name of the person</p> <p>6 on the top of the dictated discharge note</p> <p>7 that you are pointing to?</p> <p>8 A. Dr. Hillard.</p> <p>9 Q. Dr. Hillard is identified as a</p> <p>10 primary care physician in Dr. Kranitz's</p> <p>11 dictated note; is that correct?</p> <p>12 A. Yes. I want to say I don't</p> <p>13 know if Dr. Hillard was the primary care</p> <p>14 doctor on call that night to the</p> <p>15 emergency room and to her specific</p> <p>16 physician. That unfortunately is the way</p> <p>17 we practice. If somebody is on call</p> <p>18 tonight, but it's a Medicaid patient,</p> <p>19 they don't have a doctor. This doctor</p> <p>20 is to whom you pass on the information.</p> <p>21 He also could have been her real doctor.</p> <p>22 Q. Regardless whether he was the</p> <p>23 real primary care doctor versus the name</p> <p>24 given to the patient, does that primary</p> <p>25 care physician have a duty as you have</p> |

| Page 98                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Page 100                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
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| <p>1 indicated before to follow-up with what</p> <p>2 was conveyed -- supposedly conveyed to</p> <p>3 him through the emergency room physician?</p> <p>4 A. Yes.</p> <p>5 Q. And that is to pick up the</p> <p>6 phone and contact this patient and try to</p> <p>7 do all those things?</p> <p>8 A. Yes.</p> <p>9 Q. When I had asked you earlier</p> <p>10 about Dr. Walsh's report you kind of</p> <p>11 chuckled or whatever and basically you</p> <p>12 told me that you did not believe that</p> <p>13 it's Dr. Walsh's practice to not document</p> <p>14 conversations. Is there any basis that</p> <p>15 you have or is this just your assumption</p> <p>16 that that is the way Dr. Walsh practices?</p> <p>17 A. I just hope he doesn't practice</p> <p>18 like that.</p> <p>19 Q. Every time he doesn't document</p> <p>20 what he does with the patient and does</p> <p>21 have a specific memory, is that he's</p> <p>22 deviated from the standard of care</p> <p>23 because he has no ability or way to</p> <p>24 prove what he did?</p> <p>25</p>                 | <p>1 refer to Dr. X, Y, Z. I don't believe</p> <p>2 his practice is giving word of mouth.</p> <p>3 As he knows and as I know, patients</p> <p>4 forget too many things. When you tell</p> <p>5 them that they have breast cancer, they</p> <p>6 are not hearing you that you need bone</p> <p>7 scans and other things. That's why we</p> <p>8 give them little cards with other</p> <p>9 information on it. I'm interpreting that</p> <p>10 letter that he is saying that he needs</p> <p>11 to communicate that information to the</p> <p>12 patient and if he communicates it,</p> <p>13 assuredly communicates it, that he has</p> <p>14 met the standard of care.</p> <p>15 Q. I think what Dr. Walsh is</p> <p>16 saying is outlined in his last sentence,</p> <p>17 if Dr. El-Khairi advised the patient of</p> <p>18 incidental findings, he did, in fact,</p> <p>19 meet the standard of care. Do you agree</p> <p>20 or disagree with that?</p> <p>21 A. I agree with that. All I'm</p> <p>22 saying is by Dr. El-Khairi's own</p> <p>23 admission he doesn't remember doing it.</p> <p>24 Q. The basis of your opinion that</p> <p>25</p> |
| Page 99                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Page 101                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <p>1 MS. PANTAGES:</p> <p>2 Objection.</p> <p>3 A. I'm not commenting on Dr. Walsh</p> <p>4 at all.</p> <p>5 MS. SANDACZ:</p> <p>6 Q. I'm trying to make the analogy</p> <p>7 to Dr. -- putting the same standard that</p> <p>8 you are holding Dr. El-Khairi to Dr.</p> <p>9 Walsh. My question to you is if Dr.</p> <p>10 Walsh -- he does not -- the type of</p> <p>11 consultation that Dr. El-Khairi had with</p> <p>12 the patient in the post-operative visit</p> <p>13 does not need to be documented, I know</p> <p>14 you disagree with that, if Dr. Walsh, in</p> <p>15 fact, indeed practices that way and</p> <p>16 doesn't have a specific recollection, you</p> <p>17 also know he deviates from the standard</p> <p>18 of care when he doesn't document it?</p> <p>19 A. I believe he doesn't practice</p> <p>20 that way. That's what I'm saying. I</p> <p>21 believe working for the Cleveland Clinic</p> <p>22 Foundation if this patient has a lung</p> <p>23 mass he writes it in the chart and I</p> <p>24 believe he says call Dr. X, Y, Z or</p> <p>25</p> | <p>1 Dr. El-Khairi did not advise his patients</p> <p>2 is because he can't specifically recall</p> <p>3 it and there's no documentation to prove</p> <p>4 it?