

Last Name	Duggan
First Name	Douglas W.
Specialty	Overseer
Party	Plaintiff <input type="checkbox"/> D
Date (format =99/99/9999)	12/6/01
Type of Document	Articles <input type="checkbox"/> Depo <input type="checkbox"/>
Type of Injury	Heart failure
Type of Case	MM
eDocument Name	(d/doi011501.pdf)

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Page 1

1 IN THE COURT OF COMMON PLEAS
2 OF CUYAHOGA COUNTY, OHIO
3 -----
4 FRED W. PULTZ, Individually
and as Administrator of the
5 Estate of BARBARA A. PULTZ,
deceased,
6
Plaintiff,
7
vs Case No. 433332
8 Judge Kilbane-Koch
DOUGLAS N. FLAGG, M.D.,
9 et al.,
Defendants.
10 -----
11
12 DEPOSITION OF DOUGLAS N. FLAGG, M.D.
13 THURSDAY, DECEMBER 6, 2001
14 -----
15 Deposition of DOUGLAS N. FLAGG, M.D., a
16 Defendant herein, called by counsel on behalf of
the Plaintiff for examination under the statute,
18 taken before me, Vivian L. Gordon, a Registered
19 Diplomate Reporter and Notary Public in and for
the State of Ohio, pursuant to agreement of
21 counsel, at the offices of Weston, Hurd, Fallon,
22 Paisley & Howley, 2500 Terminal Tower,
23 Cleveland, Ohio, commencing at 3:00 o'clock p.m.
24 on the day and date above set forth.
25

Page 3

1 DOUGLAS N. FLAGG, M.D., a witness herein,
2 called for examination, as provided by the Ohio
3 Rules of Civil Procedure, being by me first duly
4 sworn, as hereinafter certified, was deposed and
5 said as follows:
6 EXAMINATION OF DOUGLAS N. FLAGG, M.D.
7 BY MR. MISHKIND:
8 Q. Would you state your name for the
9 record.
10 A. Douglas Flagg.
11 Q. You are a doctor?
12 A. Yes.
13 Q. Dr. Flagg, my name is Howard Mishkind
14 and I represent the Pultz family in connection
15 with the lawsuit that you are one of a number of
16 named parties. You understand that, don't you?
17 A. Uh-huh.
18 Q. That's a yes?
19 A. Yes.
20 Q. One of the things I'm going to tell
21 you right away based upon your last answer is to
22 make sure you keep your answers verbal. If
23 Vivian is looking at her machine, she can't tell
24 which way you are nodding your head.
25 A. Okay.

Page 2

1 APPEARANCES:
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5 On behalf of the Defendant Flagg
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20 On behalf of the Defendant Emergency
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21 and Kimberly Chin-Li Chen, D.O.
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25

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1 Q. Have you had your deposition taken
2 before?
3 A. Not in a case I wasn't involved in,
4 but in other cases, yes.
5 Q. In what connection have you had your
6 deposition taken before?
7 A. As a witness for patients I have
8 treated related to auto accidents.
9 Q. You have never had the situation
10 occur where your deposition was taken in a
11 medical negligence case; is that correct?
12 A. No.
13 Q. Let me just tell you that the purpose
14 of my deposition today is to learn as much as I
15 can from you about your care and treatment of
16 Mrs. Pultz, in particular as it relates to the
17 period of time from early October of '99 up
18 through the time of her death.
19 I will tell you, however, I will ask
20 some questions about your relationship with her
21 prior to that date, some background information
22 about her medical care, but the primary emphasis
23 will be concerning that time period, okay?
24 A. Yes.
25 Q. I'm also going to ask you to give an

1 (Pages 1 to 4)

Page 5

1 overview or an outline, if you will, some
2 questions about your background and your
3 training and your experience, and then we will
4 move into talking about Mrs. Pultz. Fair
5 enough?
6 A. Yes.
7 Q. I will wait until you are done with
8 your answer to any of my questions. Do me the
9 favor and do Vivian the favor of waiting until
10 I'm done with my question before you start
11 answering, just so we don't have an overlap,
12 okay?
13 A. Okay.
14 Q. If you don't understand what I'm
15 asking you, tell me and I'll try to rephrase it.
16 If I can't -- that sometimes happens -- I will
17 have Vivian read the question back to you, okay?
18 A. Yes.
19 Q. Fair enough so far?
20 A. Yes.
21 Q. You are an internist; is that
22 correct?
23 A. Internal medicine and rheumatology.
24 Q. I don't believe I have a CV for you,
25 at least in the file that I have been provided.

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1 Care Physicians Practices in North Royalton.
2 Q. Is that your only office, currently?
3 A. We have two other offices now. I
4 don't at the present time go to any other
5 office. There was an office in Brunswick I went
6 to briefly, but I haven't gone there for a few
7 years.
8 Q. When you treated Mrs. Pultz, which
9 office did you treat her at?
10 A. North Royalton.
11 Q. I noticed on some of the letterhead a
12 reference to another physician affiliated with
13 the same group that you are affiliated with; is
14 that true?
15 A. Dr. Banozic. He was my associate.
16 He is no longer in practice.
17 Q. Did he see Mrs. Pultz at all in 1999?
18 A. He saw her, I'm not sure if it was --
19 there is an office visit on February 8 for
20 bronchitis, diabetes and osteoporosis.
21 Q. And then in March of '99, you saw
22 her; is that true?
23 MS. HENRY: Do you want to find all
24 the times Banozic saw her before we go on to the
25 next one?

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1 So I'm just going to ask you to tell me where
2 you went to medical school, where you did your
3 postgraduate training, and perhaps at some point
4 in the future, unless you have a copy --
5 MS. HENRY: I thought for some reason
6 there was one that was sent with the answers to
7 interrogatories.
8 MR. MISHKIND: I didn't see it.
9 MS. HENRY: I will make sure you get
10 it.
11 A. I went to Medical College of Ohio in
12 Toledo.
13 Q. Graduated what year, sir?
14 A. 1986.
15 Q. Tell me about your postgraduate work.
16 A. I did my training at Metro, here in
17 Cleveland, from '86 to '89 in internal medicine.
18 Following that I went to University Hospitals
19 from '89 to '91 and did a rheumatology
20 fellowship. From '91 to '92 I was in private
21 practice of rheumatology in Mayfield Heights
22 with Dr. Scott Burg. From '91 to '95 I was on
23 the full-time faculty at University Hospitals in
24 the department of rheumatology. And from '95 to
25 the present, I have been with University Primary

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1 Q. I'm assuming that the February visit
2 in '99 that you just referenced is the last time
3 that he saw her. If I'm not correct, then
4 clarify matters.
5 A. I think that's correct. I don't see
6 a March '99 visit to myself, though.
7 Q. When do you show after February?
8 A. April 16th.
9 Q. She had labs done in March of '99,
10 did she not?
11 A. Yes.
12 Q. March 26th, '99?
13 A. Yes.
14 Q. Were those ordered by you or --
15 A. Those were ordered by me.
16 Q. Did you see her on March 26th '99?
17 A. No. We frequently will order labs in
18 advance of their follow-up visit.
19 Q. So the April visit that you just
20 referenced a moment ago, the labs would have
21 been drawn in anticipation of that April visit?
22 A. Correct.
23 Q. Is it fair to say that from the time
24 that you ordered the labs on March 26th, '99 or
25 where the lab work was performed on March 26th,

