

<p>1 IN THE COURT OF COMMON PLEAS 2 SUMMIT COUNTY, OHIO 3 PETER YACECZKO, 4 et al., 5 6 Plaintiffs, 7 8 JUDGE WILLIAMS 9 -vs- CASE NO. 2001-10-4854 10 11 PERANTINIDES & NOLAN CO., LPA, 12 et al., 13 Defendants. 14 15 Deposition of CHARLES L. EMERMAN, M.D., taken as 16 if upon cross-examination before Laura L. Ware, a 17 Notary Public within and for the State of Ohio, at 18 The Cleveland Clinic Foundation, Emergency 19 Department Conference Room, 9500 Euclid Avenue, 20 Cleveland, Ohio, at 12:58 p.m. on Thursday, August 21 22, 2002, pursuant to notice and/or stipulations of 22 counsel, on behalf of the Plaintiffs in this cause. 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100 101 102 103 104 105 106 107 108 109 110 111 112 113 114 115 116 117 118 119 120 121 122 123 124 125 126 127 128 129 130 131 132 133 134 135 136 137 138 139 140 141 142 143 144 145 146 147 148 149 150 151 152 153 154 155 156 157 158 159 160 161 162 163 164 165 166 167 168 169 170 171 172 173 174 175 176 177 178 179 180 181 182 183 184 185 186 187 188 189 190 191 192 193 194 195 196 197 198 199 200 201 202 203 204 205 206 207 208 209 210 211 212 213 214 215 216 217 218 219 220 221 222 223 224 225 226 227 228 229 230 231 232 233 234 235 236 237 238 239 240 241 242 243 244 245 246 247 248 249 250 251 252 253 254 255 256 257 258 259 260 261 262 263 264 265 266 267 268 269 270 271 272 273 274 275 276 277 278 279 280 281 282 283 284 285 286 287 288 289 290 291 292 293 294 295 296 297 298 299 300 301 302 303 304 305 306 307 308 309 310 311 312 313 314 315 316 317 318 319 320 321 322 323 324 325 326 327 328 329 330 331 332 333 334 335 336 337 338 339 340 341 342 343 344 345 346 347 348 349 350 351 352 353 354 355 356 357 358 359 360 361 362 363 364 365 366 367 368 369 370 371 372 373 374 375 376 377 378 379 380 381 382 383 384 385 386 387 388 389 390 391 392 393 394 395 396 397 398 399 400 401 402 403 404 405 406 407 408 409 410 411 412 413 414 415 416 417 418 419 420 421 422 423 424 425 426 427 428 429 430 431 432 433 434 435 436 437 438 439 440 441 442 443 444 445 446 447 448 449 450 451 452 453 454 455 456 457 458 459 460 461 462 463 464 465 466 467 468 469 470 471 472 473 474 475 476 477 478 479 480 481 482 483 484 485 486 487 488 489 490 491 492 493 494 495 496 497 498 499 500 501 502 503 504 505 506 507 508 509 510 511 512 513 514 515 516 517 518 519 520 521 522 523 524 525 526 527 528 529 530 531 532 533 534 535 536 537 538 539 540 541 542 543 544 545 546 547 548 549 550 551 552 553 554 555 556 557 558 559 560 561 562 563 564 565 566 567 568 569 570 571 572 573 574 575 576 577 578 579 580 581 582 583 584 585 586 587 588 589 590 591 592 593 594 595 596 597 598 599 600 601 602 603 604 605 606 607 608 609 610 611 612 613 614 615 616 617 618 619 620 621 622 623 624 625 626 627 628 629 630 631 632 633 634 635 636 637 638 639 640 641 642 643 644 645 646 647 648 649 650 651 652 653 654 655 656 657 658 659 660 661 662 663 664 665 666 667 668 669 670 671 672 673 674 675 676 677 678 679 680 681 682 683 684 685 686 687 688 689 690 691 692 693 694 695 696 697 698 699 700 701 702 703 704 705 706 707 708 709 710 711 712 713 714 715 716 717 718 719 720 721 722 723 724 725 726 727 728 729 730 731 732 733 734 735 736 737 738 739 740 741 742 743 744 745 746 747 748 749 750 751 752 753 754 755 756 757 758 759 760 761 762 763 764 765 766 767 768 769 770 771 772 773 774 775 776 777 778 779 780 781 782 783 784 785 786 787 788 789 790 791 792 793 794 795 796 797 798 799 800 801 802 803 804 805 806 807 808 809 810 811 812 813 814 815 816 817 818 819 820 821 822 823 824 825 826 827 828 829 830 831 832 833 834 835 836 837 838 839 840 841 842 843 844 845 846 847 848 849 850 851 852 853 854 855 856 857 858 859 860 861 862 863 864 865 866 867 868 869 870 871 872 873 874 875 876 877 878 879 880 881 882 883 884 885 886 887 888 889 890 891 892 893 894 895 896 897 898 899 900 901 902 903 904 905 906 907 908 909 910 911 912 913 914 915 916 917 918 919 920 921 922 923 924 925 926 927 928 929 930 931 932 933 934 935 936 937 938 939 940 941 942 943 944 945 946 947 948 949 950 951 952 953 954 955 956 957 958 959 960 961 962 963 964 965 966 967 968 969 970 971 972 973 974 975 976 977 978 979 980 981 982 983 984 985 986 987 988 989 990 991 992 993 994 995 996 997 998 999 1000</p>	<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
<p>1 APPEARANCES: 2 Mark W. Ruf, Esq. 3 Hoyt Block Building - Suite 300 4 700 West St. Clair Avenue 5 Cleveland, Ohio 44113 6 (216) 687-1999, 7 On behalf of the Plaintiffs; 8 Thomas A. Treadon, Esq. 9 Roetzel & Andress 10 222 South Main Street 11 Akron, Ohio 44308 12 (330) 376-2700, 13 On behalf of the Defendants. 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
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<p style="text-align: right;">5</p> <p>1 that 20-year period?</p> <p>2 A. I couldn't tell you.</p> <p>3 Q. Thousands?</p> <p>4 A. Probably somewhere between fifty and 100,000.</p> <p>5 Q. For the times that you've diagnosed a TIA or a</p> <p>6 stroke, how have you made the diagnosis?</p> <p>7 A. Generally the same way I make a diagnosis of most</p> <p>8 things; I take a history, I do a physical</p> <p>9 examination, I do testing if indicated.</p> <p>10 Q. What would you look for in the patient's history to</p> <p>11 diagnose a TIA or stroke?</p> <p>12 A. Well, a TIA by definition is a transient</p> <p>13 neurological deficit that's consistent with a</p> <p>14 central origin, so I would look for evidence of</p> <p>15 that.</p> <p>16 A stroke is a neurological deficit of central</p> <p>17 origin that lasts for more than 24 hours, presumably</p> <p>18 of a vascular cause.</p> <p>19 Q. Is there anything else you would look for in the</p> <p>20 patient's history?</p> <p>21 A. There's lots of things I would look for in their</p> <p>22 history.</p> <p>23 Q. Okay. What types of things?</p> <p>24 A. I would ask them about the events that brought them</p> <p>25 to the emergency department, I would ask them about</p>	<p style="text-align: right;">7</p> <p>1 Q. Well, for Mr. Yaceczko, as he presented at Akron</p> <p>2 City Hospital on April 19th, 1996, could you tell me</p> <p>3 the neurological exam that you would have performed</p> <p>4 on him?</p> <p>5 A. Generally I would have asked him questions to</p> <p>6 determine his state of alertness and orientation, I</p> <p>7 would have done a cranial nerve examination, I would</p> <p>8 have done a peripheral motor examination, I would</p> <p>9 have checked reflexes, I would have checked</p> <p>10 sensation, I would have checked him for dysmetria.</p> <p>11 Are you asking me what the standard is or what I</p> <p>12 normally would do?</p> <p>13 Q. What you would have done if he was your patient back</p> <p>14 in '96.</p> <p>15 A. That's what I would have done.</p> <p>16 Q. Is there anything else you would have done on</p> <p>17 physical examination?</p> <p>18 A. Yeah, the things that I mentioned before.</p> <p>19 Q. Anything else?</p> <p>20 A. Neurological examination, cardiac examination,</p> <p>21 listen to his lungs, checked his abdomen, done a</p> <p>22 general overall examination of him.</p> <p>23 Q. What would you have done with respect to the cardiac</p> <p>24 examination?</p> <p>25 A. Listened to his carotids, listened to his heart.</p>
<p style="text-align: right;">6</p> <p>1 associated symptoms, ask them about their past</p> <p>2 medical history, see if there's anything else going</p> <p>3 on with them.</p> <p>4 Q. Are there any risk factors you would ask about?</p> <p>5 A. Yes, there are.</p> <p>6 Q. What are the risk factors you would ask about?</p> <p>7 A. Well, generally the risk factors for atherosclerotic</p> <p>8 disease, advancing age, hypertension, diabetes,</p> <p>9 atrial fibrillation, depending on the age of the</p> <p>10 patient, cocaine use, previous episodes of TIA or</p> <p>11 CVA.</p> <p>12 Q. What would you look for on physical examination?</p> <p>13 A. I would do a neurological examination, I would do a</p> <p>14 vascular examination, in a patient like this I would</p> <p>15 do a general examination of the patient, listen to</p> <p>16 their lungs, listen to their heart, check their</p> <p>17 abdomen, things such as that.</p> <p>18 Q. What would you do in the neurological examination?</p> <p>19 A. Some of it would depend on what the presentation of</p> <p>20 the patient was, how evident the problem was, how --</p> <p>21 if the patient is having subtle problems I might do</p> <p>22 a more detailed examination, if the patient is</p> <p>23 having a stroke in which I'm considering giving TPA</p> <p>24 I might do a more abbreviated examination so I can</p> <p>25 get things moving. It depends on the situation.</p>	<p style="text-align: right;">8</p> <p>1 Q. Could you give me an estimate as to the number of</p> <p>2 times you've diagnosed a patient with a TIA or a</p> <p>3 stroke?</p> <p>4 A. No, I wouldn't be able to do that.</p> <p>5 Q. You can't give me any kind of estimate?</p> <p>6 A. I wouldn't really have any way of giving you</p> <p>7 anything other than a guess.</p> <p>8 Q. Would it be more than 100, less than 100?</p> <p>9 A. Oh, certainly it would be more than 100.</p> <p>10 Q. Would it be more than 500?</p> <p>11 A. I would be guessing. I mean, it might be 1,000, it</p> <p>12 might be 2,000, it might be 500, but it's a common</p> <p>13 thing for me to see.</p> <p>14 Q. When Mr. Yaceczko presented to Akron City Hospital</p> <p>15 on April 19th, 1996, was he having a stroke or a TIA</p> <p>16 when he presented?</p> <p>17 A. He was having a stroke.</p> <p>18 Q. Why do you say he was having a stroke?</p> <p>19 A. He had evidence of the stroke on CT scan.</p> <p>20 Q. Is the CT scan read that you're talking about the</p> <p>21 final report that was produced by Dr. Roy?</p> <p>22 A. Yes.</p> <p>23 Q. Was he having an ischemic or hemorrhagic stroke?</p> <p>24 A. He had an ischemic stroke.</p> <p>25 Q. And why do you say he had an ischemic stroke?</p>