</p> <p>5 A. Yes.</p> <p>6 Q. Hypothetically, I want you to</p> <p>7 assume Dr. El-Khairi doesn't have a</p> <p>8 specific recollection of telling the</p> <p>9 patient, but the discussions told the</p> <p>10 patient is documented. Do you believe</p> <p>11 that Dr. El-Khairi meets the standard of</p> <p>12 care?</p> <p>13 MS. PANTAGES:</p> <p>14 Objection. You are saying that</p> <p>15 if he had documented it? I don't</p> <p>16 understand the question.</p> <p>17 MS. SANDACZ:</p> <p>18 Q. You can answer.</p> <p>19 A. If he had documented it, but</p> <p>20 he doesn't recall documenting it, then I</p> <p>21 think we need to have an examination of</p> <p>22 Dr. El-Khairi. He needs to see somebody</p> <p>23 about a memory problem.</p> <p>24 Q. I would imagine a doctor would</p> <p>25</p>                                                                                                                                                               |

| Page 102                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Page 104                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
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| <p>1 document something about a conversation</p> <p>2 with a patient, but you don't put</p> <p>3 everything that you tell the patient in</p> <p>4 that documentation; correct?</p> <p>5 A. No. But you said I had</p> <p>6 conversation with the patient and</p> <p>7 recommended X, Y, Z. That's a synopsis or</p> <p>8 abstract of sometimes a five- or</p> <p>9 ten-minute conversation, but you remember</p> <p>10 having the conversation about it and you</p> <p>11 better remember writing it down and if</p> <p>12 you don't, you go back and look at the</p> <p>13 chart because your memory didn't serve</p> <p>14 you very well and the patient's don't and</p> <p>15 this serves as a reminder.</p> <p>16 Q. Let me ask you this: You get</p> <p>17 informed consent from patients for a</p> <p>18 particular procedure, do you not?</p> <p>19 A. Correct.</p> <p>20 Q. In your office note, do you</p> <p>21 document that you obtained informed</p> <p>22 consent from the patient?</p> <p>23 A. I have a copy of it in the</p> <p>24 chart.</p> <p>25</p> | <p>1 the patient that there is a potential of</p> <p>2 bleeding?</p> <p>3 A. Yes.</p> <p>4 Q. How do you know that?</p> <p>5 A. Well, I either discuss it or</p> <p>6 write it in as I said it, bleeding</p> <p>7 sepsis, death. If it's not written down</p> <p>8 I may or may not have had that</p> <p>9 conversation specifically that said</p> <p>10 bleeding.</p> <p>11 Q. Let me give you a --</p> <p>12 (interrupted)</p> <p>13 A. I think I might. I say I</p> <p>14 might have.</p> <p>15 Q. Let's assume that you operate</p> <p>16 on the patient and you have obtained</p> <p>17 informed consent from the patient which</p> <p>18 the hospital uses and says risks and</p> <p>19 benefits, advise, patient signs it,</p> <p>20 patient experiences infection and they sue</p> <p>21 you, Dr. Devereux did not tell me that</p> <p>22 infection was a potential complication of</p> <p>23 this procedure. What's your -- do you</p> <p>24 defend yourself on that issue?</p> <p>25</p>                               |
| Page 103                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Page 105                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <p>1 Q. Okay.</p> <p>2 A. There's some form of</p> <p>3 documentation, yes.</p> <p>4 Q. Does that informed consent</p> <p>5 specifically write out everything you told</p> <p>6 the patient or can it just simply</p> <p>7 summarize it and say informed consent</p> <p>8 obtained from the patient?</p> <p>9 A. We have a hospital informed</p> <p>10 consent here drawn up by our attorney and</p> <p>11 they don't want everything documented. I</p> <p>12 used to say "which includes ugly scar,</p> <p>13 bleeding, sepsis and death." She said</p> <p>14 don't say that. So we have a hospital</p> <p>15 that has gone -- (interrupted)</p> <p>16 Q. Your hospital informed consent</p> <p>17 or consent form basically just summarizes</p> <p>18 and says I've been told about the risks</p> <p>19 and benefits of a procedure and I agree</p> <p>20 to proceed?</p> <p>21 A. Yes. Risk benefits have been</p> <p>22 explained to me and I agree.