2 (Pages 5 to 8)

<p>Page 9</p> <p>1 '99, up through the remainder of Mrs. Pultz' 2 life, as it relates to your office, you were the 3 only one that saw her on a professional level? 4 It's not a well worded question, but 5 I think you know what I'm talking about. Did 6 any other physician see her? 7 A. No. Looks like Dr. Banozic took a 8 few phone calls, but mine was the only office 9 visit. 10 Q. We will talk about that in a moment. 11 Are you board certified? 12 A. Yes. 13 Q. By what boards? 14 A. American Board of Internal Medicine 15 and the American -- they have a subspecialty 16 Board of Rheumatology also, so I'm boarded in 17 both. 18 Q. When did you become board certified 19 in internal medicine? 20 A. I think it was '89, September '89. 21 Q. Was that the first time that you were 22 eligible to take the boards? 23 A. Yes. 24 Q. You were successful the first time? 25 A. Yes.</p>	<p>Page 11</p> <p>1 publishing of any articles, book chapters, 2 anything in the medical literature? 3 A. Yes. I have one article in the 4 Journal of Medicine. I think it was the year 5 1995. 6 Q. Any others? 7 A. No. 8 Q. What's the topic of that article? 9 A. Hypocomplementemic urticarial 10 vasculitis syndrome. 11 Q. Does that relate to a rheumatological 12 disorder? 13 A. Yes. 14 Q. Were you the lead author on that 15 article? 16 A. No. 17 Q. Who was the lead author? 18 A. Jeff Wisnieski. He is at the V.A. 19 Q. Have you authored or co-authored any 20 other literature? 21 A. No. 22 Q. You are affiliated with what 23 hospitals? 24 A. Southwest General, Parma Hospital, 25 and University.</p>
<p>Page 10</p> <p>1 Q. In rheumatology, when did you become 2 board certified? 3 A. I believe it was '92, and that was 4 the first time I was eligible. 5 Q. Successful the first time through? 6 A. Yes. 7 Q. You indicated that since '95 you are 8 affiliated with University UPCP or University 9 Physician -- 10 A. University Primary Care Physicians 11 Practices. 12 Q. Are you an employee of that group? 13 A. Yes. 14 Q. What affiliation does that group 15 have, if you know, with University Hospitals? 16 A. I'm not really familiar with the 17 details of their relationship. 18 Q. Prior to '95, you were in the 19 department of rheumatology at University 20 Hospitals? 21 A. Correct. 22 Q. An employee of University Hospitals? 23 A. Correct. 24 Q. Again, since I don't have the benefit 25 of your CV right now, have you done any</p>	<p>Page 12</p> <p>1 Q. This is the first time your 2 deposition has been taken in a medical 3 negligence case, as you told me a moment ago. 4 Have you ever been named as a party 5 in a medical negligence case before this? 6 A. No. 7 Q. You remember Mrs. Pultz, don't you? 8 A. Yes. 9 Q. Do you remember Mr. Pultz? 10 A. Yes. 11 Q. Did you meet any of the family, the 12 children? 13 A. The daughter. 14 Q. Which daughter? 15 A. I am blanking on her name. Her last 16 name is different. I can't remember what her 17 name is offhand. 18 Q. Did you meet her in the context of 19 physician/patient relationship or otherwise? 20 A. I believe I have seen her as a 21 patient. 22 MS. HENRY: Objection. 23 MR. MISHKIND: I'm not going to ask 24 about the particulars. 25 Q. But was there a physician/patient</p>

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1 relationship?
2 A. I don't recall for sure.
3 Q. You believe that that may be how you
4 met her?
5 A. Yes. She would accompany her mother
6 to visits, too.
7 Q. What about Mr. Pultz, did you have a
8 physician/patient relationship with him?
9 A. Again, I believe so.
10 Q. Did you have any contact with
11 Mr. Pultz or Mrs. Pultz outside of the office
12 setting? Did you see them socially?
13 A. No.
14 Q. You knew nothing about their personal
15 lives outside of what he or she may have told
16 you when they were in to see you; is that
17 correct?
18 A. Correct.
19 Q. Did you have occasion to see
20 Mrs. Pultz at any time while she was a patient
21 at any local hospitals?
22 A. No.
23 Q. Did you ever admit her to a hospital?
24 A. No.
25 Q. I'm going to jump way ahead for a

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1 moment and then come back and talk about your
2 care. Just so I don't confuse you, I'm telling
3 you where I'm going right now.
4 In your record, there is an
5 indication on October 26th, I believe, 1999 that
6 you spoke to Mr. Pultz. This is after you had
7 received a call from, I believe, the
8 daughter-in-law --
9 A. Son.
10 Q. -- from the son-in-law that
11 Mrs. Pultz had died; true?
12 A. Correct.
13 Q. Do you remember that conversation?
14 A. Not really. I remember having a
15 conversation. I don't remember any of the
16 details.
17 Q. Do you remember anything about the
18 conversation, even though you don't remember
19 details, do you remember any of the generalities
20 of what Mr. Pultz told you or what you said to
21 him?
22 A. No.
23 Q. Do you have any recollection as to
24 how long that conversation lasted?
25 A. No, I don't.

Page 15

1 Q. This was on the phone; correct?
2 A. Yes.
3 Q. Did you initiate the call to him or
4 did Mr. Pultz, to your knowledge, call you?
5 A. I initiated the call because of the
6 call that had come in before, and I believe it
7 was to -- there is no phone number here, so I
8 just called the family.
9 Q. Was it essentially to extend your
10 condolences?
11 A. That's correct.
12 Q. Even though you don't remember the
13 specifics or the generalities of the
14 conversation, do you have reason to believe that
15 you said anything in particular, other than I
16 extend my condolences?
17 A. No.
18 Q. Did you make any notes at all of that
19 conversation?
20 A. Just what's in the chart.
21 Q. Are there any notes at all of any of
22 the events that took place while you were
23 treating Mrs. Pultz that are not reflected in
24 actual office entries that are part of your
25 chart?

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1 A. No.
2 Q. You have had a chance to look back
3 over your records; correct?
4 A. Yes.
5 Q. Have you reviewed any other records
6 other than what's contained within your chart?
7 A. No.
8 Q. So you have not seen the actual
9 records for the admission for Mrs. Pultz when
10 she was admitted on October 20th to Southwest;
11 is that true?
12 A. Correct, I did not review those
13 records.
14 Q. There is an emergency room doctor --
15 and we will be talking about the follow up after
16 that September 25, 1999 trip to the emergency
17 room at Southwest -- but the emergency room
18 doctor's name is Dr. Allen Jones. Have you ever
19 met Dr. Jones?
20 A. I may have. I have no personal
21 relationship with him. I may have met him, but
22 I don't physically go to the emergency room very
23 often.
24 Q. What causes you to say that you may
25 have met him?

