

THE STATE of OHIO,
COUNTY of CUYAHOGA.

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IN THE COURT OF COMMON PLEAS

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CLARK G. KELLOGG, administrator :
of the ESTATE of MATTIE KELLOGG, :
plaintiffs,

vs.

: Case No. 274038

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HENRY W. EISENBERG, M.D.,
INC., et al.,
defendants.

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Deposition of HENRY W. EISENBERG, M.D.,
a defendant herein, called by the plaintiffs for
the purpose of cross-examination pursuant to the
Ohio Rules of Civil Procedure, taken before
Constance Campbell, Notary Public within and for th
State of Ohio, at the offices of Dr. Eisenberg,
3619 Park East, Beachwood, Ohio Ohio, on TUESDAY,
OCTOBER 11TH, 1994, commencing at 10:10 a.m.,
pursuant to notice.



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I N D E XWITNESS:HENRY W. EISENBERG, M.D.PAGE

Cross-exam-nation by Mr. Kamplnski

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Cross-examination by Mr. Malone

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NO EXHIBITS MARKED

(FOR KEYWORD AND OBJECTION INDEX, SEE APPENDIX)

1 RALPH W. EISENBERG, M.D.

2 of lawful age, a defendant herein, called by the
3 plaintiffs for the purpose of cross-examination
4 pursuant to the Ohio Rules of Civil Procedure,
5 being first duly sworn, as hereinafter certified,
6 was examined, and testified as follows:

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8 CROSS-EXAMINATION

9 BY MR. KAMPINSKI:

10 Q. State your name, please.

11 A. Henry W. Eisenberg.

12 Q. Do you have a CV, Doctor?

13 A. Yes, I do.

14 Q. Can I see it, please?

15 Q. Doctor, at what point in your training did
16 you become acquainted with the interpretation of
17 the analysis of blood work, or is that something in
18 medical school?

19 A. In medical school.

20 Q. Anything after that that dealt with that
21 topic or issue?

22 A. No.

23 Q. Did that include the understanding of
24 differentials?

25 A. Yes.

1 Q. What is the importance of the differentials
2 and blood work?

3 A. It's a measure of the blood count.

4 Q. What is the reason that you ordered blood
5 work preoperatively for Mrs. Kellogg?

6 A. To determine if she was anemic.

7 Q. That was the only reason?

8 A. As a screening test.

9 Q. Screening for what?

10 A. As I said, to see if she was anemic or not.

11 Q. That was the only thing?

12 A. Yes, sir.

13 Q. Did you order a differential?

14 A. Yes.

15 Q. Is there a requisition for that blood test
16 somewhere?

17 A. Was part of the admission work.

18 Q. Do you have that in your record?

19 A. I believe so. Actually what I ordered was a
20 CBC, was part of their routine preadmission test.

21 Q. Can I see that?

22 A. This is a form we fill out for her to be
23 admitted.

24 Q. In other words, you just circled on this
25 patient admission information form what tests you

1 wanted?

2 A. Yes.

3 Q. And that doesn't distinguish whether a
4 differential would be done or not?

5 A. No.

6 Q. Is it your understanding that a differential
7 was done as part of the CBC?

8 A. Part of the CBC. Stands for complete blood
9 count.

10 Q. Is that part of your office chart?

11 A. Yes, it is.

12 Q. Is that something that you sent when I
13 requested your records?

14 A. I believe so.

15 Q. Do you have an extra copy of his chart,
16 Jerry?

17 MR. KALUR: Do I have an
18 extra copy?

19 MR. KAMPINSKI: Yes.

20 MR. KALUR: He has his
21 chart, we can make a copy.

22 Q. When did you get the results of that test
23 back then?

24 A. Well, I think Mrs. Kellogg was in my office
25 the second time on February 28th, which is when we

1 arranged to have that pre-admission testing done.
2 I think she went from the office to the hospital to
3 have it done. I received the results the next day,
4 which I think was Tuesday, March 1st.

5 Q. Did they call the results to your office?

6 A. Yes.

7 Q. Would that have been the day of the testing
8 or the next day?

9 A. The next day.

10 Q. So that was March 1st?

11 A. Yes.

12 **a.** How do you know it was the next day?