</p> <p>23 Q. Based upon that documentation,</p> <p>24 can you tell me whether or not you told</p> <p>25</p>     | <p>1 A. I'm on the hot seat.</p> <p>2 Q. Do you believe that you</p> <p>3 deviated from a standard of care?</p> <p>4 A. It's not my decision. I don't</p> <p>5 think I did if I can recall telling them</p> <p>6 that they may have had an infection, but</p> <p>7 if I don't write it down somewhere it's</p> <p>8 hard for me to prove I did. It's a he</p> <p>9 said she said deal.</p> <p>10 Q. Okay.</p> <p>11 A. That's why you write things</p> <p>12 down. We all write things down. Come</p> <p>13 on, I write notes to go to the grocery</p> <p>14 store.</p> <p>15 Q. In that scenario that I gave</p> <p>16 you where the patient tells -- makes a</p> <p>17 claim that you did not tell her about</p> <p>18 the infection and you don't have a</p> <p>19 specific recollection of this particular</p> <p>20 thing, it's your opinion that you</p> <p>21 deviated from the standard of care?</p> <p>22 A. Yes. I believe one standard</p> <p>23 fits us all.</p> <p>24 Q. In that particular situation</p> <p>25</p> |

| Page 106                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Page 108                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
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| <p>1<br/>2 where that patient claims again that you,<br/>3 Dr. Devereux, didn't tell me about<br/>4 infections you wouldn't even defend<br/>5 yourself, you would say here you go, here<br/>6 is the check?<br/>7 MS. PANTAGES:<br/>8 Objection. That's way beyond.<br/>9 Beverly, that's not reasonably calculated<br/>10 to lead to discovery of admissible<br/>11 evidence.<br/>12 MS. SANDACZ:<br/>13 Absolutely.<br/>14 A. Can I respond?<br/>15 Q. You can respond.<br/>16 A. That's what happened to me in<br/>17 the situation that I told you about.<br/>18 Q. That's when you were at<br/>19 Rutgers?<br/>20 A. Yes.<br/>21 Q. Do you remember what year that<br/>22 was?<br/>23 A. Maybe '87, '88.<br/>24 Q. Do you know the name of the<br/>25 patient?</p> | <p>1<br/>2 didn't defend yourself on that?<br/>3 A. I would have, but the attorney<br/>4 said you're dead, you didn't write it<br/>5 down. Of course maybe that's just New<br/>6 Jersey law.<br/>7 MS. SANDACZ:<br/>8 Off the record.<br/>9 (OFF THE RECORD DISCUSSION)<br/>10 Q. Is there anything else that you<br/>11 feel you need to review in this case to<br/>12 give your opinions?<br/>13 A. No. I shouldn't say that.<br/>14 Yes, I'd like to see my binder just to<br/>15 make sure -- I'd like to find that and<br/>16 make sure that my notes in there<br/>17 correspond to everything that I told you.<br/>18 Q. I think there's a list of<br/>19 things that you were going to try to get<br/>20 me. The patient's name in that Rutgers<br/>21 lawsuit filed in Middlesex County in or<br/>22 around 1987. You were going to provide<br/>23 me with some indication of what you have<br/>24 in your binder, if you have another<br/>25 binder?</p> |
| Page 107                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Page 109                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <p>1<br/>2 A. No.<br/>3 Q. Can you get that for me?<br/>4 A. Yes.<br/>5 (REQUESTED INFORMATION HERE)<br/>6 Q. Can you also get -- do you<br/>7 know what county that was in?<br/>8 A. Middlesex.<br/>9 Q. Did you give a deposition in<br/>10 that case?<br/>11 A. I don't recall.<br/>12 Q. Do you recall who your lawyer<br/>13 was?<br/>14 A. It was the attorney for the<br/>15 medical school.<br/>16 Q. Do you know who the opposing<br/>17 lawyer was?<br/>18 A. No.<br/>19 MS. SANDACZ:<br/>20 Off the record.<br/>21 (OFF THE RECORD DISCUSSION)<br/>22 A. That was based upon not writing<br/>23 it down and I had absolute recall that I<br/>24 told him.<br/>25 Q. Even in that scenario you</p>                                                            | <p>1<br/>2 A. If it corresponds to the<br/>3 missing pages?<br/>4 Q. Yes.<br/>5 A. Right.<br/>6 Q. Anything else?<br/>7 A. No.<br/>8 Q. Have we talked about all of<br/>9 your opinions that you are going to offer<br/>10 at the time of trial in this matter?<br/>11 MS. PANTAGES:<br/>12 Objection. Just with respect<br/>13 to -- he will have the opportunity to<br/>14 review Dr. Walsh's deposition, to the<br/>15 extent that he will be commenting on Dr.<br/>16 Walsh's testimony which he doesn't know<br/>17 as he sits here.<br/>18 MS. SANDACZ:<br/>19 Q. I'm talking about standard of<br/>20 care opinions of Dr. El-Khairi, not<br/>21 whether or not you agree or disagree with<br/>22 Dr. Walsh's opinions. On his report you<br/>23 disagree with his -- (interrupted)<br/>24 A. I don't disagree with him. I<br/>25 agree with him, absolutely, as long as he</p>                                                                            |