4 (Pages 13 to 16)

Page 17

1 A. I do sometimes go to the emergency
2 room and I may have met him in passing, but that
3 would be it.
4 Q. Have you had occasion at any time
5 since September 25, 1999 to talk to Dr. Jones
6 about Mrs. Pultz?
7 A. No.
8 Q. For example, I will be even more
9 specific, in fairness to you. Following the
10 arrival of Mrs. Pultz at the emergency room on
11 September 25, 1999, did Dr. Jones or anyone from
12 the emergency room call you on that date when
13 she was present in the emergency room?
14 A. No.
15 Q. Did anyone from the emergency room,
16 to your knowledge, call your office at any time
17 after September 25, 1999, before Mrs. Pultz was
18 seen by you on October 5, 1999?
19 A. No.
20 Q. When did you first become aware of
21 the fact that Mrs. Pultz had been seen in the
22 emergency room on September 25, 1999?
23 A. The first I would have known would
24 have been when I got the copy of the blood count
25 done on October 1st.

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1 Q. Now, didn't you actually receive a
2 copy of the KUB from the emergency room before
3 you received the blood count?
4 A. Yes, there is a KUB report on
5 September 27th.
6 Q. That was received by you on September
7 27th; correct?
8 A. Correct.
9 Q. So what you said a moment ago was
10 actually not entirely accurate; correct?
11 A. I guess that's correct.
12 Q. You received the blood work on
13 October 1, but you received the results of the
14 KUB on September 27th; true?
15 A. True.
16 Q. Can you explain to me how it is that
17 you -- this may be obvious -- how it is that you
18 received the interpretation from the KUB from
19 the emergency room or why it is that you
20 received it?
21 A. It's routine. On essentially any of
22 my patients that go to the emergency room that
23 identify me as their doctor, they will send a
24 faxed copy of the x-ray interpretation.
25 Q. And what is your routine in your

Page 19

1 office when you receive a faxed copy of any --
2 is it just of x-ray results?
3 A. X-rays and labs. We may see that,
4 too.
5 Q. Do you routinely receive on patients
6 that are yours, that are recorded as yours at
7 the emergency room, do you receive copies of
8 both the x-rays and the labs?
9 A. Yes.
10 Q. So on the 27th, which is two days
11 after her emergency room visit, you received a
12 copy of the KUB, x-ray interpretation; correct?
13 A. Correct.
14 Q. But you did not receive copies of the
15 labs?
16 A. Correct.
17 Q. What did you do on September 27th
18 when you received the KUB result?
19 A. I reviewed them, and seeing that
20 there was no abnormalities and knowing that she
21 had been seen by a physician, I took no further
22 action.
23 Q. How did you know that she had been
24 seen by a physician?
25 A. Because it's an emergency room x-ray.

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1 Q. In fact, Dr. Jones' name is written
2 on there; correct?
3 A. Correct.
4 Q. When you received that result from
5 Dr. Jones or from the emergency room, did you
6 review it the same day that it came over?
7 A. I don't have that document.
8 Q. Is your normal custom and practice
9 when you receive a fax of results of labs or
10 results of x-rays on patients of yours that have
11 been seen in the emergency room, that you review
12 it the same day it comes over?
13 A. I try to review it the same day for
14 labs that I haven't ordered. I may not review
15 the same day, but generally I do.
16 Q. Do you have any reason to believe
17 that the September 27th fax to you from
18 Dr. Jones was not reviewed by you on the 27th?
19 A. I have no reason to believe.
20 Q. I guess what I'm asking, might you
21 have been out of town on the 27th or the 28th?
22 A. Not that I recall.
23 Q. Fair enough.
24 I was asking you a moment ago what
25 information you had received, what information

5 (Pages 17 to 20)

<p style="text-align: right;">Page 21</p> <p>1 you had reviewed. You have not seen any, for 2 example, of Dr. Mahajan 's office chart, have 3 you? 4 A. No. 5 Q. You know Dr. Mahajan, don't you? 6 A. Yes. 7 Q. And he is a gastroenterologist? 8 A. Correct. 9 Q. Is he the gastroenterologist of 10 choice to you when you refer a patient for 11 consultation? 12 A. No. 13 Q. Do you have a list of 14 gastroenterologists that you select from? 15 A. No, we don't have a list. 16 Q. In this particular case, we know that 17 on October 14 there is a reference to a referral 18 to Dr. Mahajan. Can you tell me how it is that 19 you chose Dr. Mahajan in this case for the 20 referral? 21 A. She had previously seen Dr. Mahajan. 22 Q. Let's assume that she had not seen 23 Dr. Mahajan before, but you felt that she needed 24 to be seen by a gastroenterologist -- and I'll 25 ask you in a moment to tell me why you felt she</p>	<p style="text-align: right;">Page 23</p> <p>1 A. I have seen him at the hospital. 2 Q. Have you had occasion to talk to 3 Dr. Mahajan since Mrs. Pultz died about 4 Mrs. Pultz? 5 A. No. 6 Q. Did Dr. Mahajan contact you on 7 October 19th, 1999, either prior to or while 8 Mrs. Pultz was present at his office? 9 A. No. 10 Q. Did you have any contact with 11 Dr. Mahajan between October 14th and October 12 19th when she was seen? 13 A. No. 14 Q. Explain to me the process that you 15 follow in your office when a referral is made as 16 it was on October 14 to Dr. Mahajan, what 17 logistically takes place to get the patient to 18 the referral. 19 A. It depends on the circumstance. 20 Since she had a preexisting relationship with 21 Dr. Mahajan, I didn't write what I did, but I 22 presume I told her that she needed to contact 23 Dr. Mahajan. 24 Q. Your record doesn't reflect how soon 25 you wanted her to be seen by Dr. Mahajan, does</p>
<p style="text-align: right;">Page 22</p> <p>1 needed to be seen -- but how would you have gone 2 about selecting the GI consultant? 3 A. That wasn't the case here. She had 4 seen a gastroenterologist. But if she hadn't 5 previously seen a gastroenterologist, we have a 6 number of gastroenterologists that we routinely 7 refer to based on our past experiences with 8 them. 9 Q. Do you maintain some type of a 10 consult list? 11 A. No. 12 Q. Who else besides Dr. Mahajan do you 13 routinely refer patients to? 14 A. There are a couple other 15 gastroenterologists: Dr. Modic and Dr. Pola and 16 Dr. Davessar we refer to probably more than any 17 other. 18 Q. Who would you have referred her to in 19 this case, absent that relationship, is 20 impossible for you to tell me? 21 A. Correct. 22 Q. Have you had occasion to talk to 23 Dr. Mahajan since Mrs. Pultz died? 24 A. Yes. 25 Q. When did you talk with him?</p>	<p style="text-align: right;">Page 24</p> <p>1 it? 2 A. No. 3 Q. It doesn't reflect any urgency of her 4 scheduling the appointment with Dr. Mahajan, 5 does it? 6 A. No. 7 Q. In terms of providing Dr. Mahajan 8 with any information to assist him in his 9 consultation, your records don't reflect that 10 you forwarded to him copies of any of the labs 11 that you had drawn or the labs that you had 12 received from the emergency room; is that 13 correct? 14 A. Correct. 15 Q. After Mrs. Pultz was seen on the 16 19th, but before she was admitted to the 17 hospital on the 20th, which was sometime around 18 4:00 o'clock in the afternoon, did you have any 19 communication in any way, either by phone, or in 20 person, with Dr. Mahajan about Mrs. Pultz? 21 A. No. 22 Q. Do your records reflect that you had 23 any communication from either Mr. or Mrs. Pultz 24 after Mrs. Pultz was seen by Dr. Mahajan on the 25 19th?</p>