13 A. That is how I have it written down. **As** I
14 remember it, I was called with the results in the
15 afternoon.

16 Q. What results were you called with?

17 A. The hematocrit was 32 percent, white blood
18 count 3,200, I was told she had an abnormal number
19 of lymphocytes.

20 Q. Were you told the number?

21 A. I subsequently found out it was 95 percent.
22 Over the phone I was told it was either an abnormal
23 number or abnormal appearance of lymphocytes.

24 Q. When you say subsequently, when was that and
25 how?

1 A. The next day when I saw the printed out
2 result at the hospital.

3 Q. That would have been on the --

4 A. Wednesday the day of the surgery.

5 Q. The 2nd?

6 A. Yes.

7 Q. Prior to the surgery?

8 A. Yes.

9 Q. Were you therefore aware of the other results
10 set forth on that laboratory sheet prior to the
11 surgery?

12 A. What other results do you mean?

13 Q. The segs?

14 A. Yes.

15 Q. What significance did those results have?

16 A. Well, I looked at the total number of white
17 cells which was at the lower limits of normal. The
18 abnormality was -- the percentage of lymphocytes at
19 the Hillcrest lab can be as high as 50 percent is
20 considered normal. This was abnormal.

21 Q. I understand it was abnormal. What was the
22 significance of the abnormality, sir?

23 A. At the time I didn't know what the
24 significance of it was.

25 Q. Is the lymphocytes the only thing you focused

1 on, Doctor?

2 A. Yes.

3 Q. Are there any aspects to the differential?

4 A. Yes.

5 Q. What are those?

6 A. The polymorphics and the bands.

7 Q. What is the significance of the abnormalities
8 in those?

9 A. Those were low.

10 Q. What is the significance of them being low?

11 A. At the time I did not know what the
12 significance of it was.

13 Q. What is normal for the neutrophils for
14 example?

15 A. Neutrophils normally would be about 40 to 50
16 percent.

17 Q. What were they?

18 A. I don't remember exactly.

19 Q. Is there anything in the record that will
20 tell you that?

21 A. Not in my office chart. In the hospital
22 chart it would be.

23 Q. Do you have that?

24 A. I have to look.

25 MR. KALUR: Do you have the

1 original, we will use that? Here.

2 Q. Tell me what you are looking at, sir.

3 A. I was looking at the CBC that is dated -- I
4 think it's dated 3-2, that is where I had looked at
5 the hematocrit is 32, the white blood cell was
6 3,200, the platelet count was 340,000 which was
7 normal. That is where it says the lymphocytes
8 were 95. The segs were only one percent.

9 Q. Is this the sheet that you saw before the
10 surgery?

11 A. Yes.

12 Q. Once again, what is the significance of segs
13 being one percent, Doctor?

14 A. It's that it's normal.

15 Q. I beg your pardon?

16 A. It's abnormally low.

17 Q. What does that mean, what condition does she
18 have that causes it to be abnormally low?

19 A. At the time I did not know. I thought she
20 perhaps had an abscess. Sometimes when there is an
21 abscess the segs or neutrophils are outside of the
22 blood stream in the area of the abscess. In
23 retrospect these are findings that she had
24 leukemia.

25 Q. Should she have been operated on with these

1 findings, Doctor?

2 A. I thought she should. I had thought she had
3 an abscess than needed to be drained.

4 Q. Should she be operated on with acute
5 leukemia?

6 A. If you think there is an abscess, the
7 surgical indication is to drain the abscess,
8 whether she has acute leukemia or not.

9 Q. What are the complications for the patient
10 that has acute leukemia that goes untreated, is
11 operated on?

12 A. They will be at risk of developing infection.

13 Q. Did she develop an infection?

14 A. Yes, she did.

15 Q. Did she die as a result of the complication
16 of that infection?

17 A. Yes, she did.

18 Q. Isn't one percent segs a medical emergency,
19 Doctor?

20 A. I don't think so. I think a rectal abscess
21 is also a medical emergency.

22 Q. Therefore, the standard of care would require
23 you to operate on the abscess prior to dealing with
24 the abnormal segs?