| Page 110                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Page 112                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
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| <p>1 gives the patient advice on the</p> <p>2 incidental findings and follows up on</p> <p>3 that, that's not a deviation from the</p> <p>4 standard of care.</p> <p>5 Q. I'm not sure Dr. Walsh follows</p> <p>6 up on that. We will talk to Dr. Walsh</p> <p>7 about that.</p> <p>8 A. Okay. If the question is do I</p> <p>9 disagree that he doesn't need to</p> <p>10 follow-up on incidental findings, yeah,</p> <p>11 then I disagree.</p> <p>12 Q. I didn't see that follow-up.</p> <p>13 I think you told me Dr. El-Khairi could</p> <p>14 have told the patient and documented it</p> <p>15 and that would have discharged his duty</p> <p>16 as it relates to these findings?</p> <p>17 MS. PANTAGES:</p> <p>18 Objection. That's not what he</p> <p>19 said.</p> <p>20 A. That's not what I said.</p> <p>21 MS. SANDACZ:</p> <p>22 Q. Tell me then I'm wrong. The</p> <p>23 record will speak for itself. You gave</p> <p>24 me an option he could have called the</p> <p>25</p>       | <p>1 I'm hearing you add to your list of</p> <p>2 opinions?</p> <p>3 A. It's got to be followed up in</p> <p>4 some way. Whether Dr. El-Khairi did the</p> <p>5 follow-up or whether her primary care</p> <p>6 doctor did the follow-up. Telling her</p> <p>7 about the masses, telling her about the</p> <p>8 pulmonary masses also required that she</p> <p>9 call the primary care doctor or the</p> <p>10 pulmonologist or Dr. El-Khairi could have</p> <p>11 called them.</p> <p>12 Q. Okay.</p> <p>13 A. But to close the loop, yes,</p> <p>14 she could have called the doctor herself,</p> <p>15 but Dr. El-Khairi needs to make sure that</p> <p>16 she did it in some way, shape or form.</p> <p>17 If I wasn't clear about that, I'm sorry.</p> <p>18 Q. You also put in there that</p> <p>19 Miss Richnafsky also has a responsibility</p> <p>20 to call the primary care physician</p> <p>21 herself?</p> <p>22 A. Dr. El-Khairi or the primary</p> <p>23 care physician have got to close the loop</p> <p>24 and make sure that she followed up on</p> <p>25</p>                                                               |
| Page 111                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Page 113                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <p>1 pulmonologist?</p> <p>2 A. Yes.</p> <p>3 Q. As an outpatient he could have</p> <p>4 called the pulmonologist as an outpatient,</p> <p>5 he could have told the patient in the</p> <p>6 hospital or he could have told the</p> <p>7 patient in the office?</p> <p>8 A. Called the patient, told her in</p> <p>9 the office or called her primary care</p> <p>10 doctors either on an inpatient basis or</p> <p>11 outpatient basis.</p> <p>12 Q. I didn't get that. Call</p> <p>13 primary care doctor?</p> <p>14 A. Whomever the doctor that</p> <p>15 follows up on this or he could have</p> <p>16 followed up on it himself.</p> <p>17 Q. How so?</p> <p>18 A. He could have ordered a CAT</p> <p>19 scan, a biopsy, something that made the</p> <p>20 diagnosis himself.</p> <p>21 Q. So now in addition to the two</p> <p>22 opinions you have in not telling her, you</p> <p>23 are also saying that he needed to call</p> <p>24 the primary care physician, is that what</p> <p>25</p> | <p>1 it.</p> <p>2 Q. That's right. You don't put</p> <p>3 any responsibility on her because the</p> <p>4 patient can forget.</p> <p>5 A. Right. Some of the cases that</p> <p>6 I've looked at the doctor tells the</p> <p>7 patient to get a mammogram and she</p> <p>8 doesn't get one next year, waits three</p> <p>9 years and comes back with a spiculated</p> <p>10 mass we can do that. We just can't tell</p> <p>11 somebody to do something even though you</p> <p>12 are listening to me and you're aware and</p> <p>13 not drugged up and medicated, there has</p> <p>14 to be a way to follow-up on that patient</p> <p>15 and make sure she did it. I write on</p> <p>16 the chart call Mrs. Smith back, she</p> <p>17 doesn't want to have a mammogram and she</p> <p>18 is afraid of the radiation. You just</p> <p>19 can't drop the ball. There's something</p> <p>20 there that we need to evaluate and she</p> <p>21 doesn't want to get it evaluated. That's</p> <p>22 how we all get hung out to dry. It's</p> <p>23 always a communication thing. It's never</p> <p>24 not seeing it, it's seeing if and</p> <p>25</p> |