6 (Pages 21 to 24)

Page 25

1 A. No.
2 Q. So after the referral -- correct me
3 if I am wrong -- after the referral that was
4 made from the visit on the 14th, is it fair to
5 say that the next contact that you had with
6 anyone from the Pultz family would be when you
7 received the telephone call from the family
8 telling you about her demise?
9 A. That's correct.
10 Q. I'm not doing this intentionally, but
11 I am jumping around a bit. If I am confusing
12 you in any respect, tell me, because it's not my
13 intent.
14 In preparation for today's
15 deposition, have you reviewed any medical
16 literature at all?
17 A. No.
18 Q. Do you do any teaching?
19 A. Yes, I do.
20 Q. Where?
21 A. I do it in my office. Medical
22 students from Case or residents from University
23 Hospitals will sometimes come to the office.
24 Q. Do you currently have medical
25 students that rotate through your office?

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1 Q. Were you teaching at the medical
2 school also at that time?
3 A. Yes.
4 Q. Did you have a particular course that
5 you were teaching?
6 A. No. They have a musculoskeletal
7 segment and I taught that. That's when I gave
8 that one lecture.
9 Q. Other than the one lecture that you
10 just referenced, have you done any teaching,
11 either on a regular or guest basis, at any time
12 during your career?
13 A. No, with the exception of medical
14 students that come to the office that I had
15 rotate with me when I was faculty.
16 Q. What percentage of your practice,
17 doctor, is rheumatologically based?
18 A. Probably 50 percent.
19 Q. Do you have any other area in
20 internal medicine that you consider yourself to
21 have a subinterest in, aside from rheumatology?
22 A. No.
23 Q. A general internal medicine practice,
24 aside from the rheumatologically end?
25 A. Yes.

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1 A. I have one now for the first time in
2 many years.
3 Q. Do you have residents also that
4 rotate through your office?
5 A. They are no longer rotating residents
6 in offices, in peripheral offices.
7 Q. Have you taught at the medical
8 school?
9 A. Yes.
10 Q. Are you currently teaching at the
11 medical school?
12 A. No.
13 Q. What have you taught?
14 A. I gave a lecture on soft tissue pain
15 syndromes.
16 Q. When was that, sir?
17 A. It would have been in the years that
18 I was at University full time.
19 Q. Between '91 and '95?
20 A. Correct.
21 Q. When you were full time at
22 University, were you a full-time clinical
23 faculty member or were you also an academic?
24 A. There is not really a
25 differentiation. I was primarily a clinical.

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1 Q. So you see patients with diabetes,
2 you see patients with cardiovascular diseases
3 and the whole gamut; true?
4 A. That's correct.
5 Q. What journals do you subscribe to?
6 A. We subscribe to a number of journals
7 in the office that we rotate between us. New
8 England Journal, Annals of Internal Medicine,
9 American Journal of Internal Medicine,
10 Arthritis and Rheumatism. There is Current
11 Opinion in Rheumatology, Archives of Internal
12 Medicine, and Clinics in Rheumatic Diseases.
13 Q. Did you review any articles at all in
14 any of those journals in preparation for today's
15 deposition?
16 A. No.
17 Q. Have you reviewed any articles in any
18 of those journals at any time since the lawsuit
19 has been filed?
20 MS. HENRY: Other than his routine
21 review?
22 MR. MISHKIND: Sure.
23 Q. Other than your routine review with
24 Mrs. Pultz' case in mind.
25 A. No.

7 (Pages 25 to 28)

<p style="text-align: right;">Page 29</p> <p>1 Q. So as you sit here now, there are no 2 articles from any of those journals that you can 3 cite me to that support the care and treatment 4 that you provided to Mrs. Pultz; true? 5 A. True. 6 Q. What about medical textbooks, 7 internal medicine books? I presume you own 8 Harrison's? 9 A. Yes. 10 Q. Are there any other internal medicine 11 texts that you own besides Harrison's? 12 A. I have a large number of internal 13 medicine texts. 14 Q. Putting aside the rheumatological 15 texts, Principles of Internal Medicine, other 16 than Harrison's text, are there others that you 17 own, as well? 18 A. Yes. I have a number that more 19 specialize, labs diagnosis, all kinds of various 20 texts, pharmacological texts. 21 Q. Which lab texts do you own? 22 A. I have numerous ones. Lexicom has a 23 lab diagnosis text. 24 Q. Which pharmacological texts do you 25 own?</p>	<p style="text-align: right;">Page 31</p> <p>1 read the chapters on rheumatoid arthritis there 2 because I use the subspecialty books. 3 Q. Which subspecialty books do you look 4 to for reliable information on rheumatological 5 diseases and rheumatoid arthritis, in 6 particular? 7 A. On both rheumatoid arthritis, 8 rheumatological disease and internal medicine, 9 we always consult a broad variety; looking for 10 updated stuff on the Internet, new articles, you 11 know, a variety of texts. 12 The text that I probably use the most 13 would be Kelly's Textbook of Rheumatology. 14 Q. Suffice it to say that you did not 15 review Kelly's for purposes of today's 16 deposition? 17 A. That's correct. 18 Q. You did not review it in connection 19 with this case? 20 A. That's correct. 21 Q. Are there any journal articles or 22 texts that you deem to be, aside from what we 23 already talked about, deem to be authoritative 24 in the area of internal medicine? 25 A. I can't think of any others. I mean,</p>
<p style="text-align: right;">Page 30</p> <p>1 A. I have the PDR, Goodman and Gellman. 2 I use the Internet base, Hypocrites 3 Pharmacological book. 4 Q. Do you do a lot of research on the 5 Internet? 6 A. Yes. 7 Q. Have you done any research on the 8 Internet in connection with any aspect of 9 Mrs. Pultz' case? 10 A. No. 11 Q. Do you consider Harrison's to be a 12 reliable source of information in the area of 13 internal medicine? 14 A. I think it's a reliable source of 15 information. I don't think it's a definitive 16 source of all opinions. 17 Q. You refer to it from time to time? 18 A. Yes. 19 Q. And I presume that there is 20 information in there on the treatment of anemia, 21 diagnosis and treatment of anemia? 22 A. I would imagine. 23 Q. And treatment of patients with 24 rheumatoid arthritis, as well? 25 A. Yes. I don't believe I have ever</p>	<p style="text-align: right;">Page 32</p> <p>1 there is a broad variety of texts and they all 2 have their pros and cons. 3 Q. And the same question in terms of any 4 journals, journal articles or texts that you 5 deem to be authoritative, other than what we 6 have talked about, in the area of 7 rheumatological diseases? 8 A. The same answer. 9 Q. Very good. 10 Have you had an opportunity to talk 11 with any physicians -- we have already talked 12 about Dr. Mahajan for a moment -- as it relates 13 to your care and treatment of Mrs. Pultz since 14 her death? And by that I mean to just review 15 and go over what you did or what you didn't do. 16 A. No. 17 Q. Before 1999, you had occasion to see 18 Mrs. Pultz; is that true? 19 A. I believe that's correct, yes. 20 Q. Tell me -- because I'm not going to 21 go through all of your treatment -- I want to 22 get sort of a global idea in terms of when your 23 relationship as a physician with Mrs. Pultz 24 began prior to 1999, and then I'm going to ask 25 you a few questions about your treatment of her.</p>