<p style="text-align: right;">9</p> <p>1 A. Based on the CT scan reading. 2 Q. And what's the difference between an ischemic and 3 hemorrhagic stroke? 4 A. Well, with an ischemic stroke you have interruption 5 of the blood supply to a portion of the brain, but 6 you do not have extravasation of blood into the 7 brain tissue. 8 Q. What do you mean by ex -- what is the word you used? 9 A. Extravasation. 10 Q. What is that? 11 A. Leakage. 12 Q. Please continue. Thanks. 13 A. Where was I? 14 MR. TREADON: You were describing the 15 difference between an ischemic and hemorrhagic 16 stroke. 17 THE WITNESS: Yeah, I just don't 18 remember where I was when I was interrupted. 19 - - - - 20 (Thereupon, the requested portion of 21 the record was read by the Notary.) 22 - - - - 23 A. With a hemorrhagic stroke then you would have 24 extravasation of blood into the brain tissue. 25 Q. Do you agree that Mr. Yaceczko was not definitively</p>	<p style="text-align: right;">11</p> <p>1 A. Well, by definition a stroke in evolution is one 2 that changes over time. Since Mr. Yaceczko's stroke 3 changed between April 17th and his discharge on 4 April 29th from Akron General Hospital, it would be, 5 using that definition, a stroke in evolution. 6 Q. Do you agree that the acceptable standard of medical 7 practice in 1996 required Dr. Henschen to form a 8 differential diagnosis for Mr. Yaceczko? 9 A. Emergency physicians many times do not form formal 10 differential diagnoses, as you might see done in the 11 hospital, so, no, the center did not require him to 12 document the differential diagnosis. 13 Q. Well, even if it wasn't documented, would the 14 standard of care require him to form a differential 15 diagnosis list for Mr. Yaceczko? 16 A. No, the standard would not have required him to list 17 a differential diagnosis. 18 Q. Isn't that something that you do on every patient, 19 you form a differential diagnosis for that patient? 20 A. That's when you evaluate patients you think about 21 the different things that could be causing the 22 patient's problem, but emergency physicians are not 23 required to list a differential diagnosis and 24 frequently do not. 25 Q. Well, weren't you taught and trained to form a</p>
<p style="text-align: right;">10</p> <p>1 diagnosed by Dr. Henschen as having a stroke? 2 A. Yes, that's true. 3 Q. Was Mr. Yaceczko having progressive strokes or a 4 stroke in evolution on April 19th, 1996? 5 A. Well, he appears to have had a single stroke which 6 had fluctuating symptoms. 7 Q. When did the stroke occur? 8 A. As I recall from the nursing notes, it would have 9 been two days prior to his initial visit. That 10 would have made it, well, let me just look so I'm 11 clear on the dates, two days prior to this visit, so 12 that would have made it April 17, yes, April 17th, 13 1996. 14 Q. Would you disagree that Mr. Yaceczko was having a 15 stroke in evolution on April 19th, 1996? 16 A. No, I agree with that. 17 MR. TREADON: You agree that he was 18 having a stroke in evolution? You said not. I 19 think it was a negative question. 20 MR. RUF: I'm sorry, do you want me to 21 clarify? 22 MR. TREADON: I'd like it clarified, 23 yes. 24 Q. Do you agree that Mr. Yaceczko was having a stroke 25 in evolution on April 19th, 1996?</p>	<p style="text-align: right;">12</p> <p>1 differential diagnosis for a patient given their 2 history and signs and symptoms? 3 A. You mean as an emergency physician? 4 Q. Yes. 5 A. We're taught to consider the different things that 6 can be causing the patient's problem but not to list 7 a differential diagnosis, as you're describing it. 8 Q. Do you agree that the acceptable standard of medical 9 practice in 1996 required Dr. Henschen to rule in 10 and rule out diagnoses for Mr. Yaceczko? 11 A. Well, he would have been required to consider 12 diagnoses for Mr. Yaceczko. We frequently are not 13 in a position to rule in or rule out diagnoses in 14 the emergency department. We may come to some 15 consideration of what is a likely cause of the 16 patient's problem. We don't always rule them in or 17 rule them out. 18 Q. So you disagree that the acceptable standard of 19 medical practice would require him to rule in and 20 rule out diagnoses? 21 A. The way you've stated it, yes. 22 Q. What would the acceptable standard of medical 23 practice require Dr. Henschen to do with respect to 24 making a diagnosis of Mr. Yaceczko? 25 A. To consider the things that could be causing his</p>