| Page 114                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Page 116                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
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| <p>1<br/>2 assuming somebody else is going to do it<br/>3 and not doing it ourselves. It's a lack<br/>4 of communication with us together as<br/>5 doctors, etcetera, etcetera.<br/>6 Q. I'm following up on that<br/>7 mammogram issue. If you see a patient and<br/>8 the patient has an obvious palpable mass<br/>9 in her breast and you recommend the<br/>10 patient to get a mammogram and give her<br/>11 a slip, the patient doesn't get it,<br/>12 that's your responsibility as a physician<br/>13 ordering it because she didn't get it?<br/>14 A. Yes.<br/>15 Q. And no responsibility for the<br/>16 patient?<br/>17 A. None. I'll take you out here<br/>18 and show you my charts right now. Every<br/>19 prescription I write for a patient my<br/>20 nurse one week later calls the patient up<br/>21 and says did you get a mammogram? Is it<br/>22 scheduled? We don't even let them leave<br/>23 this office until we schedule it for<br/>24 them.<br/>25 Q. Why would you have to call</p> | <p>1 doctor says it's not my responsibility.<br/>2 I'm glad the days have changed. This is<br/>3 why we are getting earlier diagnoses.<br/>4 This is why cancer treatment survival is<br/>5 being extended because we are now held<br/>6 responsible for documenting an earlier<br/>7 diagnosis, and if we aren't the ones who<br/>8 are the gatekeeper of an earlier<br/>9 diagnosis, then who is? HMO's aren't<br/>10 going to get you to do your mammogram.<br/>11 We have to follow-up on these things.<br/>12 We have to -- we can't rely on the<br/>13 patients here.<br/>14 Q. In other words, for Dr.<br/>15 El-Khairi to discharge his patient he<br/>16 would have had to have told the patient<br/>17 in either setting and followed up with<br/>18 the patient with either calling her up<br/>19 after she left the office, calling the<br/>20 primary care physician, calling the<br/>21 pulmonologist or in some manner?<br/>22 A. He would have had to have<br/>23 closed the loop and make sure either he<br/>24 or someone else assume the responsibility<br/>25</p> |
| Page 115                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Page 117                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <p>1<br/>2 them and ask if it's scheduled?<br/>3 A. If they have had the scheduled<br/>4 mammogram. If they have had it. In<br/>5 other words, we call, schedule it and we<br/>6 call later and say, Miss Jones, did you<br/>7 get the mammogram? We scheduled it for<br/>8 you.<br/>9 Q. You called them up to tell<br/>10 them did you get it because we have<br/>11 scheduled it?<br/>12 A. Yeah. My secretary writes it<br/>13 down. Spoke to patient, hasn't had it<br/>14 yet. We have to send them -- I don't<br/>15 know if this is nationwide, we have to<br/>16 send them a letter.<br/>17 Q. Is that the standard of care?<br/>18 A. Yeah.<br/>19 Q. I know we are talking about<br/>20 mammograms -- (interrupted)<br/>21 A. Same thing. There's a possible<br/>22 problem here. In the old days the<br/>23 doctors didn't do it in 1950s. I don't<br/>24 know why my doctor didn't, you know...<br/>25 Why didn't the doctor call back up. The</p>                                                | <p>1 for evaluating that pulmonary mass.<br/>2 Q. Same responsibility and duty as<br/>3 to a primary care physician to close that<br/>4 loop as well?<br/>5 A. Whoever closes it, I don't<br/>6 care.<br/>7 Q. If it's closed it -- is it a<br/>8 "so what" whether or not the other person<br/>9 closed it?<br/>10 A. It's not a "so what." To me<br/>11 I don't care who closed it. If<br/>12 El-Khairi was the only one that knew<br/>13 about it and had the only opportunity to<br/>14 intervene and diagnose this thing earlier,<br/>15 then it was his responsibility. If he<br/>16 gave that responsibility to the primary<br/>17 care doctor and/or turned it over to him<br/>18 or the primary care doctor assumed it, I<br/>19 don't care who did it. Somebody dropped<br/>20 the ball on the lady. That's a standard<br/>21 of care issue that should be worldwide.<br/>22 Q. As to all physicians?<br/>23 A. Yes.<br/>24 MS. SANDACZ:<br/>25</p>                                                                                                                         |