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1 A. It looks like my first office visit
2 was July 15th, 1996, and she had been seeing
3 another rheumatologist who left town.
4 Q. Who was that doctor?
5 A. Dr. Baladori.
6 Q. Was he with the same group that you
7 were affiliated with?
8 A. No.
9 Q. You then saw her periodically from
10 '96 up through 1999?
11 A. That's correct.
12 Q. Was Mrs. Pultz compliant with your
13 medical care?
14 A. She took the medications, as best I
15 could tell. She did not routinely get the blood
16 work as I had ordered. And I would frequently
17 request that she go for blood work, because
18 given the treatment that she was on, there was
19 routine blood testing.
20 Q. One of the treatments that she was on
21 was methotrexate?
22 A. Correct.
23 Q. And there are certain complications
24 associated with long-term use of methotrexate;
25 true?

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1 A. That's correct.
2 Q. What are some of the common concerns
3 that you as a rheumatologist or a subspecialist
4 in the area of rheumatology have when a patient
5 is on methotrexate on a long-term basis?
6 A. My major concern is liver
7 abnormalities and cirrhosis of the liver.
8 Q. Were one of the tests that you were
9 sending her for to check the liver enzymes?
10 A. That's correct.
11 Q. You would have to prod her to have
12 the tests from time to time?
13 A. That's correct.
14 Q. She would eventually get them;
15 correct?
16 A. Not within the time frame that I
17 recommended.
18 Q. Did her failure to get them in the
19 time period that you recommended, did that, in
20 your opinion, adversely affect her overall
21 condition?
22 A. I'm not sure I understand the
23 question.
24 Q. The fact that she didn't get the test
25 done within the period of time that you wanted

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1 them done, she eventually got the tests done;
2 correct?
3 A. Yes.
4 Q. Did she harm herself? In other
5 words, when you got the results, did it show
6 that she had had some type of injury or harm;
7 that had she gotten the tests earlier, you would
8 have treated her differently?
9 A. No. Her results were always normal,
10 but the abnormalities are kind of up and down,
11 so that frequent monitoring is recommended,
12 because you can catch an abnormality that might
13 not be seen with less frequent monitoring.
14 Q. I understand that and appreciate
15 that, but even though she may not have followed
16 your dictates all the time in terms of getting
17 the tests done, when she eventually got the
18 tests done, she didn't have any abnormalities
19 that you would have treated any differently;
20 true?
21 A. That's correct.
22 Q. How often from an internal medicine
23 standpoint do you understand liver biopsies to
24 be required in a patient that's on long-term
25 methotrexate?

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1 A. It depends on what the diagnosis is.
2 With psoriatic arthritis, we may do a biopsy
3 every one and a half to three years. We are
4 kind of getting away from even that. In
5 rheumatoid arthritis, we used to do biopsies
6 regularly and got away from a routine liver
7 biopsy.
8 Q. Tell me, with her rheumatoid
9 arthritis, first, when did she last have or when
10 was her last liver biopsy?
11 A. To my knowledge, the only liver
12 biopsy I have the results of was in November of
13 '93.
14 Q. Is it fair to say that from November
15 of '93 up through October of '99, you did not
16 order any additional liver biopsies?
17 A. That's correct.
18 Q. Are there any guidelines or standards
19 back during that period of time that you
20 followed in terms of monitoring a patient that
21 was on methotrexate, aside from checking the
22 liver enzymes?
23 A. As I said before, every one and a
24 half to three years, depending on the dose
25 amount of methotrexate.

9 (Pages 33 to 36)

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1 Q. Liver biopsies would be indicated?
2 A. There is a lot of disagreement on
3 when and if liver biopsies should be done on a
4 routine basis.
5 Q. And in fairness to you, doctor, I'm
6 talking about the period of time, not 2001 or
7 2000, I'm talking between '93 and '99, did you
8 have certain guidelines or standards that you
9 followed during that period of time such that
10 you would order on a rheumatoid arthritis
11 patient a liver biopsy to be done follow up
12 after '93 at a particular point in time?
13 A. No. In rheumatoid arthritis, since I
14 finished my training, I have not routinely done
15 liver biopsies on people with methotrexate.
16 Q. Does methotrexate as a side effect
17 have any GI, other than liver complications,
18 does it increase the chance of gastritis or
19 gastric ulcers?
20 A. I am not aware of that to be a
21 clinical problem. I have certainly never had a
22 patient with that. Methotrexate frequently
23 causes stomach upset and sometimes we have to
24 change the mode of administration based on that,
25 but in terms of increasing the frequency of

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1 when she would see you -- let's take the period
2 of time from '93 up through -- before we get
3 into October of '99, did she voice many
4 complaints of pain so long as she was on the
5 methotrexate, the ketoprofen, as well as the
6 Darvocet?
7 A. I don't recall in a lot of detail.
8 What my recollection is, she had very severe
9 arthritis and had constant pain.
10 Q. Is it fair to say -- and if it isn't,
11 tell me -- that your records do not reflect
12 continuous complaints of pain by the patient
13 when you would see her so long as she was taking
14 her Darvocet?
15 A. I do have a note on April 16th of '99
16 that her left third finger hurts the most, and
17 on July 16th, the note says stable, hurting, but
18 no real change. So I guess the answer to your
19 question is, no, she did have pain despite the
20 Darvocet.
21 Q. You referred to April and July of
22 '99. Had you looked through your records prior
23 to that time period?
24 A. Yes.
25 Q. Before April of '99, is it fair to

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1 ulcer, no.
2 Q. She also was on ketoprofen?
3 A. Correct.
4 Q. Which is a nonsteroidal
5 antiinflammatory?
6 A. That's correct.
7 Q. She was a pretty full dose of
8 ketoprofen?
9 A. That's correct.
10 Q. And ketoprofen has side effects of
11 causing gastritis and gastric ulcers; correct?
12 A. That's correct.
13 Q. She was on Darvocet, was it?
14 A. Yes.
15 Q. And what was the reason that she was
16 on Darvocet?
17 A. For pain.
18 Q. In reviewing your records, and
19 correct me if I am wrong, but it appears as if
20 with the use of Darvocet that controlled the
21 pain associated with her rheumatoid arthritis
22 pretty well?
23 A. It's hard for me to say. She didn't
24 have any stronger medications for pain.
25 Q. Did she voice many complaints of pain