<p style="text-align: right;">13</p> <p>1 problems by doing first a history and physical, 2 based on the history and physical decide what those 3 things are that rise to a high enough likelihood 4 that they need further diagnostic testing or 5 treatment, and based on that act on his 6 information. 7 Q. Do you agree that Dr. Henschen's differential 8 diagnosis for Mr. Yaceczko was stroke versus 9 neuropathy? 10 A. I would agree that that is what he's documented, but 11 until you ask him what his differential diagnosis 12 is, I can't make an assumption that you've asked 13 me. 14 Q. Attorneys Perantinides and Parker never asked Dr. 15 Henschen that question, did they? 16 A. Not that I'm aware. 17 Q. How would you rule out neuropathy for Mr. Yaceczko? 18 A. We would not be able to rule that out in the 19 emergency department. To rule it out you'd have to 20 do an EMG, so we would consider that diagnosis based 21 on the clinical impression in the emergency 22 department. 23 Q. Could you bring in a consult to perform an EMG? 24 A. Not in the emergency department. 25 Q. If you wanted to have a patient have an EMG, what</p>	<p style="text-align: right;">15</p> <p>1 Q. You've seen a unilateral diabetic neuropathy? 2 A. Oh, certainly. 3 Q. Wouldn't you expect to see numbness and weakness in 4 Mr. Yaceczko's feet and arms as just opposed to one 5 arm if he had a diabetic neuropathy? 6 A. Not necessarily, no. 7 Q. Do you agree that with a diabetic neuropathy you do 8 not have an acute onset of symptoms? 9 A. No, I don't agree with that. 10 Q. Do you agree that a diabetic neuropathy would not 11 affect speech? 12 A. I've not personally seen a patient with a diabetic 13 neuropathy with dysarthria, but I'd have to review 14 that to see whether that can occur, so I can't agree 15 or disagree with your question. 16 Q. Are you aware of any medical text or any medical 17 article that would document a diabetic neuropathy 18 affecting speech? 19 A. Well, as I said, there may be. You can get diabetic 20 neuropathy of other cranial nerves, so I don't see 21 why you couldn't get one affecting speech, but I'd 22 have to review that. 23 Q. But as we sit here today, are you able to tell me 24 one medical textbook or article that would document 25 a diabetic neuropathy affecting speech?</p>
<p style="text-align: right;">14</p> <p>1 would you do? 2 A. I've never ordered an EMG, and if I wanted a patient 3 to have an EMG I would need to refer them back to 4 their primary care doctor. 5 Q. Do you agree that a diabetic neuropathy would be 6 systemic in Mr. Yaceczko? 7 A. I don't understand what you're asking me with that 8 question. 9 Q. Well, do you know what kind of neuropathy was being 10 considered in Dr. Henschen's differential 11 diagnosis? 12 A. I would presume he's considering that he has a 13 diabetic peripheral neuropathy based on the 14 presentation of what he has here. 15 Q. And would a diabetic neuropathy be systemic in Mr. 16 Yaceczko? 17 A. Why don't you explain to me what you're trying to 18 get at because what you're saying doesn't make 19 sense. 20 Q. Well, if Mr. Yaceczko, in fact, had a diabetic 21 neuropathy, wouldn't you expect it to affect Mr. 22 Yaceczko bilaterally? 23 A. No. You can get bilateral diabetic peripheral 24 neuropathy, but you can also get unilateral 25 neuropathies.</p>	<p style="text-align: right;">16</p> <p>1 A. I might be able to. I'd just have to go look. 2 Q. As we sit here in this deposition, are you able to 3 tell me one medical textbook or article that 4 documents a diabetic neuropathy only affecting an 5 arm on one side of the body? 6 A. Certainly any neurology textbook could give you 7 that. 8 Q. Other than performing an EMG, how would you rule out 9 neuropathy for Mr. Yaceczko? 10 A. I don't know of any other way to rule out a 11 peripheral neuropathy. 12 Q. Was there anything about his presentation that was 13 inconsistent with diabetic neuropathy causing his 14 symptoms? 15 A. I don't believe Dr. Henschen used the words diabetic 16 neuropathy. Is that the basis of your question? 17 Q. Yes, although we've already gone over that you 18 assume when he talked about neuropathy he was 19 talking about diabetic neuropathy, correct? 20 A. I didn't say that. 21 Q. Well, what -- 22 A. You said that. 23 Q. What other type of neuropathies could he be talking 24 about? 25 A. Oh, there's lots of other different causes of</p>

<p style="text-align: right;">17</p> <p>1 neuropathy.</p> <p>2 Q. What other neuropathies were a potential cause of</p> <p>3 Mr. Yaceczko's symptoms?</p> <p>4 A. Well, the causes of neuropathy can be from nerve</p> <p>5 impingement, they can be from infection, they can be</p> <p>6 from connective tissue disorders, they can be</p> <p>7 from -- there's one there that I'm missing. I'll</p> <p>8 have to think about that.</p> <p>9 Q. Is there any evidence that any of those neuropathies</p> <p>10 applied to Mr. Yaceczko's situation?</p> <p>11 A. Not that I see here offhand. You mean in terms of</p> <p>12 establishing a more likely ideology than diabetic?</p> <p>13 Q. Yes.</p> <p>14 A. No, not that I see offhand.</p> <p>15 Q. What are the signs or symptoms of a diabetic</p> <p>16 neuropathy?</p> <p>17 A. There's a variety of them. They can be motor</p> <p>18 weakness, they can be loss of sensation, loss of</p> <p>19 reflexes, they can be pain in the distribution of a</p> <p>20 nerve, they can have autonomic dysfunction, they can</p> <p>21 have dysfunction of the cranial nerves.</p> <p>22 Q. And typically does that affect a patient bilaterally</p> <p>23 or unilaterally?</p> <p>24 A. Well, there's different types, and some of them</p> <p>25 would be bilateral and some of them would be</p>	<p style="text-align: right;">19</p> <p>1 Q. Is there anything about his presentation on April</p> <p>2 19th, 1996 that would be inconsistent with a</p> <p>3 diabetic neuropathy?</p> <p>4 A. Yes, the pattern that's described by the nurse would</p> <p>5 be inconsistent with a diabetic neuropathy, this</p> <p>6 pattern of numbness, disorientation, memory loss,</p> <p>7 that would not be from a diabetic neuropathy.</p> <p>8 Q. I'm sorry, did you use the word consistent or</p> <p>9 inconsistent?</p> <p>10 A. Maybe we should come up with a different word to use</p> <p>11 here.</p> <p>12 MR. TREADON: I think he said not</p> <p>13 consistent.</p> <p>14 A. Yeah, maybe so. This pattern that's described by</p> <p>15 the nurse, numbness, disorientation, memory loss,</p> <p>16 that would not be from a diabetic neuropathy.</p> <p>17 Q. And why wouldn't that be from a diabetic neuropathy?</p> <p>18 A. Because this describes a central origin for his</p> <p>19 problem, not a peripheral origin for his problem.</p> <p>20 Q. And typically with a diabetic neuropathy do you have</p> <p>21 a peripheral origin?</p> <p>22 A. Yes, that's correct.</p> <p>23 Q. So if there's a peripheral origin with a diabetic</p> <p>24 neuropathy, do you look for signs or symptoms</p> <p>25 peripherally in the patient?</p>
<p style="text-align: right;">18</p> <p>1 unilateral.</p> <p>2 Q. What about with a diabetic neuropathy?</p> <p>3 A. I was referring to a diabetic neuropathy.</p> <p>4 Q. What types of diabetic neuropathies are there?</p> <p>5 A. I think I went over that, didn't I? I went over the</p> <p>6 different outcomes.</p> <p>7 Q. You went over different types of neuropathies, but</p> <p>8 now you're telling me there are different types of</p> <p>9 diabetic neuropathies?</p> <p>10 A. That's what I was referring to when I was talking</p> <p>11 about autonomic and cranial nerves. That's what I</p> <p>12 was referring to.</p> <p>13 Q. I'm sorry, I'm not sure you answered my question.</p> <p>14 Is there anything that's inconsistent with -- based</p> <p>15 on Mr. Yaceczko's presentation on April 19th, 1996,</p> <p>16 is there anything about his presentation that's</p> <p>17 inconsistent with a diabetic neuropathy?</p> <p>18 MR. TREADON: I'm going to object. I</p> <p>19 think you asked him if there's anything</p> <p>20 consistent with it already.</p> <p>21 MR. RUF: Well, I think I asked</p> <p>22 inconsistent, although I think we got off on</p> <p>23 another topic.</p> <p>24 MR. TREADON: Well, go ahead, you can</p> <p>25 answer.</p>	<p style="text-align: right;">20</p> <p>1 A. When I examine the patient's peripheral nervous</p> <p>2 system, is that the question you asked me?</p> <p>3 Q. Yes.</p> <p>4 A. Yes, as we described when we first talked about</p> <p>5 this.</p> <p>6 Q. Do you have an opinion based on reasonable medical</p> <p>7 probability as to whether or not Dr. Henschen</p> <p>8 deviated from acceptable medical practice in failing</p> <p>9 to diagnose Mr. Yaceczko's stroke on April 19th,</p> <p>10 1996?</p> <p>11 A. Well, I think my impression here is based on the</p> <p>12 information that Dr. Henschen had, the evaluation by</p> <p>13 Dr. Salem who apparently reassured him that the</p> <p>14 patient was at his baseline, and based on the CT</p> <p>15 scan reading he had that he was within the standard</p> <p>16 of care to come to a decision to send this patient</p> <p>17 home for further follow-up.</p> <p>18 Q. Do you agree that a CT scan cannot always detect a</p> <p>19 cerebral infarction?</p> <p>20 A. That's true.</p> <p>21 Q. And do you agree that because of that an emergency</p> <p>22 room physician should be able to make the diagnosis</p> <p>23 of stroke based on clinical signs and symptoms as</p> <p>24 well as the patient's history?</p> <p>25 A. Are you asking me can you or --</p>