25 A. That was my judgment. I did not know she **had**

1 leukemia.

2 Q. Of course you didn't know, you didn't
3 follow-up.

4 MR. KALUR: Let's --

5 A. I'm not sure it's possible to know. She had
6 no other symptoms of it.

7 Q. Doctor, I mean you are aware of the test
8 results, correct?

9 A. Yes.

10 Q. You didn't put, by the way, in your record,
11 the one percent segs, did you?

12 A. No, I did not.

13 Q. Is that because you didn't appreciate the
14 importance of that finding?

15 A. In retrospect I was focusing on the
16 elevations of lymphocytes. That was what had been
17 called to my attention.

18 Q. Is the answer to my question that you did not
19 in fact focus on the segs?

20 A. No, I didn't.

21 Q. Should you have?

22 A. I'm not sure it would have made a difference
23 had I or not.

24 Q. I'm not sure I understand you not being
25 sure.

1 As the physician you ordered the
2 tests, if in fact you would have appreciated the
3 significance of the segs, would it have made a
4 difference to you.

5 MR. KALUR: In that he
6 would not have operated?

7 Q. Right, at that time?

8 A. I think I still would have had to operate on
9 this patient.

10 Q. At that time?

11 A. Yes.

12 Q. In the absence of obtaining any treatment for
13 the acute leukemia?

14 A. As I said, I didn't know she had acute
15 leukemia, if the treatment for this type of acute
16 leukemia is very successful.

17 Q. When did you receive your oncology training?

18 A. I'm not an oncologist.

19 Q. Do you treat leukemia?

20 A. No, I don't.

21 Q. Then I don't understand your last answer?

22 MR. KALUR: He might have
23 seen patients with it, treated for leukemia,
24 patients who had leukemia, seen the outcome.

25 Q. Is that your testimony as an expert or an

1 offhand comment?

2 A. It's my personal opinion.

3 Q. Is that also a medical opinion?

4 A. Yes.

5 Q. Based upon a reasonable degree of medical
6 certainty?

7 A. Based upon asking a hemotologist and
8 oncologist who are experts in treating this type of
9 leukemia what they expect the treatment would have
10 been.

11 Q. When did you do that?

12 A. In the time since this case occurred.

13 Q. Who did you ask?

14 A. I asked Dr, Armand Green who is an
15 oncologist, I asked the oncologist who saw this
16 patient in consultation.

17 Q. Dr. Dickman?

18 A. Yes.

19 Q. Did they have an opportunity to see or treat
20 her before she died?

21 A. Dr. Dickman saw this patient I believe on the
22 Saturday which was the day she died at my
23 insistance. He performed an emergency bone marrow
24 which in fact made the diagnosis of leukemia.

25 Q. How do you treat acute leukemia?

1 A. I don't treat it. That is treated with
2 chemotherapy.

3 Q. What percentage of the time is it successful?

4 A. I can't answer that for certain. I think
5 with the type of leukemia she had the success rate
6 of chemotherapy would be small.

7 Q. 20 percent?

8 A. I don't think it's that high.

9 Q. 10 percent?

10 A. 10 percent possibility of a remission.

11 Q. Of a remission or of a cure?

12 A. Possibility of having a remission.

13 Q. Is that based on your discussion with these
14 two oncologists?

15 A. Yes.

16 Q. Have you done any literature search on that,
17 Doctor?

18 A. No, I haven't.

19 MR. KALUR: We don't
20 anticipate having this Doctor testify on the
21 survival rates of leukemia if that's any help to
22 you. I'm sure we can get a hemotologist to testify
23 on that subject.

24 Q. She was not provided with the prospect of
25 obtaining either a cure or a remission prior to

1 your surgery was she?

2 A. Prior to the surgery I did not know she had
3 leukemia, it was not something that I discussed
4 with her.

5 Q. Is one percent segs one of the differentials
6 for leukemia?

7 A. It is, yes.

8 Q. When you say you didn't know she had it, you
9 said that now three or four times, you didn't know
10 she had it because you didn't follow-up; isn't that
11 true?