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1 say that she did not have consistent or regular
2 complaints of pain to you on the Darvocet?
3 A. No, I think she probably did have
4 consistent and regular pain.
5 Q. It's just not noted in the records?
6 A. Correct.
7 Q. Just so we can move on, whether she
8 did or didn't prior to April of '99, we can
9 agree that there is nothing recorded about her
10 complaining of any particular area hurting her;
11 true?
12 A. That's correct. I don't routinely
13 prescribe medicines like Darvocet, so if
14 somebody is requiring that, they are still
15 having pain.
16 Q. But I guess maybe I'm not being
17 clear. With the use of the Darvocet, though,
18 she wasn't having what I would refer to as
19 breakthrough pain, if you will. In other words,
20 the Darvocet seemed to be controlling the pain,
21 at least from a standpoint of her subjectively
22 complaining to you in '94, '95, '96, et cetera;
23 is that true?
24 A. I don't really think that's true. I
25 didn't record that she was having breakthrough

10 (Pages 37 to 40)

<p>Page 41</p> <p>1 pain. 2 Q. The only time you can say as a fact 3 that she had breakthrough pain was this April 4 and July of '99 that you just referenced? 5 A. That's correct. 6 Q. Is there a reason in Mrs. Pultz' case 7 that you did not order a liver biopsy at any 8 time between '93 and when she died? 9 A. At that point in time I was not 10 routinely ordering liver biopsies in patients 11 with rheumatoid arthritis. 12 Q. Did you then purposely not order a 13 liver biopsy on her? 14 A. That's correct. 15 Q. As opposed to an oversight? 16 A. Correct. 17 Q. Did you and Mrs. Pultz get along 18 okay? 19 A. Sure. 20 Q. You had seen her for a long period of 21 time, so as a physician, you developed sort of a 22 relationship with the patient. Did you have a 23 good physician/patient relationship with her? 24 A. Yes. 25 Q. Did she share with you events that</p>	<p>Page 43</p> <p>1 not enough are produced and that causes anemia. 2 Q. What causes iron deficiency anemia? 3 A. A large number of things can cause 4 it. Blood loss, menstrual blood loss, 5 gastrointestinal blood loss, colon cancer, which 6 causes gastrointestinal blood loss, frequent 7 blood donation, malabsorption of iron, or a diet 8 deficient in iron. 9 Q. Are there classic findings, clinical 10 findings that you see in a patient that has iron 11 deficiency anemia? 12 A. On physical examination? 13 Q. Yes, sir. 14 A. No. I mean, anemia sometimes has 15 some very characteristic findings, but it's not 16 specific to iron deficiency. 17 Q. What about lab results? What are the 18 classic findings that you expect to see in iron 19 deficiency anemia? 20 A. Generally we go by measurement of the 21 serum iron, iron binding capacity, ferritin 22 levels and reticulocyte counts. 23 Q. Is it fair to say that in Mrs. Pultz' 24 case that prior to 1999 she did not experience 25 anemia?</p>
<p>Page 42</p> <p>1 were taking place with her family or with her 2 husband, anniversaries or birthdays or things of 3 that nature? 4 A. I don't recall specifically, but 5 that's routine. 6 Q. Do you remember anything that she 7 shared with you about her family life or her 8 relationship with her husband that stands out in 9 your mind? 10 A. Nothing specifically. 11 Q. Anything that she shared with you 12 that was negative or derogatory or bad that she 13 shared with you about her husband or her family? 14 A. No. 15 Q. Since the conversation with Mr. Pultz 16 on the 26th of October, up to the present date, 17 have you had any occasion to run into him in 18 town anywhere and see him? 19 A. No. 20 Q. Any communication by phone with him 21 since October 26th? 22 A. No. 23 Q. What is iron deficiency anemia? 24 A. Iron is a necessary building block 25 for red blood cells, so if it's deficient, then</p>	<p>Page 44</p> <p>1 A. It looks like in the time that I saw 2 her she was not anemic. Whether she was 3 previously to that, I don't know. 4 Q. Do you know what percentage of 5 patients develop a gastric ulcer perforate? 6 A. No, I don't. 7 Q. Do you know whether it's more common 8 to have a gastric ulcer bleed as opposed to 9 gastric ulcer perforate? 10 A. I'm not sure which is more common. 11 Q. Have you in your practice been called 12 upon to manage gastric ulcers? 13 A. Yes. 14 Q. First, how do you go about diagnosing 15 a gastric ulcer? 16 A. Usually a gastric ulcer is diagnosed 17 by an endoscopy. 18 Q. Do you do endoscopic procedures? 19 A. No. 20 Q. That would be referral to a GI? 21 A. Correct. 22 Q. Are there other modalities that you 23 use in your practice to diagnose gastric ulcers? 24 A. We do an upper GI. I don't routinely 25 order them now and haven't for a number of</p>

<p>Page 45</p> <p>1 years. 2 Q. Why is that? 3 A. Well, for gastric ulcer, sometimes 4 they can be caused by cancer and so biopsy is 5 important. So we generally just go straight to 6 that, because that can be done at the time of 7 the endoscopy. 8 Q. Other than the endoscopy or upper GI, 9 any other modalities that you use to diagnose 10 ulcers? 11 A. That would be the primary. 12 Q. How do you treat gastric ulcers? 13 A. Usually with an acid blocking agent. 14 Q. When did you see Mrs. Pultz before 15 September 25, '99? When was the last time you 16 had seen her before? 17 A. August 6th of '99. 18 Q. And before the August date, when had 19 you seen her? 20 A. July 28th of '99. 21 Q. Before July? 22 A. July 16th of '99. 23 Q. Before then? 24 A. June 4th of '99. 25 Q. And before that?</p>	<p>Page 47</p> <p>1 well; correct? 2 A. Correct. 3 Q. What was Mrs. Pultz seen for on the 4 visits that you just referenced? Without you 5 going into all of the detail, can you sort of 6 characterize the visits? 7 A. This is from April, including the 8 April visit? 9 Q. Yes. 10 A. The April visit was for follow up of 11 her diabetes. I will give you my diagnoses. 12 Rheumatoid arthritis, adult onset diabetes with 13 proteinuria, bronchitis and hyperlipidemia. 14 That was April. 15 June 4, acute bronchitis and adult 16 onset of diabetes. 17 July 16th, adult onset diabetes, 18 rheumatoid arthritis, elevated lipid and 19 hypertension. 20 And on July 28th, sinusitis and 21 rheumatoid arthritis. 22 Do you want the August one, too? 23 Q. Please. 24 A. August was a cough, which I queried 25 might be caused by possible ace inhibition,</p>
<p>Page 46</p> <p>1 A. April 16th. 2 Q. Is that the date that you had the 3 result from the labs? 4 A. Correct. 5 Q. On the visits that you just mentioned 6 to me, in April, June, July, August, did 7 Mrs. Pultz have any abdominal complaints on any 8 of those visits? 9 MR. ROSSI: What was the date? 10 Through August 6th? 11 MR. MISHKIND: Through whatever the 12 last date was that he saw Mrs. Pultz before we 13 get to the September 25, '99 visit. 14 A. So can you repeat the question? 15 Q. Any complaints in any of those visits 16 between April and the last visit before her 17 emergency room visit where she had any abdominal 18 complaints? 19 A. No. 20 Q. The labs that were drawn on March 21 26th and reported to you with regard to her 22 hemoglobin and hematocrit were normal; is that 23 correct? 24 A. That's correct. 25 Q. And her platelet count was normal, as</p>	<p>Page 48</p> <p>1 which is a blood pressure medication that 2 frequently can cause a cough. 3 Q. When you would do labs on her, you 4 would also check her sedimentation rate; 5 correct? 6 A. Sometimes. 7 Q. Do all rheumatological, rheumatoid 8 arthritis patients have an elevation in their 9 ESR? 10 A. No. 11 Q. Is it more common to have an 12 elevation in the sed rate in a rheumatoid 13 arthritis patient than you or I who presumably 14 don't have rheumatoid arthritis? 15 A. Yes. 16 Q. But finding a normal ESR in a 17 rheumatoid arthritis patient such as Mrs. Pultz 18 would not be uncommon; true? 19 A. That's correct. 20 Q. In fact, her sed rate usually was 21 within normal limits, was it not, when you would 22 see her? 23 A. I don't recall. I may have missed it 24 in this review, but I don't see it. 25 Q. In fairness to you, there is a sed</p>