<p style="text-align: right;">21</p> <p>1 Q. Yes.</p> <p>2 A. -- should you in every case?</p> <p>3 Q. First of all, can you?</p> <p>4 A. Yes.</p> <p>5 Q. Second of all, should you if there are signs and</p> <p>6 symptoms of a stroke and the patient's history</p> <p>7 indicates that they are a higher risk for stroke?</p> <p>8 A. Well, if you have signs and symptoms of a stroke,</p> <p>9 then you can generally make the diagnosis of a</p> <p>10 stroke.</p> <p>11 Q. Well, do you agree that if a patient has signs and</p> <p>12 symptoms of a stroke that the ER physician should</p> <p>13 make the diagnosis of a stroke?</p> <p>14 A. Are you asking me whether the standard requires them</p> <p>15 to be 100 percent accurate?</p> <p>16 Q. No, I'm just asking you should they make the</p> <p>17 diagnosis of a stroke?</p> <p>18 A. It would depend on the signs and symptoms that are</p> <p>19 present.</p> <p>20 Q. If the patient has classic signs and symptoms of a</p> <p>21 stroke, should the ER physician make the diagnosis</p> <p>22 of stroke?</p> <p>23 A. Yes.</p> <p>24 Q. Do you agree that with ischemic strokes, ischemic</p> <p>25 strokes may not show up initially on CT scan?</p>	<p style="text-align: right;">23</p> <p>1 the reading of a CT scan to determine whether or not</p> <p>2 a patient is suffering from a stroke?</p> <p>3 A. Yes.</p> <p>4 Q. What risk factors did Mr. Yaceczko have for a</p> <p>5 stroke?</p> <p>6 A. His age, the fact that he has diabetes, and the fact</p> <p>7 that he has hypertension, and the fact he's had a</p> <p>8 previous stroke, of course.</p> <p>9 Q. Are you able to quantify how much higher of a risk</p> <p>10 he was for stroke based upon those factors?</p> <p>11 A. Compared to what?</p> <p>12 Q. Compared to the average person.</p> <p>13 MR. TREADON: Average 70-year-old?</p> <p>14 MR. RUF: Sure.</p> <p>15 A. Compared to a 70-year-old who had not had a stroke,</p> <p>16 does not have diabetes, and does not have</p> <p>17 hypertension?</p> <p>18 Q. Sure.</p> <p>19 A. He's at increased risk. I can't quantify it for</p> <p>20 you.</p> <p>21 Q. You couldn't give me a multiplication factor?</p> <p>22 A. Not for the combination of the three, no.</p> <p>23 Q. Have you ever read medical literature that indicates</p> <p>24 that a person with diabetes has three times the risk</p> <p>25 of a person that does not have diabetes for getting</p>
<p style="text-align: right;">22</p> <p>1 A. Yes.</p> <p>2 Q. Do you agree that 50 percent of ischemic strokes</p> <p>3 will not be apparent on CT scan between 24 and 48</p> <p>4 hours?</p> <p>5 A. That sounds too high.</p> <p>6 Q. Are you aware of what the literature reports as far</p> <p>7 as what percentage of ischemic strokes are apparent</p> <p>8 between 24 and 48 hours?</p> <p>9 A. Not off the top of my head, but 50 percent sounds</p> <p>10 too high.</p> <p>11 Q. Have you ever read studies that report what percent</p> <p>12 of ischemic strokes are apparent between 24 and 48</p> <p>13 hours?</p> <p>14 A. I probably have, but I don't recall them off the top</p> <p>15 of my head.</p> <p>16 Q. Well, based upon your education and experience, what</p> <p>17 percentage of ischemic strokes may not show up</p> <p>18 between 24 and 48 hours?</p> <p>19 A. If you're asking me to guess, I would say 25</p> <p>20 percent, but I'd have to look it up.</p> <p>21 Q. Is that just a guess?</p> <p>22 A. Yes.</p> <p>23 Q. Because ischemic strokes may not show up initially</p> <p>24 in a patient, do you agree it would be a mistake for</p> <p>25 an emergency room physician to rely exclusively on</p>	<p style="text-align: right;">24</p> <p>1 a stroke?</p> <p>2 A. That sounds about right.</p> <p>3 Q. What about for hypertension?</p> <p>4 A. I would imagine it would be very similar.</p> <p>5 Q. And what about for a patient with a previous</p> <p>6 stroke?</p> <p>7 A. A patient with previous stroke has between a five</p> <p>8 and ten percent risk per year of having another</p> <p>9 stroke.</p> <p>10 Q. Did Mr. Yaceczko have signs or symptoms of a stroke</p> <p>11 when he presented to Akron City Hospital on April</p> <p>12 19th, 1996?</p> <p>13 A. Depending on whose history and physical you're</p> <p>14 reading, yes.</p> <p>15 Q. What do you mean by that?</p> <p>16 A. As I said, if I take the history and physical -- if</p> <p>17 I take the information that the nurse has, those are</p> <p>18 signs and symptoms of a stroke. It appears that the</p> <p>19 evaluation by Dr. Salem provided Dr. Henschen with</p> <p>20 some information to suggest that this was not a</p> <p>21 stroke.</p> <p>22 Q. Well, based upon the emergency room record, what</p> <p>23 signs or symptoms did Mr. Yaceczko have of a</p> <p>24 stroke?</p> <p>25 A. Confusion, memory loss, numbness. The question is</p>

<p style="text-align: right;">25</p> <p>1 whether or not he actually had a change in speech 2 pattern, that seems to be part of the question here, 3 in part why Dr. Salem was asked to come to see the 4 patient, so those are all things that could be from 5 a stroke. 6 Q. Are those classic signs or symptoms of a stroke? 7 A. They can be signs of a stroke. They're not what 8 generally you would think of as a classic sign of a 9 stroke. 10 Q. Okay. What are classic signs or symptoms of a 11 stroke? 12 A. Loss of motor power, loss of speech, abnormalities 13 of the cranial nerves, loss of sensation, abnormal 14 reflexes. 15 Q. Isn't weakness or numbness a classic sign or symptom 16 of a stroke? 17 A. Are you asking me that in isolation, or are you 18 asking me in the context of this case? 19 Q. I'm asking you in isolation. 20 A. Well, you can have weakness without having a stroke, 21 you can have numbness without having a stroke. 22 Q. But aren't weakness and numbness classic signs of a 23 stroke? 24 A. They can be. It depends on the context in which 25 you're seeing them.</p>	<p style="text-align: right;">27</p> <p>1 A. It wouldn't surprise me. 2 Q. And would you consider the information that 3 MetroHealth would put on its web site to be accurate 4 and reliable information? 5 A. I would hope it would be, but I'd want to review 6 it. 7 Q. Well, would you expect that they would put 8 inaccurate or unreliable information on their web 9 site? 10 A. I would hope not. 11 Q. Could you tell me physiologically what would account 12 for Mr. Yaceczko having problems with weakness or 13 numbness on one side of his body, difficulty with 14 speech or difficulty understanding speech and memory 15 loss, and then those symptoms improving once he got 16 to the emergency room? 17 A. Are you posing that as a hypothetical? 18 Q. Yes. 19 A. Okay, because I'm not seeing the weakness on the 20 right side as documented in here. Maybe I'm just 21 missing it. 22 Q. Do you agree that weakness is checked under neuro? 23 A. That's a weakness on the left side. 24 Q. Okay. 25 A. That's a residual result of a stroke.</p>
<p style="text-align: right;">26</p> <p>1 Q. You're director of emergency medicine both at The 2 Cleveland Clinic as well as Metro Hospital; is that 3 correct? 4 A. Correct. 5 Q. Are you aware that The Cleveland Clinic has 6 information about stroke on its web site? 7 A. It wouldn't surprise me. 8 Q. Would The Cleveland Clinic web site be a reliable or 9 accurate source of information on stroke? 10 MR. TREADON: Objection. Are you 11 talking -- give him something specific. 12 Q. Are you able to answer the question? 13 A. I would think they have information directed to the 14 public. They may have information directed at 15 medical providers, but I don't know that. I haven't 16 seen it. 17 Q. Would you expect them to have inaccurate or 18 unreliable information in their web site? 19 A. I would hope not. 20 Q. Have you ever reviewed the information listed for 21 stroke on The Cleveland Clinic's web site? 22 A. No, I have not. 23 Q. What about for MetroHealth, are you aware that they 24 have a web site containing information about 25 stroke?</p>	<p style="text-align: right;">28</p> <p>1 Q. At the top does it say whether it's on the right or 2 left side? 3 A. No, it says that in the narrative. 4 Q. Do you know whether or not Mr. Yaceczko had weakness 5 prior to his presentation at Akron City Hospital? 6 A. Yes, he had a previous stroke. 7 Q. Did he have weakness on the right side prior to 8 presentation at the Akron City Hospital emergency 9 room? 10 A. Not that I see documented here. 11 Q. I'm sorry, let me go back. 12 A. Okay. 13 Q. Physiologically what could account for him having 14 numbness in the right arm and hand, difficulty with 15 speech, disorientation and memory loss and then 16 those symptoms improving once he was in the 17 emergency room? 18 A. Sometimes when patients have stroke they have an 19 area of edema around the stroke site that can vary, 20 so their symptoms may fluctuate a little bit. 21 Q. Could one explanation be that there was increased 22 blood flow to the area that was affected 23 ischemically? 24 A. Once you have an infarction, that area will not 25 recover, so change in blood flow wouldn't affect</p>