12 A. Aside from that one laboratory test there was
13 no other reason for suspicion, she had no other
14 symptoms.

15 Q. I suppose aside from the bomb that was
16 dropped on Hiroshima, there wouldn't have been a
17 lot of deaths at that particular place.

18 I don't understand what you are
19 saying, sir.

20 MR. KALUR: Wait a minute,
21 you're not going to respond to that. If you want
22 to put a question, now that you observed the death
23 rate in Japan, we can move on. He isn't going to
24 respond to those kinds of questions.

25 MR. KAMPINSKI: What he did is

1 not respond to the question I asked him.

2 MR. KALUR: He did if you
3 listen. He didn't proceed further along the seg
4 issue because he didn't find any other symptoms of
5 the disease.

6 If you quarrel with not doing that,
7 I'm sure you will, that is up to you. He's given
8 you his answer.

9 Q. Is it your testimony that a finding of one
10 percent segs is not in and of itself sufficient for
11 a physician such as yourself to follow up to
12 determine whether or not the person has leukemia as
13 a result of that test result; is that your
14 testimony?

15 A. I'm not sure I understand the question. I
16 was treating her for a rectal abscess.

17 Q. Doctor, you don't ignore the test results, do
18 you?

19 A. No, I don't.

20 Q. You did in this case?

21 A. I was aware of the result.

22 Q. I don't want to quarrel with you. I don't
23 see anywhere in your notes a reflection that you
24 were aware of the one percent segs. If you want to
25 show that to me, I'd be happy to look at that.

1 If we look at your notes, Doctor,
2 you refer to the lymphs, not the segs; am I correct
3 about that?

4 A. That's correct.

5 Q. I don't mean to be repetitive. Is the reason
6 because you didn't understand or appreciate the
7 significance of the segs at that time?

8 A. I may not have. I was focused on the
9 abnormal lymphocytes. That is what was called to
10 my attention. That is what I looked at on the
11 report.

12 Q. So you just missed it?

13 A. I may have missed what, the one percent --

14 Q. Segs?

15 A. I may have misinterpreted it.

16 Q. We may be saying the same thing, I'm not
17 sure.

18 I guess when I say missed it I mean
19 you didn't appreciate the significance of it; would
20 that be a fair statement?

21 A. I think that is fair.

22 Q. Did you at any time prior to today indicate
23 that you had not in fact appreciated the
24 significance of that finding to any member of the
25 family, the Kellogg family?

1 A. I had told them she had an abnormal blood
2 count before the surgery. I did not know the
3 significance of it.

4 Q. When did you tell them that?

5 A. I remember telling both Mr. and Mrs. Kellogg
6 at Hillcrest before the surgery that her blood
7 count was abnormal. I didn't know why it was
8 abnormal.

9 Q. I assume you didn't tell them that one of the
10 differentials for the findings was potential acute
11 leukemia?

12 A. I did not tell them that, no.

13 Q. Failure to treat that, going ahead with an
14 operation could result in infection and death, I
15 assume you didn't tell them that?

16 A. I did not tell them that.

17 Q. Well, did you tell them after she was
18 readmitted to the hospital that in fact there had
19 been a finding on the blood work that you did not
20 appreciate?

21 A. I told them that her blood count was very
22 abnormal, that is why she developed the severe
23 infection. At that point I only knew she had
24 leukemia after that bone marrow was done, which I
25 believe was done on the day she died.

1 Q. I didn't mean to make my question obtuse. I
2 thought it was pretty specific.

3 Did you tell the family after she
4 was readmitted there was something on the blood
5 work prior to her surgery that was an indication
6 she probably had leukemia?

7 A. The answer is no.

8 Q. In your opinion, Doctor, did anybody at the
9 emergency room when she went there prior to her
10 admission do anything wrong?

11 A. On that Friday?

12 Q. That's right, when she went with urinary
13 retention?

14 A. Part of the difficulty, I wasn't called until
15 after she was discharged from the emergency room.

16 Q. When were you called?

17 A. That particular day I was at another hospital
18 with my mother who was at the emergency room at
19 Mount Sinai. I was signed out to Dr. Feiner, who
20 is my associate.