| Page 118                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Page 120                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
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| <p>1<br/>2 Thank you. Thank you.<br/>3 (Deposition concludes at 3:40<br/>4 p.m.)<br/>5 .<br/>6 .<br/>7 .<br/>8 .<br/>9 .<br/>10 .<br/>11 .<br/>12 .<br/>13 .<br/>14 .<br/>15 .<br/>16 .<br/>17 .<br/>18 .<br/>19 .<br/>20 .<br/>21 .<br/>22 .<br/>23 .<br/>24 .<br/>25 .</p>                                                                                                                                                                              | <p>1<br/>2 STATE OF NEW YORK )<br/>3 ) ss.<br/>4 COUNTY OF ORANGE )<br/>5 CERTIFICATION<br/>6 I, PATRICK M. DeGIORGIO, a<br/>7 Shorthand Reporter and Notary Public<br/>8 within and for the State of New York, do<br/>9 hereby certify:<br/>10 That the witness whose<br/>11 examination is hereinbefore set forth, was<br/>12 duly sworn by me, and that the transcript<br/>13 of said examination is a true record of<br/>14 the testimony given by the said witness.<br/>15 I further certify that I am<br/>16 not related to any of the parties to<br/>17 this action by blood or marriage and that<br/>18 I am in no way interested in the outcome<br/>19 of this matter.<br/>20 .<br/>21<br/>22 PATRICK M. DeGIORGIO<br/>23 .<br/>24 Dated: April 10, 2006<br/>25 .</p> |
| Page 119                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Page 121                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <p>1<br/>2 DESCRIPTION OF DEFENDANT'S EXHIBITS<br/>3 EXHIBIT DESCRIPTION<br/>4 A Report<br/>5 B Time Line<br/>6 C Fax<br/>7 .<br/>8 .<br/>9 .<br/>10 ITEMS AND INFORMATION<br/>11 REQUESTED TO BE SUPPLIED<br/>12 PAGE LINE DESCRIPTION<br/>13 25 23 Provide copy of the<br/>14 correspondence.<br/>15 107 5 Provide name of the<br/>16 patient who sued<br/>17 Dr. Devereux.<br/>18 .<br/>19 .<br/>20 .<br/>21 .<br/>22 .<br/>23 .<br/>24 .<br/>25 .</p> | <p>1<br/>2 CAPTION<br/>3 The Deposition of Dennis F. Devereux,<br/>4 M.D., taken in the matter, on the date, and<br/>5 at the time and place set out on the title<br/>6 page hereof.<br/>7 It was requested that the deposition<br/>8 be taken by the reporter and that same be<br/>9 reduced to typewritten form.<br/>10 It was agreed by and between counsel<br/>11 and the parties that the Deponent will read<br/>12 and sign the transcript of said deposition.<br/>13 .<br/>14 .<br/>15 .<br/>16 .<br/>17 .<br/>18 .<br/>19 .<br/>20 .<br/>21 .<br/>22 .<br/>23 .<br/>24 .<br/>25 .</p>                                                                                                                                                                                  |

| Page 122 |                                                | Page 124 |                                         |
|----------|------------------------------------------------|----------|-----------------------------------------|
| 1        |                                                | 1        |                                         |
| 2        | CERTIFICATE                                    | 2        | Reason for change:                      |
| 3        | STATE OF :                                     | 3        | Page No. Line No. Change to:            |
| 4        | COUNTY/CITY OF :                               | 4        |                                         |
| 5        | Before me, this day, personally                | 5        | Reason for change:                      |
| 6        | appeared, Dennis F. Devereux, M.D., who, being | 6        | Page No. Line No. Change to:            |
| 7        | duly sworn, states that the foregoing          | 7        |                                         |
| 8        | transcript of his/her Deposition, taken in the | 8        | Reason for change:                      |
| 9        | matter, on the date, and at the time and       | 9        | .                                       |