<p style="text-align: right;">29</p> <p>1 that.</p> <p>2 Q. Is there an area around the infarction that may be</p> <p>3 compromised as far as blood flow but still may be</p> <p>4 viable tissue?</p> <p>5 A. Well, there's an area that may be compromised and</p> <p>6 may be potentially viable, but that's related to</p> <p>7 edema and to toxic chemicals that are put out by</p> <p>8 dead cells. That's the aspect of a stroke that we</p> <p>9 try and address with studies, unfortunately we've</p> <p>10 not been successful yet.</p> <p>11 Q. What's the penumbra?</p> <p>12 A. That is what I just described.</p> <p>13 Q. Do you know whether or not there was an area of</p> <p>14 brain tissue that had compromised blood flow but was</p> <p>15 still potentially viable when Mr. Yaceczko presented</p> <p>16 to Akron City Hospital on April 19th, 1996?</p> <p>17 A. In retrospect, the answer to that is no. The</p> <p>18 penumbra did not appear to be viable.</p> <p>19 Q. Do you agree that Mr. Yaceczko had a worsening of</p> <p>20 symptoms by the time he presented to General</p> <p>21 Hospital?</p> <p>22 A. His symptoms when he presented to Akron General</p> <p>23 Hospital were similar to his symptoms when he</p> <p>24 presented to Akron City.</p> <p>25 Q. You wouldn't consider that he had a worsening of</p>	<p style="text-align: right;">31</p> <p>1 penumbra?</p> <p>2 A. It can, yes.</p> <p>3 Q. Is the treatment of a stroke related to the fact</p> <p>4 that it takes time for the damage to occur to the</p> <p>5 penumbra?</p> <p>6 A. Unfortunately, no, that's not the case.</p> <p>7 Q. Well, isn't the theory behind treatment that if you</p> <p>8 can increase the blood flow to the area you can</p> <p>9 reduce the amount of brain damage that occurs?</p> <p>10 A. No.</p> <p>11 Q. What's the theory behind treatment for a stroke</p> <p>12 then?</p> <p>13 A. It depends on which phase of the stroke you're</p> <p>14 talking about. During the first three hours of a</p> <p>15 stroke we can occasionally give people thrombolytics</p> <p>16 and reverse the ischemia. Beyond that three-hour</p> <p>17 period, we do not have effective therapy to reverse</p> <p>18 a stroke. The treatment is supportive.</p> <p>19 Q. Back in 1996, what were the potential treatments for</p> <p>20 a stroke?</p> <p>21 A. Aside from thrombolytics, which were introduced</p> <p>22 sometime in 1996, there was no effective treatment</p> <p>23 for a stroke.</p> <p>24 Q. I'm asking you about recognized treatments.</p> <p>25 A. There were no recognized effective treatments for</p>
<p style="text-align: right;">30</p> <p>1 symptoms when he went to General?</p> <p>2 A. Are you asking me whether he had different symptoms;</p> <p>3 is that the question?</p> <p>4 Q. I'm asking you whether his symptoms worsened.</p> <p>5 A. The history is that he had increasing numbness, so I</p> <p>6 suppose the answer to your question is, yes, he had</p> <p>7 worsening symptoms.</p> <p>8 Q. And didn't his numbness and other symptoms also</p> <p>9 become more persistent by the time he got to General</p> <p>10 Hospital?</p> <p>11 A. He did have persistent symptoms after he came to</p> <p>12 Akron General, yes.</p> <p>13 Q. If there was a worsening of his symptoms, wouldn't</p> <p>14 that be caused by increased brain damage?</p> <p>15 A. Yes.</p> <p>16 Q. Do you agree that with a stroke the amount of brain</p> <p>17 damage increases as time passes?</p> <p>18 A. No, that's not -- that can't be answered yes in a</p> <p>19 general sense.</p> <p>20 Q. Do you agree that damage occurs due to interference</p> <p>21 with blood flow to a portion of the brain with an</p> <p>22 ischemic stroke?</p> <p>23 A. Yes.</p> <p>24 Q. And other than the area of immediate infarct, does</p> <p>25 it take time for damage to occur due to the</p>	<p style="text-align: right;">32</p> <p>1 stroke.</p> <p>2 Q. Wasn't heparin being used to treat stroke back in</p> <p>3 1996?</p> <p>4 A. Some people used heparin, but it was not recognized</p> <p>5 as an effective therapy.</p> <p>6 Q. Have you ever used heparin to treat a stroke?</p> <p>7 A. No, I haven't.</p> <p>8 Q. Not at any time during your career?</p> <p>9 A. No.</p> <p>10 Q. Typically when you diagnose a patient with a stroke,</p> <p>11 do you determine what treatment to provide or do you</p> <p>12 bring in a neurologist to consult on that issue?</p> <p>13 A. Well, anybody that I would diagnose with an acute</p> <p>14 stroke would be referred to somebody else for</p> <p>15 admission. They may choose to put them on heparin,</p> <p>16 but I would not.</p> <p>17 Q. For a patient that was diagnosed with stroke in</p> <p>18 1996, would the standard of care require admission</p> <p>19 of that patient to the hospital?</p> <p>20 A. It would depend on the time frame. Somebody who has</p> <p>21 an acute stroke the standard of care would require</p> <p>22 them to be admitted.</p> <p>23 Q. And why would the standard of care require them to</p> <p>24 be admitted?</p> <p>25 A. To monitor them for deterioration, hemorrhagic</p>

<p style="text-align: right;">33</p> <p>1 transformation of the stroke, beginning their 2 therapy, do diagnostic testing. 3 Q. Are you aware of any of your patients being treated 4 with heparin for stroke after you've diagnosed a 5 stroke and brought in a neurologic consult? 6 A. Well, some of them have been, yes. 7 Q. Have you had patients in which you've diagnosed a 8 stroke that have had a good outcome with treatment 9 with heparin? 10 A. Some patients that I've taken care of have had a 11 good outcome but it was not because of the heparin. 12 Q. Have you had patients that have been treated with 13 heparin that have had a good outcome? 14 A. Has anybody who I've ever seen treated with heparin 15 had a good outcome? 16 Q. Yes. 17 A. Yeah, I would imagine the answer to that would be 18 yes. 19 Q. Do you agree that heparin was being widely used to 20 treat strokes back in 1996? 21 A. It was used some of the time but not most of the 22 time. 23 Q. So if you, back in 1996, if you diagnosed a patient 24 with a stroke, was it outside your area of expertise 25 to determine what particular treatment to provide to</p>	<p style="text-align: right;">35</p> <p>1 A. Are you asking me whether it was the standard of 2 care to give TPA for stroke? 3 Q. No, I'm asking you was it an accepted treatment for 4 stroke in '96? 5 A. Some people used it for stroke, some people would 6 not. Some people today would use it, some people 7 would not. 8 Q. Are there certain types of patients for which you 9 would not give TPA that were suffering from a 10 stroke? 11 A. Many times. 12 Q. What types of patients? 13 A. Well, most patients are not eligible for TPA. They 14 have to be very rigid criteria to get TPA. 15 Q. And what are those criteria? 16 A. Generally you have to see them within three hours of 17 the onset of the stroke, they have to have enough of 18 a neurologic deficit that the benefit outweighs the 19 risk, their blood pressure has to be reasonably 20 controlled, they cannot have too high of a glucose, 21 they cannot be anticoagulated, they cannot have had 22 a recent head trauma, there's other similar 23 criteria. 24 Q. For patients in which TPA was not indicated, what 25 type of treatment would you provide those patients</p>
<p style="text-align: right;">34</p> <p>1 that patient? 2 A. No. 3 Q. Although you said that it was your practice to 4 consult with a neurologist to determine treatment? 5 A. I would not have started heparin because the 6 evidence was not there to demonstrate its 7 effectiveness. Sometimes neurologists would choose 8 to put patients on heparin, but I would not have 9 started it. 10 Q. But my specific question is if you diagnosed a 11 patient with a stroke back in '96 was it your 12 typical practice to consult a neurologist to 13 determine what treatment was appropriate for the 14 patient? 15 A. Some treatment I would provide without their advice, 16 some treatment I would provide with their advice. 17 Q. And what treatment would you provide without their 18 advice? 19 A. I would control their blood pressure, I would give 20 them aspirin, I would address any other medical 21 problems they might be having, I personally would 22 give them TPA, although generally I would consult 23 them if I could get a hold of them. 24 Q. Back in 1996 was TPA a recognized treatment for 25 stroke?</p>	<p style="text-align: right;">36</p> <p>1 back in 1996? 2 A. I would give them an aspirin, control their blood 3 pressure, and admit them. 4 Q. Would you admit them for consultation with a 5 neurologist? 6 A. Some would be admitted and would get a 7 consultation. It would depend who they would be 8 admitted to. They might be admitted directly to a 9 neurologist or their primary care doctor and get a 10 neurology consultation. 11 Q. Do you agree that when Mr. Yaceczko was given 12 heparin at General Hospital his condition improved? 13 A. No, his condition worsened with the heparin. Mr. 14 Yaceczko had a pattern of worsening with heparin. 15 Q. Do you disagree that he had restoration of strength 16 on the right when heparin was administered? 17 A. He had a loss of strength on the right. 18 Q. Do you agree that by the time Mr. Yaceczko presented 19 to General Hospital his stroke had completely 20 evolved? 21 A. No, his stroke worsened after he was admitted to 22 Akron General Hospital. 23 Q. Based upon a reasonable medical certainty by the 24 time he reached General Hospital was it too late to 25 prevent any further damage?</p>