21 He talked to the family, she should
22 go to the emergency room. Then the call I think I
23 got at 6:30 or when I talked to the -- it wasn't
24 the physician, to the nurse in the emergency room,
25 Mr. Kellogg had been already sent home, that was

1 the first that I heard about it.

2 Q. You did not speak to the emergency room
3 physician?

4 A. No, I didn't.

5 Q. Not at all?

6 A. No. Not during that day or afterward
7 either.

8 Q. What was the nature of your conversation with
9 the nurse?

10 A. I was just told that she had been seen, was
11 catheterized, sent home.

12 Q. Did you inquire further as to any of her
13 presenting symptoms in terms of pain or anything
14 that the emergency room doctor may or may not have
15 seen in terms of his physical examination?

16 A. That's all I was told.

17 Q. What did you do as a result of being told
18 that, did you call the family?

19 A. I didn't call the family. Part of it I was
20 kind of distraught that day, I was admitting my
21 mother who thought she was having a heart attack.
22 As it turned out had a kidney stone, was admitted
23 to Mount Sinai.

24 I think I got home from Mount Sinai
25 at about 9:30 or 10:00, I called the Hillcrest

1 emergency room as I remember from Mount Sinai,
2 that is when I heard Mrs. Kellogg had been sent
3 home.

4 Q. Have you looked at the emergency room records
5 since then?

6 A. I've looked at them earlier today.

7 Q. Is there anything in there that causes you
8 any concern regarding the treatment that she
9 received at the emergency room on that Friday?

10 A. I think the main concern, looking back at it,
11 was her blood pressure was very low. There is no
12 mention about her low blood count. Had I talked to
13 the physician I might have been able to tell him
14 that was a concern.

15 Q. Should she have been admitted at that time,
16 Doctor?

17 A. I think in retrospect had I known and been
18 available to do this I think she should have been
19 admitted, yes.

20 Q. Did you when you spoke to the nurse order a
21 urinalysis done or were you told of the results of
22 one?

23 A. I don't think I was told, I don't think I
24 ordered one, no.

25 Q. Do you carry a beeper with you?

1 A. No. I had a situation of that day I had --
2 my office knew I was at Mount Sinai for the day
3 with my mother in the emergency room. I was
4 assigned, Dr. Feiner was taking the emergency
5 calls.

6 Q. Somehow, however, you became aware after the
7 fact the emergency room was trying to contact you?

8 A. I called back, as I said, talked to them
9 after Mr. Kellogg had been sent home.

10 Q. So is it that your office didn't get to you
11 until 6:30 or --

12 A. It was at 6:00 when they had decided my
13 mother would be admitted. That is when I called
14 here to the office, to say I would be at home, find
15 out what the calls were. That was one of the calls
16 that I returned.

17 Q. So you don't know what time the emergency
18 room contacted your office then?

19 A. No, I don't. I wasn't here then.

20 If I may add something in addition
21 to this, to have urinary retention two days after a
22 hemorrhoidectomy is not an unusual complication.

23 Q. So in and of itself her returning for urinary
24 retention -- let me withdraw that.

25 The treatment they gave her for

1 urinary retention was not inappropriate?

2 A. No.

3 Q. What you are saying is that the abnormally
4 low blood pressure was something that in your
5 opinion wasn't appropriately dealt with or
6 addressed by the emergency room?

7 A. Yes.

8 Q. Their failure to speak with you prior to
9 discharging her from the emergency room, you find
10 fault with that as well?

11 A. I wasn't really available for them to speak
12 to me. In retrospect things may have been done
13 differently had I talked to them.

14 Q. Once your personal problem with your mother
15 had been attended to, at least her admission to the
16 hospital, did you then try to speak with
17 Mr. or Mrs. Kellogg?

18 A. I didn't really -- see they said she had been
19 sent home with a catheter. In ordinary
20 circumstances after a hemorrhoidectomy is not an
21 unusual circumstance, I didn't know there was a
22 problem I should call.

23 The next I heard from the Kelloggs
24 was when Mr. Kellogg called about midnight that
25 night, when I told him that he should bring his

1 wife to the emergency room.

2 Q. Doctor, a few minutes ago you said something
3 about had you been apprised of her condition in the
4 emergency room, you may have told the emergency
5 room doctor about the abnormally low blood count
6 which would have been followed up I think is what
7 you said?