| 10       | place set out on the title page hereof,        | 10       | .                                       |
| 11       | constitutes a true and accurate transcript of  | 11       | Deposition of Dennis F. Devereux, M.D.. |
| 12       | said deposition.                               | 12       | .                                       |
| 13       |                                                | 13       | Page No. Line No. Change to:            |
| 14       | Dennis F. Devereux, M.D..                      | 14       |                                         |
| 15       | .                                              | 15       | Reason for change:                      |
| 16       | SUBSCRIBED and SWORN to before me this         | 16       | Page No. Line No. Change to:            |
| 17       | day of , 2006 in the                           | 17       |                                         |
| 18       | jurisdiction aforesaid.                        | 18       | Reason for change:                      |
| 19       |                                                | 19       | Page No. Line No. Change to:            |
| 20       | My Commission Expires Notary Public            | 20       |                                         |
| 21       | .                                              | 21       | Reason for change:                      |
| 22       | .                                              | 22       | Page No. Line No. Change to:            |
| 23       | .                                              | 23       |                                         |
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| Page 123 |                                                | Page 125 |                              |
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| 1        |                                                | 1        |                              |
| 2        | DEPOSITION ERRATA SHEET                        | 2        | Reason for change:           |
| 3        | .                                              | 3        | Page No. Line No. Change to: |
| 4        | RE: SetDepo, Inc.                              | 4        |                              |
| 5        | File No. 9998                                  | 5        | Reason for change:           |
| 6        | Case Caption: Richard Richnafsky, et al.,      | 6        | ..                           |
| 7        | vs. University Hospitals of Cleveland, et al.  | 7        | SIGNATURE: _____ DATE: _____ |
| 8        |                                                | 8        | Dennis F. Devereux, M.D..    |
| 9        | Deponent: Dennis F. Devereux, M.D..            | 9        |                              |
| 10       | Deposition Date: April 6, 2006                 | 10       |                              |
| 11       | .                                              | 11       |                              |
| 12       | To the Reporter:                               | 12       |                              |
| 13       | I have read the entire transcript of my        | 13       |                              |
| 14       | Deposition taken in the captioned matter or    | 14       |                              |
| 15       | the same has been read to me. I request        | 15       |                              |
| 16       | that the following changes be entered upon the | 16       |                              |
| 17       | record for the reasons indicated. I have       | 17       |                              |
| 18       | signed my name to the Errata Sheet and the     | 18       |                              |
| 19       | appropriate Certificate and authorize you to   | 19       |                              |
| 20       | attach both to the original transcript.        | 20       |                              |
| 21       | .                                              | 21       |                              |
| 22       | Page No. Line No. Change to:                   | 22       |                              |
| 23       |                                                | 23       |                              |
| 24       | Reason for change:                             | 24       |                              |
| 25       | Page No. Line No. Change to:                   | 25       |                              |