<p>37</p> <p>1 A. It was too late when he presented to Akron City 2 Hospital, so I would agree that when he presented 3 two days later at Akron General Hospital it was 4 still too late. 5 Q. Isn't heparin given to a stroke patient to try and 6 increase the blood flow to the affected area in that 7 patient? 8 A. Heparin is not effective for stroke. For whatever 9 reason people initially thought it might have been 10 useful, it is not useful. 11 Q. Well, wasn't the theory for administering heparin to 12 increase the blood flow to the area that was 13 affected? 14 A. Maybe, but it doesn't work. 15 Q. Well, what was your understanding of the theory of 16 giving patients who were suffering from stroke 17 heparin? 18 A. I think the theory was that you would give them 19 heparin and the blood clot would break up, and then 20 they would re-perfuse and their brain would be 21 fine. It just didn't work. 22 Q. Do you agree that back in 1996 heparin was indicated 23 for patients with a stroke in evolution to prevent 24 progression? 25 A. It was a matter of physician preference, it was not</p>	<p>39</p> <p>1 A. That appears to be the case. 2 Q. And do you agree that would be a deviation from 3 acceptable medical practice to misread the CT scan? 4 A. Well, it's not the standard that you are 100 percent 5 accurate in reading a CT scan, so not having seen 6 the CT scan I cannot say that it was so obvious that 7 everybody should have picked it up. 8 Q. Well, do you think it was acceptable to misread the 9 CT scan; do you consider that to be acceptable 10 medical practice? 11 A. Well, we try not to make mistakes, but sometimes 12 that happens. 13 Q. Well, do you agree that when mistakes are made that 14 can be a deviation from acceptable medical 15 practice? 16 MR. TREADON: Could be? Anything is 17 possible. Go ahead. 18 A. There are some mistakes that are deviations from 19 acceptable standards of care, there are some 20 mistakes that are not a deviation of the standard of 21 care. 22 Q. Well, in your opinion does a mistake have to be 23 intentional in order to be a deviation from 24 acceptable medical practice? 25 A. No.</p>
<p>38</p> <p>1 the standard of care. 2 Q. Whose preference was it, the neurologist's? 3 A. The treating physician. 4 Q. If you diagnosed a patient with a stroke and they 5 were admitted, who would the treating physician be? 6 A. I don't understand the question. I would admit -- I 7 mean, there are dozens of physicians I might admit a 8 patient to. You're not asking me that, are you? 9 Q. What I'm asking you is once you admit the patient, 10 are you the treating physician any longer or does 11 somebody else take over as the treating physician? 12 A. Yes, once I admit them somebody else becomes the 13 treating physician. 14 Q. So back in 1996 was your job to diagnose a person 15 with a stroke and then admit them for a different 16 physician to follow up and treat them? 17 A. I would diagnose them, I would initiate treatment, 18 and then I would admit them. 19 Q. Was Mr. Yaceczko's blood pressure properly 20 controlled by Dr. Henschen? 21 A. Sorry, I'm looking at the wrong record here. Yes, 22 his blood pressure, diastolic blood pressure, is 23 only 70. 24 Q. Do you agree that at Akron City Hospital there was a 25 misread of his CT scan initially?</p>	<p>40</p> <p>1 Q. What's your definition of acceptable medical 2 practice? 3 A. The standard of care is the care provided by a 4 reasonable physician under similar circumstances. 5 Q. Do you agree it would be reasonable and prudent to 6 call Mr. Yaceczko back to the hospital after it was 7 discovered that there was a misread of the CT scan? 8 A. Or to notify his primary care physician, yes. 9 Q. Do you agree that that was not done in this case? 10 A. That appears to be the case. 11 Q. Do you agree that the misread of the CT scan was at 12 least one of the factors which caused Mr. Yaceczko 13 to be discharged from Akron City Hospital? 14 A. Yes. 15 Q. Do you agree that if Dr. Henschen had diagnosed Mr. 16 Yaceczko with a stroke that the standard of care 17 would have required him to admit Mr. Yaceczko for 18 the hospital? 19 A. Yes. 20 Q. To the hospital? 21 A. Yes. 22 Q. I'm sorry. 23 What are your charges for being involved as an 24 expert witness in this case? 25 A. \$300 per hour.</p>

<p style="text-align: right;">41</p> <p>1 Q. And how much time have you spent on this case?</p> <p>2 A. In preparing for this deposition, about eight hours,</p> <p>3 and I can't recall how much time I spent prior to</p> <p>4 this.</p> <p>5 Q. How many bills have you sent to Mr. Treadon?</p> <p>6 A. One that I can recall.</p> <p>7 Q. And what was the amount of that bill?</p> <p>8 A. I can't recall.</p> <p>9 Q. Could you give me an approximate amount?</p> <p>10 A. I would imagine it would have been around \$1,200,</p> <p>11 but I can't recall exactly.</p> <p>12 Q. Did you produce a report in this case?</p> <p>13 A. I don't think I did.</p> <p>14 THE WITNESS: Did I give you a report?</p> <p>15 MR. TREADON: No.</p> <p>16 A. No.</p> <p>17 Q. How many times have you been an expert?</p> <p>18 A. About 100 times. Well, I've reviewed about 100</p> <p>19 cases. I haven't always agreed to or been asked to</p> <p>20 produce a report.</p> <p>21 Q. Have you ever been an expert on behalf of a</p> <p>22 plaintiff/patient?</p> <p>23 A. Yes.</p> <p>24 Q. How many times have you done that?</p> <p>25 A. Oh, about 30.</p>	<p style="text-align: right;">43</p> <p>1 MR. TREADON: Irishman.</p> <p>2 THE WITNESS: Yes.</p> <p>3 Q. Do you know the physician that was involved in that</p> <p>4 case or physicians?</p> <p>5 A. The physician involved was Chris --</p> <p>6 MR. TREADON: Gradisek?</p> <p>7 A. Gradisek, yes, thank you.</p> <p>8 Q. And you were an expert for the patient in that case?</p> <p>9 A. No, for the defense.</p> <p>10 Q. Who was defending that case?</p> <p>11 A. (Indicating.)</p> <p>12 Q. Tom Treadon?</p> <p>13 A. Yes.</p> <p>14 Q. How many times have you served as an expert witness</p> <p>15 for Mr. Treadon?</p> <p>16 A. Two or three. I guess this will be three.</p> <p>17 Q. And the Konstand case Mr. Perantinides was a lawyer</p> <p>18 for the patient/plaintiff?</p> <p>19 A. That's correct.</p> <p>20 Q. Did that case only involve ER care or other</p> <p>21 physicians' care as well?</p> <p>22 A. I don't recall there being anybody else involved,</p> <p>23 other than the hospital and the emergency</p> <p>24 physicians, but there may have been. That was a</p> <p>25 year ago.</p>
<p style="text-align: right;">42</p> <p>1 Q. So what percent of the time have you served as an</p> <p>2 expert for the defense?</p> <p>3 A. About two-thirds of the time.</p> <p>4 Q. Have you actually issued a report or testified that</p> <p>5 a doctor was negligent?</p> <p>6 A. Yes.</p> <p>7 Q. How many times have you done that?</p> <p>8 A. I'd be guessing, but I would think of the</p> <p>9 approximately 36 times I've been a plaintiffs'</p> <p>10 expert I've probably gone to deposition or issued a</p> <p>11 report maybe half of that.</p> <p>12 Q. Have you ever been an expert on a stroke case?</p> <p>13 A. Yes.</p> <p>14 Q. How many times?</p> <p>15 A. A half a dozen, maybe.</p> <p>16 Q. Do you know the names of any of those cases?</p> <p>17 A. Yes.</p> <p>18 Q. What are the names of those cases?</p> <p>19 A. I did a case last year in Akron by the name of</p> <p>20 Konstand.</p> <p>21 Q. Who was the plaintiffs' attorney?</p> <p>22 A. Mister -- what was his name?</p> <p>23 MR. TREADON: Perantinides.</p> <p>24 A. Perantinides, yes. I couldn't remember how to</p> <p>25 pronounce his name. Thank you.</p>	<p style="text-align: right;">44</p> <p>1 Q. Were the facts of that case similar to the Yaceczko</p> <p>2 case or were they different?</p> <p>3 A. They were different.</p> <p>4 Q. How were they different?</p> <p>5 MR. TREADON: Well, I'm going to</p> <p>6 object. That's a pretty tall order. This is a</p> <p>7 case -- I mean, if you can remember, that's</p> <p>8 fine.</p> <p>9 Q. Just tell me based on your recollection how they</p> <p>10 were different.</p> <p>11 A. Most of my testimony in that case revolved around</p> <p>12 the use of TPA, which isn't an issue in this case.</p> <p>13 Q. Can you remember the name of -- let me go back. Did</p> <p>14 you give a deposition in the Konstand case?</p> <p>15 A. Yes.</p> <p>16 Q. And did that case go to trial?</p> <p>17 A. Yes.</p> <p>18 Q. Did you testify at trial?</p> <p>19 A. Yes.</p> <p>20 Q. Do you know what the verdict was in that case?</p> <p>21 A. It was a defense verdict.</p> <p>22 Q. What were the other one or two cases you served as</p> <p>23 an expert on involving a stroke?</p> <p>24 A. Let's see, I'm an expert now on a case near</p> <p>25 Sandusky. I was asked by a couple plaintiffs'</p>