8 A. I did say that.

9 Q. Why wasn't it followed up before she was
10 discharged from the hospital, after the
11 hemorrhoidectomy?

12 A. She seemed to be doing quite well. I had
13 planned to do that. I dictated in my operative
14 note the blood count should be repeated.

15 Q. It wasn't done though?

16 A. There wasn't opportunity to do so.

17 Q. There wasn't an opportunity to do so.

18 What opportunity were you waiting
19 for?

20 A. Well, I think in my mind I thought when she
21 came back to the office for a postoperative visit
22 we would do the blood count then.

23 Q. It's your testimony that a one percent seg
24 finding is not a medical emergency; that's your
25 testimony?

1 A. I said she had a rectal abscess was the
2 reason she was in the emergency room.

3 Q. No, Doctor, I'm referring back to when you
4 originally got the blood count work, prior to your
5 operation?

6 MR. KALUR: Are you asking
7 at the time did he consider it to be a medical
8 emergency?

9 MR. KAMPINSKI: No, I know he
10 didn't consider it because he didn't deal with it
11 as one.

12 Q. The question I have is, is it one?

13 A. In retrospect it is. I admitted that I
14 misinterpreted that result.

15 Q. He called you then at home at midnight?

16 A. It may have been after midnight, I don't
17 remember the exact time.

18 Q. Some time that night?

19 A. Yes.

20 Q. Was it your office that called you?

21 A. It was the answering service.

22 Q. You told them to take his wife to the
23 hospital?

24 A. I think it ended up being by ambulance
25 because he called back to say she couldn't get out

1 of bed. I think I arranged to have the ambulance
2 or rescue squad get her.

3 Q. By the way, that is one percent of what, what
4 would be the normal number of neutrophils?

5 A. Normally would be 40 to 50 percent.

6 Q. But 40 to 50 percent of what?

7 A. Of 100.

8 Q. 100, that's your testimony?

9 A. I don't understand your question.

10 Q. That's a percentage of what number?

11 A. Of white blood cells on the blood smear.

12 Q. How many would be the normal white blood
13 count on the smear?

14 A. There are millions. They count 100 in a
15 field is how it's done.

16 Q. That would be a percentage of that particular
17 field?

18 A. Yes.

19 Q. Was there another blood count done on the day
20 of the operation?

21 A. No, there was not.

22 Q. What would be the normal percentage of
23 lymphocytes?

24 A. The way the lab does it at Hillcrest up to
25 50 percent.

1 Q. What was the number in this case, 95?

2 A. Yes.

3 Q. In your operative report you say there is a
4 slightly elevated percent of lymphocytes; that is
5 more than slightly elevated isn't it, Doctor?

6 A. Yes, it is.

7 Q. Have you retained your own personal attorney
8 to represent you in this case?

9 A. Yes.

10 Q. Has there been a demand by you or your
11 company to pay policy limits in this case?

12 A. I'm not sure I understand that question.

13 Q. Have you made a demand yourself or through
14 your attorney to pay policy limits in this case?

15 MR. KALUR: He's not going
16 to answer anything he's done through me.

17 MR. KAMPINSKI: Not through
18 you, to you.

19 MR. KALUR: He wants to
20 know if you asked PIE to pay your policy limits by
21 any method?

22 A. I don't think so.

23 Q. Who is your personal attorney?

24 A. Mr. Ronald Rosenfield.

25 Q. When you said that you focused on the

1 lymphocytes because that is what you were told by
2 the hospital, who is it that called you, do you
3 recall?

4 A. I don't know the person's name. I believe it
5 was a technician in the laboratory.

6 Q. Did they speak directly to you or someone in
7 your office?

8 A. Message was given to my secretary, who told
9 me.

10 Q. Is it your testimony that they did not tell
11 you what the neutrophils were?

12 A. No, they did not.

13 Q. When were you provided with the laboratory
14 report? You said it was before the surgery, when
15 before?

16 A. I had gotten this report on Tuesday, Tuesday
17 afternoon, the surgery was on Wednesday morning.
18 When I looked at the hospital chart that is when I
19 looked at the laboratory report.