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1 rate in '97 that I'm looking at. Would a 30 sed
2 rate be within normal limits?
3 A. It's on the upper limit of normal.
4 Q. But still nothing that you would
5 consider to be abnormal; true?
6 A. Not in a patient with rheumatoid
7 arthritis.
8 Q. Her hemoglobin and her hematocrit in
9 March -- her hemoglobin was 12.5 in March;
10 correct?
11 A. That's correct.
12 Q. And the hematocrit was 38.1?
13 A. That's correct.
14 Q. Entirely normal; correct?
15 A. That's correct.
16 Q. Now, when you received the September
17 27th, '99 results of the KUB from the emergency
18 room, did this record come with anything else
19 other than the one page?
20 A. To the best of my knowledge, this is
21 all I received. It would be in the chart.
22 Q. It would be in your chart?
23 A. Correct.
24 Q. Again, the only reason -- I'm just
25 looking at the fax date. Did this record

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1 know, numerous things.
2 Q. Based upon what you knew on September
3 27th, why did she go to the emergency room on
4 September 25? Could you tell?
5 A. I couldn't tell.
6 Q. Dr. Jones, the emergency room doctor,
7 didn't contact you on September 27th, did he?
8 A. No, he did not.
9 Q. He didn't contact you when she was
10 seen in the emergency room on September 25, did
11 he?
12 A. No.
13 Q. Now, you received another document
14 from the emergency room on October 1; correct?
15 A. Correct.
16 Q. Can you tell me why it is that you
17 received a fax on October 1 from the emergency
18 room?
19 A. Generally the emergency room does
20 like to keep us up to date on our patients, so
21 when they are in, they will send us a copy of
22 the lab results.
23 Q. Do you know why these labs were not
24 provided to you before October 1, 1999?
25 A. No, I don't.

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1 provide you with any information as to why it
2 was that Mrs. Pultz had been seen in the
3 emergency room on September 27th?
4 A. I don't see any indication on here
5 why it was ordered. It says ER, emergency room.
6 Q. However, this doesn't tell you what
7 else was done, if anything, for the patient or
8 what her complaints were; correct?
9 A. Correct.
10 Q. This doesn't tell you whether she did
11 or did not have any lab work?
12 A. That's correct.
13 Q. Or whether the lab work was normal or
14 abnormal?
15 A. Correct.
16 Q. Normally when you receive information
17 from an emergency room on a patient of yours,
18 you get more than just a diagnostic
19 interpretation; correct?
20 A. Sometimes we do, sometimes we don't.
21 Q. Well, when you saw this, did you
22 question at all in your mind why it was that
23 Mrs. Pultz had been seen in the emergency room?
24 A. No. My patients go to the emergency
25 room for many different reasons; bronchitis, you

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1 Q. Now, September 25 was a Saturday and
2 October 1 was, what, six days later. If you had
3 received these labs prior to October 1, would
4 you have contacted the patient immediately?
5 A. Yes.
6 Q. Based upon these labs, follow up
7 needed to be take place; correct?
8 A. That's correct.
9 Q. And if Dr. Jones had contacted you
10 from the emergency room on September 25,
11 indicating to you what her hemoglobin and her
12 hematocrit was, as well as the elevation in her
13 platelets, what would you have wanted done at
14 that point?
15 A. Well, he didn't do that, so it's
16 difficult to say. I would probably ask for
17 further studies, try to get a little more
18 clinical information.
19 Q. She was diagnosed with a urinary
20 tract infection; correct?
21 A. I don't have any information on that.
22 Q. I believe that's what the diagnosis
23 was. Is it unusual to be diagnosed with a
24 urinary tract infection yet have a normal WBC?
25 A. It's very common.

13 (Pages 49 to 52)

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1 Q. It's common to have a normal WBC?
2 A. For uncomplicated urinary tract
3 infection, that would be normal.
4 Q. Would you have liked to have been
5 contacted on September 25, 1999?
6 A. I think if something significant
7 happens with my patients, I like to be
8 contacted, but I don't know what the clinical
9 circumstances were.
10 Q. Was there any reason why you could
11 not have been contacted September 25, 1999?
12 A. No.
13 Q. Now, you saw Mr. Pultz on, I believe,
14 or Mr. Pultz came to the office on September, I
15 think it was, 29th to pick up a prescription?
16 A. I have no recollection.
17 Q. Take a look at your prescription pads
18 or the notes, just to confirm for the record
19 that he apparently called in the office and you
20 okayed something.
21 A. Oh, I thought you were talking about
22 for himself.
23 Q. No, I'm talking about for
24 Mrs. Pultz.
25 A. What date was that?

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1 Q. I believe it was September 29th. I
2 may be off.
3 A. Yes.
4 Q. Was it September 29th?
5 A. Yes, September 29th.
6 Q. And what was it that Mr. Pultz was
7 coming into the office for?
8 A. Routine medication refill.
9 Q. Did you see him when he came in to
10 get this medication refill?
11 A. It's very unlikely that I saw him.
12 Q. Given the fact that you had the
13 results from the KUB from the 27th, did you
14 question Mr. Pultz about his wife's condition
15 when he came in to pick up the prescription?
16 A. As I said, it's very unlikely that I
17 saw him. Had I seen him, which I didn't, there
18 was nothing there that would have made me
19 particularly concerned.
20 Q. Had you received the lab results at
21 the same time you received the KUB results,
22 would you have acted differently?
23 A. I probably would have, but I didn't
24 have those results at the time.
25 Q. I understand that. And if you had

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1 had the same results that you got on October 1,
2 if you had them on September 27th, and then
3 Mr. Pultz came in on September 29th, what would
4 you have done? Either you personally, or what
5 would you have caused your office to do?
6 A. Well, my office wouldn't know that.
7 If I would have had the results, which I didn't,
8 my office wouldn't know, if he came in for
9 another reason, to grab him and do anything
10 else. Had I seen him myself, I would have
11 recommended that she come in.
12 Q. Would it have been inappropriate for
13 you to have seen those results, the results that
14 you received on October 1, and take no action?
15 MS. HENRY: Objection. I guess I
16 don't understand.
17 Q. Was my question confusing?
18 A. Yes.
19 Q. Fair enough. Every once and a while
20 I do that. I just want to make sure Ms. Henry
21 is listening to me, so I throw that in just for
22 flavor.
23 We know, according to your testimony,
24 that you received the labs on October 1 from the
25 emergency room visit on September 25th.