<p style="text-align: right;">45</p> <p>1 lawyers to review other stroke cases related to 2 whether the patient should have gotten TPA or not. 3 They never followed through on those cases. 4 Q. So you never rendered a formal opinion in those 5 cases? 6 A. That's correct. 7 Q. Okay. 8 A. There were probably a couple of others in there. I 9 can't recall them offhand. 10 Q. Is the research that you've done in this case 11 Exhibits A through F? 12 MR. TREADON: Is there a question? 13 MR. RUF: Yeah. 14 Q. Have you done research for this case? 15 A. Well, I'm generally aware of the issues related to 16 stroke and the use of heparin and TPA, so I would 17 imagine that in my position I have other articles, 18 but these are ones that were particularly pertinent 19 to this case. 20 Q. Did you -- 21 A. All the other ones are pertinent also, but these 22 happened to be handy. 23 Q. Did you actually find Plaintiffs' Exhibits A through 24 F? 25 MR. TREADON: As opposed to somebody</p>	<p style="text-align: right;">47</p> <p>1 New England Journal of Medicine? 2 A. Can I see the title? 3 Q. Sure. 4 A. Yes. This is actually not heparin, it's a heparin 5 related compound that's not available in the United 6 States. It's an interesting article. It was done 7 in the far east involving a patient population 8 that's, of course, different than the one that's at 9 issue here, and the interesting thing about it is 10 that they repeated the study and it was a negative 11 trial. 12 Q. Did you review any medical text in order to prepare 13 yourself today for this deposition? 14 A. No. 15 Q. Other than Exhibits A through F, did you review any 16 medical articles in order to prepare yourself for 17 today's deposition? 18 A. I review medical articles about stroke on a frequent 19 basis, so I am aware of other articles about 20 stroke. 21 Q. And what publications do you review articles about 22 stroke? 23 A. In whatever ones they appear. I'm not sure what 24 you're asking me. 25 Q. What periodicals do you review on a regular basis?</p>
<p style="text-align: right;">46</p> <p>1 else finding them? 2 MR. RUF: Yes. 3 Q. Are you the one that pulled these articles? 4 A. Yes, I did. 5 Q. Are you aware of a study in the New England Journal 6 of Medicine by Kay that found heparin to be 7 effective for the treatment of stroke? 8 A. Which study was that? 9 Q. A study in 1995. 10 A. Do you have the name of the study? 11 Q. Do you consider the publication New England Journal 12 of Medicine to be a quality publication? 13 A. A quality publication? 14 Q. Yes. 15 A. Is that the same as authoritative or reliable? 16 Q. No, I'm just asking you is it a quality publication? 17 A. Oh, it's a good journal, yes. 18 Q. Is that a publication that you've referenced and 19 reviewed? 20 A. The New England Journal of Medicine, yes. 21 Q. Is that a publication that you subscribe to? 22 A. Yes. 23 Q. Have you ever reviewed an article entitled Low 24 Molecular Weight Heparin for the Treatment of Acute 25 Ischemic Stroke published December 14th, 1995 in the</p>	<p style="text-align: right;">48</p> <p>1 A. I review articles when I'm interested in a topic, 2 when I'm preparing lectures, when I'm preparing 3 articles, or if I just happen to be interested. Are 4 you asking me what I subscribe to? 5 Q. Yes, what do you subscribe to? 6 A. Oh, okay. Of course you're aware I have access to 7 many other things than what I subscribe to through 8 the computer or through the library. 9 Q. Yes. 10 A. I subscribe to the New England Journal, the Journal 11 of the American Medical Association, the Annals of 12 Emergency Medicine, Academic Emergency Medicine, the 13 American Journal for Emergency Medicine, and the 14 Journal of Emergency Medicine, and Chest. 15 Q. Do you subscribe to those publications because 16 you've found them to be reliable sources of 17 information? 18 A. Well, some of them I get just as a result of 19 membership in various organizations. Some of them I 20 get because they frequently have articles of 21 interest to me. 22 Q. Well, I don't think you've answered my question. 23 Have you found those to be reliable sources of 24 information? 25 A. Sometimes yes, sometimes not.</p>

<p style="text-align: right;">49</p> <p>1 Q. Have you ever published on stroke?</p> <p>2 A. Yes.</p> <p>3 Q. What publication of yours relates to stroke?</p> <p>4 A. Can I have my CV back?</p> <p>5 Q. Sure.</p> <p>6 MR. TREADON: Here you go.</p> <p>7 A. Do you want me to just circle or read them?</p> <p>8 Q. Sure, why don't you circle them.</p> <p>9 MR. TREADON: Tell me what you're</p> <p>10 circling so I can circle mine.</p> <p>11 A. Okay. Let's see here, this is abstract number 49.</p> <p>12 Q. What's the title of that abstract?</p> <p>13 A. Effect of a Stroke Protocol on Management of Out of</p> <p>14 Hospital Stroke Patients. Article number 73.</p> <p>15 MR. TREADON: What page? Oh, is this</p> <p>16 in your publications?</p> <p>17 THE WITNESS: Yes, this would be the</p> <p>18 publications.</p> <p>19 A. I'm not a listed author on that, but I was a listed</p> <p>20 investigator.</p> <p>21 Q. What's the title of that article?</p> <p>22 A. Glycine Antagonist and Neuro Protection for Patients</p> <p>23 with Acute Stroke.</p> <p>24 Q. Under other publications?</p> <p>25 A. Carotid Artery Disease.</p>	<p style="text-align: right;">51</p> <p>1 in Louisiana that I've reviewed a number of cases</p> <p>2 for, it will come to me.</p> <p>3 Q. Are all the plaintiffs' firms that you've consulted</p> <p>4 with, are they all out of state?</p> <p>5 A. No, Bill Knapp is in Cincinnati.</p> <p>6 Q. Other than Bill Knapp, are all the other plaintiffs'</p> <p>7 firms out of state?</p> <p>8 A. No.</p> <p>9 Q. Are you the head of the emergency department both at</p> <p>10 Metro and The Cleveland Clinic?</p> <p>11 A. Yes.</p> <p>12 Q. I assume that you have administrative duties with</p> <p>13 both of those positions?</p> <p>14 A. Yes.</p> <p>15 Q. What percent of your time is spent on administration</p> <p>16 in both those positions?</p> <p>17 A. 60 percent of my time is spent on teaching the</p> <p>18 practice of emergency medicine, the remainder 40</p> <p>19 percent of my time is spent on research and</p> <p>20 administration.</p> <p>21 Q. I'm handing you what was previously marked as</p> <p>22 Plaintiffs' Exhibit 10. They're answers to</p> <p>23 interrogatories and request for production of</p> <p>24 documents that were sent by Defendant Ross Henschen,</p> <p>25 M.D. If you could take a look at Interrogatory</p>
<p style="text-align: right;">50</p> <p>1 Q. Can I go back for one minute?</p> <p>2 A. Yes.</p> <p>3 Q. Was glycine a potential treatment for stroke in</p> <p>4 '96?</p> <p>5 A. No.</p> <p>6 Q. Go ahead.</p> <p>7 A. It was an investigational agent that did not prove</p> <p>8 useful.</p> <p>9 Q. Okay. Go ahead.</p> <p>10 A. Carotid Artery Disease. This is in other</p> <p>11 publications. Then articles 13 and 14 under other</p> <p>12 publications, Ischemic Stroke Syndromes, part one</p> <p>13 and part two. I believe that's it.</p> <p>14 Q. Have you ever served as an expert for the</p> <p>15 Perantinides & Nolan law firm?</p> <p>16 A. I don't think so.</p> <p>17 Q. Can you remember the name of any plaintiffs' lawyers</p> <p>18 that you've served as an expert for?</p> <p>19 A. William Knapp, K-N-A-P-P, in Cincinnati.</p> <p>20 Q. Anyone else?</p> <p>21 A. Abramson, Reiss, R-E-I-S-S, and Dugan in New</p> <p>22 Hampshire. Let's see here. There's a West Virginia</p> <p>23 lawyer that I've reviewed a couple cases for. Let</p> <p>24 me see if I can think of his name. Wes Graylip. I</p> <p>25 don't know how to spell that. There's a firm down</p>	<p style="text-align: right;">52</p> <p>1 Number 1, please.</p> <p>2 A. Okay.</p> <p>3 Q. These interrogatories were actually signed by</p> <p>4 Christopher Parker. Do you consider the answer to</p> <p>5 Interrogatory Number 1 to be a false statement?</p> <p>6 MR. TREADON: Objection. Go ahead and</p> <p>7 answer.</p> <p>8 A. Well, I think he had a stroke, not a transient</p> <p>9 ischemic attack. But if you presume that he was</p> <p>10 having a stroke, then, as I've said, it would be a</p> <p>11 violation of the standard of care in this instance</p> <p>12 to send the patient home.</p> <p>13 Q. So you think the answer to Interrogatory Number 1</p> <p>14 was justified?</p> <p>15 MR. TREADON: With that change, with</p> <p>16 that caveat?</p> <p>17 MR. RUF: Yes.</p> <p>18 A. Yes.</p> <p>19 Q. Could you take a look at answer to Interrogatory</p> <p>20 Number 13.</p> <p>21 A. Okay, I see it. What did you want me to answer?</p> <p>22 Q. Can you tell me whether or not that's a false</p> <p>23 statement?</p> <p>24 MR. TREADON: Well, object to the</p> <p>25 characterization as false. Does he agree with</p>