20 Q. So you had the information then?

21 A. Yes.

22 MR. KAMPINSKI: That is all I
23 have.

24 MR. MALONE: Let me ask you
25 a couple questions.

1 Doctor, as you know I represent
2 Hillcrest Hospital.

3 -----

4 CROSS-EXAMINATION

5 BY MR. MALONE:

6 Q. Did you have a chance to look at the
7 emergency report?

8 A. I have to look at it right now.

9 Q. You have that in front of you?

10 A. Yes.

11 Q. In the narrative under the nursing notes
12 there is a reference that at 1630, which I take to
13 mean 4:30 p.m., the note is patient changed to leg
14 bag, attempted to reach Dr. Eisenberg, signed Meg
15 McGill, RN; do you see that?

16 A. I have to find the sheet.

17 MR. KAMPINSKI: Can we get a
18 copy of his entire chart before we leave?

19 MR. KALUR: Didn't we give
20 that to you? That sheet you had was in mine.

21 MR. MALONE: In the copy you
22 sent me.

23 MR. KALUR: You want the
24 whole thing copied again?

25 MR. KAMPINSKI: Yes.

1 A. Says 3:30 French Foley placed.

2 Q. Yes, below that 1630.

3 A. I see patient changed to leg bag.

4 Q. Attempted to reach Dr. Eisenberg, the nurse's
5 signature, Meg McGill, RN; do you see that?

6 A. I do see that, yes.

7 Q. Do you know whether a call was placed here to
8 your office for you at 4:30 p.m. from any source
9 other than what this would suggest?

10 A. As I testified, I don't remember because I
11 wasn't physically here in the office.

12 Q. I understand that. Was there a log of calls
13 or such that might --

14 A. We do have a log. I could look back.

15 Q. Could you tell us -- the next question is if
16 this is accurate, let's assume a call was placed
17 here at 4:30, why would Dr. Feiner not respond to
18 that, was there some special reason?

19 A. When I asked him about it, he said that he
20 was not called. As I mentioned, when I called back
21 it was 6:30, after she had left. I don't know.

22 Q. So really what happened at six o'clock or
23 thereabouts, you phone your office to get messages
24 and find out was going on as we all do?

25 A. Yes.

1 Q. Then you were told your patient,
2 Mrs. Kellogg, was at the Hillcrest emergency room,
3 then you contacted the nurse at Hillcrest and
4 learned she had been discharged?

5 A. That's correct.

6 Q. Your call there was about **6:30**?

7 A. I believe so.

8 Q. Then the only other area I want to ask you
9 about, Mr. Kellogg I believe you testified called
10 you at some time that night, the night of
11 March 5th?

12 A. Yes.

13 Q. You believe that was about midnight?

14 A. I think so, yes.

15 Q. Do you have anything in writing or is that
16 just memory from your mind?

17 A. Well, I think we could look and see what time
18 she got back to the emergency room.

19 Q. The ambulance was at your home at **6:30** in the
20 morning, they took her directly to the floor from
21 where she was transferred to intensive care. She
22 never went to the emergency room that morning?

23 A. The reason was I then got a call either from
24 the emergency room or the ambulance that she was in
25 shock in the ambulance, that is why I said don't

1 bother with the emergency room, she should go to
2 the surgical intensive care unit.

3 MR. KAMPINSKI: That's the
4 record, the ambulance run sheet?

5 MR. MALONE: Should be.
6 Your copy was there from the beginning, it was
7 Hillcrest.

8 A. It may have been 2:00 or 3:00 a.m., it was
9 pretty late when he called.

10 Q. Do you have any explanation for the amount of
11 time from 2:00 a.m. to the ambulance arriving on
12 the scene taking so long?

13 A. No, I don't know.

14 Q. Did you place a call to initiate an ambulance
15 run or did you instruct your patient's husband to
16 do that?

17 A. When he called he said he would need an
18 ambulance. As I remember it I called Hillcrest to
19 find out what ambulance service they showed, how I
20 should go about doing it. I called to try to get.
21 an ambulance. I think they gave me a number of an
22 ambulance service which I called to send to their
23 home.

24 Q. From the time you initiated that call, does
25 it seem to you there was delay in getting an

1 ambulance to the home, getting her back to the
2 hospital?

3 MR. KAMPINSKI: Let me
4 interject something. Are you asking him to assume
5 a certain time Mr. Kellogg called him?

6 MR. MALONE: I think he said
7 he doesn't know.

8 Q. Do you have an impression in your memory it
9 took a long time to get an ambulance out there and
10 get her back, that's all?

11 A. I think it did. I don't remember whether it
12 was midnight or 2:00 a.m. he first called. I know
13 that when the ambulance did get there it was
14 difficult to move her, they had to carry her on the
15 stretcher, that sort of thing. I don't know why
16 there was a delay in the ambulance getting there, I
17 don't know.

18 Q. You really don't know whether you actually
19 initiated ambulance service or whether the
20 patient's husband did?

21 A. I believe I did that. He called, said that
22 she was very ill, I said she has got to go to the
23 emergency room. I think when I called back he said
24 she couldn't get in a car. That is when we decided
25 it would be by ambulance, I tried to call the

1 ambulance service.

2 Q. You say you tried to call, were you able to
3 call -- did you call 911 or some other number that
4 would put you in direct contact that can dispatch?

5 MR. KALUR: He said
6 Hillcrest gave him a number of a service, he thinks
7 he got that, called that service.

8 Q. You gave that number to Mr. Kellogg or you
9 initiated the ambulance run?

10 A. I did.

11 Q. You initiated the ambulance run?

12 A. Yes.

13 Q. You don't know what time that call was made
14 by you?

15 A. No, I don't.

16 MR. MALONE: No further
17 questions.

18 MISS FORD: Nothing.

19

20

21

22

23 (Deposition concluded; signature not waived.)

24

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ERRATA SHEET

PAGE

LINE

I have read the foregoing transcript and the
same is true and accurate.

HENRY W. EISENBERG, M.D.

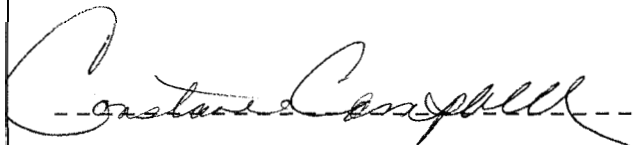
1 The State of Ohio,
2 County of Cuyahoga.

CERTIFICATE:

3 I, Constance Campbell, Notary Public within
4 and for the State of Ohio, do hereby certify that
5 the within named witness, HENRY W. EISENBERG, M.D.
6 was by me first duly sworn to testify the truth in
7 the cause aforesaid; that the testimony then given
8 was reduced by me to stenotypy in the presence of
9 said witness, subsequently transcribed onto a
10 computer under my direction, and that the foregoing
11 is a true and correct transcript of the testimony
12 so given as aforesaid.

13 I do further certify that this deposition was
14 taken at the time and place as specified in the
15 foregoing caption, and that I am not a relative,
16 counsel or attorney of either party, or otherwise
17 interested in the outcome of this action.

18 IN WITNESS WHEREOF, I have hereunto set my
19 hand and affixed my seal of office at Cleveland,
20 Ohio, this 14th day of October, 1994.

21 
22 -----

23 Constance Campbell, Stenographic Reporter,
24 Notary Public/State of Ohio.

25 Commission expiration: January 14, 1998.

Look-See Concordance Report

 UNIQUE WORDS: **556**
 TOTAL OCCURRENCES: **1,442**
 NOISE WORDS: **385**
 TOTAL WORDS IN FILE: **5,693**

 SINGLE FILE CONCORDANCE

 CASE SENSITIVE

 PHRASE WORD LIST(S):

 NOISE WORD LIST(S): **NOISE.NOI**

 COVER PAGES = **4**

 INCLUDES ONLY TEXT OF:

QUESTIONS
ANSWERS
COLLOQUY
PARENTHETICALS
EXHIBITS

 DATES **ON**

 INCLUDES PURE NUMBERS

 POSSESSIVE FORMS **ON**

 MAXIMUM TRACKED OCCURRENCE
 THRESHOLD: **50**

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