<p style="text-align: right;">53</p> <p>1 it or disagree with it; is that what you're</p> <p>2 really asking him?</p> <p>3 MR. RUF: No, I want him to answer my</p> <p>4 question as I've asked it.</p> <p>5 MR. TREADON: If you can answer that,</p> <p>6 Doctor, go ahead.</p> <p>7 A. I think the scientific basis for this answer is</p> <p>8 lacking, that Mr. Yaceczko's stroke is not a</p> <p>9 result -- is not a direct and proximate result of</p> <p>10 the negligence of the defendant.</p> <p>11 Q. So do you think the answer to Interrogatory Number</p> <p>12 13 was justified or unjustified?</p> <p>13 MR. TREADON: Objection.</p> <p>14 A. I do not think that they could have established that</p> <p>15 there was a direct and proximate result of the</p> <p>16 negligence of the defendant in this case.</p> <p>17 Q. Do you know whether or not they made representations</p> <p>18 to the physicians' attorneys that they had expert</p> <p>19 testimony to support the answer to Interrogatory</p> <p>20 Number 13?</p> <p>21 A. I wouldn't have a way of knowing that.</p> <p>22 Q. Do you agree that based upon your review of the</p> <p>23 materials that the Perantinides & Nolan law firm did</p> <p>24 not hire an ER physician expert like yourself while</p> <p>25 they represented Peter Yaceczko?</p>	<p style="text-align: right;">55</p> <p>1 not the standard of care in 1996 to give heparin.</p> <p>2 Some people did but some people didn't.</p> <p>3 MR. TREADON: Dr. Tucker's assessment</p> <p>4 of the patient.</p> <p>5 THE WITNESS: Oh, yes, yes, thank you.</p> <p>6 A. It appears to me from reviewing this case that Mr.</p> <p>7 Yaceczko deteriorated long after he had the stroke</p> <p>8 in 1996, and that's evidenced by the difference</p> <p>9 between what Dr. Tucker found when he did his</p> <p>10 evaluation last -- was it March?</p> <p>11 MR. TREADON: I think whenever his</p> <p>12 report was authored.</p> <p>13 A. Whenever you had Dr. Tucker do a physical exam of</p> <p>14 the patient to what's reflected in the medical</p> <p>15 reports here, it appears from these medical records</p> <p>16 that post stroke Mr. Yaceczko seemed to be doing</p> <p>17 fairly well and has subsequently deteriorated.</p> <p>18 Q. Do you have an opinion as to the cause of that</p> <p>19 deterioration?</p> <p>20 A. There is a number of reasons why it could be, but</p> <p>21 the most likely thing is that he's continued to have</p> <p>22 small vessel ischemic disease and possibly more</p> <p>23 strokes. Let me see here. I note that Dr. Deranek</p> <p>24 seems to be wrong on some of the facts of this case</p> <p>25 and seems to be wrong on the medicine that was</p>
<p style="text-align: right;">54</p> <p>1 A. I've only been provided with your experts' reports,</p> <p>2 no others.</p> <p>3 Can we take a break for a minute?</p> <p>4 Q. I'm almost finished. I just have two more minutes.</p> <p>5 A. I still need to take a break.</p> <p>6 Q. Okay.</p> <p>7 A. Thanks.</p> <p>8 - - - -</p> <p>9 (Thereupon, a recess was had.)</p> <p>10 - - - -</p> <p>11 Q. Do you agree that the appropriate doctor to review</p> <p>12 emergency room care is an emergency room physician,</p> <p>13 from a medical perspective?</p> <p>14 A. It would depend on the issues in the case.</p> <p>15 Q. What about the issues in the Yaceczko case?</p> <p>16 A. The Yaceczko case, an emergency physician would be</p> <p>17 prepared to review the issues, a neurologist would</p> <p>18 be prepared to review the issues.</p> <p>19 Q. Based upon your experience -- strike that.</p> <p>20 Do you have any opinions in this case that you</p> <p>21 have not yet told me about?</p> <p>22 A. I related to you that I think that you cannot</p> <p>23 establish proximate cause in this case, I've related</p> <p>24 to you that Mr. Yaceczko has a history of worsening</p> <p>25 on heparin, I think I've related to you that it was</p>	<p style="text-align: right;">56</p> <p>1 available in 1996.</p> <p>2 Q. How is she wrong on the facts or the medicine?</p> <p>3 A. She has proposed that Mr. Yaceczko could have been</p> <p>4 given treatment that was not available in 1996.</p> <p>5 Q. And what treatment is that?</p> <p>6 A. Plavix. It was not available in 1996, and she has</p> <p>7 suggested he should have been given that or could</p> <p>8 have been given that.</p> <p>9 Q. How was she wrong on the facts?</p> <p>10 A. She was of the opinion that Mr. Yaceczko was given</p> <p>11 heparin immediately when he got to Akron General</p> <p>12 Hospital. She was of the opinion he improved after</p> <p>13 being given heparin at Akron General Hospital and he</p> <p>14 did not. In fact, he deteriorated as he did when he</p> <p>15 was admitted for his stroke in 1994. I think there</p> <p>16 were other things in there that I disagreed with</p> <p>17 her, but I can't recall them off the top of my head.</p> <p>18 Q. Do you have any of those things marked?</p> <p>19 A. No, I do not.</p> <p>20 Q. You read Dr. Tucker's deposition?</p> <p>21 A. Yes.</p> <p>22 Q. Based upon your current recall, what do you disagree</p> <p>23 with as far as Dr. Tucker's opinions?</p> <p>24 A. The primary thing is I disagree with him on</p> <p>25 proximate cause. I do not think that there is</p>

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1 evidence that heparin would have assisted this
2 gentleman. If fact, I think the evidence is that it
3 would not have assisted him.

4 Q. Any other opinions?

5 MR. TREADON: Well, I'm going to object
6 because you don't know exactly what I'm -- he
7 doesn't know exactly what I'm going to be
8 asking him, but in summary form have you
9 covered most of the areas that you have
10 opinions about, in general, I guess is a better
11 way to put it; have we covered the areas?

12 A. Yes, I think we've covered the general areas in
13 which I have opinions.

14 Q. Okay. Thank you, Doctor.

15 A. You're welcome.

16 MR. RUF: That's all I have. Do you
17 want to read this?

18 MR. TREADON: Yes, I'd like to have the
19 doctor read it.

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CHARLES L. EMERMAN, M.D.

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2 CERTIFICATE
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4 The State of Ohio,) SS:
5 County of Cuyahoga.)

6 I, Laura L. Ware, a Notary Public within and
7 for the State of Ohio, do hereby certify that the
8 within named witness, CHARLES L. EMERMAN, M.D., was
9 by me first duly sworn to testify the truth, the
10 whole truth, and nothing but the truth in the cause
11 aforesaid; that the testimony then given was reduced
12 by me to stenotypy in the presence of said witness,
13 subsequently transcribed into typewriting under my
14 direction, and that the foregoing is a true and
15 correct transcript of the testimony so given as
16 aforesaid.

17 I do further certify that this deposition
18 was taken at the time and place as specified in the
19 foregoing caption, and that I am not a relative,
20 counsel or attorney of either party, that I am not,
21 nor is the court reporting firm with which I am
22 affiliated, under a contract as defined in Civil
23 Rule 28(D), or otherwise interested in the outcome
24 of this action.

25 IN WITNESS WHEREOF, I have hereunto set my
hand and affixed my seal of office at Cleveland,
Ohio, this 27th day of August, 2002.

18

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20 Laura L. Ware, Ware Reporting Service
21 21860 Crossbeam Lane, Rocky River, Ohio 44116
22 My commission expires May 17, 2003.

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