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1 My question to you is, if you had
2 received those labs, lab results at any time
3 prior to October 1, would it have been
4 substandard on your part to have done nothing by
5 way of further intervention with regard to the
6 patient?
7 MR. AUCIELLO: Objection.
8 MR. MISHKIND: You can answer the
9 question. The objection is for the record.
10 A. Without knowing the circumstances of
11 the clinical situation when she was in the ER, I
12 don't know that I can answer that.
13 Probably no, because I don't know
14 what kind of treatment she may have received in
15 the emergency room at that point.
16 Q. She clearly was demonstrating anemia
17 based upon the labs on September 25th; correct?
18 A. That's correct.
19 Q. And she had never experienced anemia,
20 at least from what you know, when you had seen
21 her; correct?
22 A. That's correct.
23 Q. And this was a fairly pronounced drop
24 in her hemoglobin from what it had been in March
25 of '99; correct?

14 (Pages 53 to 56)

<p>Page 57</p> <p>1 A. That's correct.</p> <p>2 Q. Given the history that you had with</p> <p>3 the patient, and absent any evidence that the</p> <p>4 patient was given any blood on September 25th,</p> <p>5 1999, if you had received the labs sooner than</p> <p>6 October 1, 1999, and taken no action in terms of</p> <p>7 getting ahold of the patient or scheduling her</p> <p>8 to come back in, would that have been below</p> <p>9 accepted standards of care?</p> <p>10 MR. AUCIELLO: Objection.</p> <p>11 A. It's very difficult for me to answer</p> <p>12 that, because I didn't receive the labs, you</p> <p>13 know, so it's difficult to say. And I was not</p> <p>14 aware of what treatment, if any, was given in</p> <p>15 the emergency room.</p> <p>16 Q. I'm asking you to assume that the</p> <p>17 patient was not given any blood in the emergency</p> <p>18 room and had those results. If that information</p> <p>19 had been provided to you sooner than October 1,</p> <p>20 1999, would a reasonable and prudent physician</p> <p>21 have acted upon those results immediately?</p> <p>22 A. I think that's reasonable.</p> <p>23 Q. Now, the elevation in the platelet</p> <p>24 count on September 25, from the September 25</p> <p>25 labs, was 490. That's abnormal, is it not?</p>	<p>Page 59</p> <p>1 basis that you can instruct him not to answer</p> <p>2 that question. With all due respect, your</p> <p>3 objection is noted, but you don't have a basis</p> <p>4 to instruct him not to answer.</p> <p>5 MS. HENRY: Where do you have a basis</p> <p>6 to ask that question when it's not appropriate?</p> <p>7 MR. MISHKIND: Based upon the</p> <p>8 platelet result, he can certainly answer that,</p> <p>9 even though we know that she died. I want to</p> <p>10 know from a medical standpoint what causes the</p> <p>11 platelet level to be 490.</p> <p>12 MS. HENRY: He told you the two</p> <p>13 things that can cause it.</p> <p>14 MR. MISHKIND: In this particular</p> <p>15 patient, even though it is in retrospect, and I</p> <p>16 acknowledge that, what does he believe that 490</p> <p>17 was attributable to?</p> <p>18 MS. HENRY: Go ahead and answer with</p> <p>19 the proviso that it is based on everything that</p> <p>20 you might know about the patient; that she died</p> <p>21 and all that.</p> <p>22 It's not a fair question. You should</p> <p>23 know better.</p> <p>24 MR. MISHKIND: You let me know that</p> <p>25 and you have reprimanded me, but nonetheless the</p>
<p>Page 58</p> <p>1 A. That's correct.</p> <p>2 Q. Of what significance is this in your</p> <p>3 patient?</p> <p>4 A. Elevated platelet counts can occur in</p> <p>5 two circumstances that would be significant</p> <p>6 here. One is chronic iron deficiency and the</p> <p>7 other would be active inflammation.</p> <p>8 Q. Chronic iron deficiency?</p> <p>9 A. Correct.</p> <p>10 Q. Or an inflammatory condition?</p> <p>11 A. That's two that I can think of</p> <p>12 offhand.</p> <p>13 Q. To what do you attribute the</p> <p>14 elevation of 490 in platelets on September 25,</p> <p>15 1999?</p> <p>16 MS. HENRY: Given what he knows now</p> <p>17 or what he knew at the time?</p> <p>18 MR. MISHKIND: Given what you know</p> <p>19 now.</p> <p>20 MS. HENRY: I'll object to that and</p> <p>21 instruct him not to answer that, Howard. That's</p> <p>22 a retrospective question.</p> <p>23 MR. MISHKIND: It may be a</p> <p>24 retrospective question and it may be</p> <p>25 objectionable, but I don't know of any privilege</p>	<p>Page 60</p> <p>1 doctor can answer.</p> <p>2 A. There is nothing in these labs that</p> <p>3 can tell me what that is from, whether it could</p> <p>4 be inflammation, she had an inflammatory</p> <p>5 disease, or whether it could be iron deficiency.</p> <p>6 Q. Now, the UA in the emergency room</p> <p>7 showed two plus protein and large amount of</p> <p>8 blood but few bacteria; true?</p> <p>9 A. What date was that?</p> <p>10 Q. September 25.</p> <p>11 A. Yes. It showed protein.</p> <p>12 Q. Two plus protein?</p> <p>13 A. Large amount of blood, moderate</p> <p>14 leukocyte esterase, red blood cells and white</p> <p>15 blood cells and few bacteria.</p> <p>16 Q. Is this consistent with a UTI?</p> <p>17 A. Yes.</p> <p>18 Q. Is this a classic finding for a</p> <p>19 patient with a UA?</p> <p>20 A. Yes. We knew she had protein in her</p> <p>21 urine from diabetes, too, but this would be</p> <p>22 perfectly consistent with urinary tract</p> <p>23 infection.</p> <p>24 Q. When you received the results on</p> <p>25 October 1 for the labs, did you feel that there</p>

<p style="text-align: right;">Page 61</p> <p>1 was any cause for alarm? 2 A. Not for alarm. Because you can 3 presume when somebody is being seen in an 4 emergency room, they have received treatment. 5 And there was nothing to tell me whether 6 anything was acute or chronic, so I thought she 7 needed follow up. 8 Q. What type of treatment would you 9 expect in an emergency room to be provided for a 10 patient that has the hemoglobin and the 11 hematocrit and the platelets that she had? 12 MR. SWEENEY: Objection. 13 MR. AUCIELLO: Objection. 14 A. I'm not an emergency room doctor. 15 I'm not competent to tell them what to do. 16 MS. HENRY: That's enough. 17 Q. You, as an internist, if you see a 18 patient with that kind of hemoglobin, 19 hematocrit, and platelet level, what type of 20 treatment would you expect that you would give? 21 A. Without clinical information, I can't 22 say. 23 Q. Assume the patient presents with 24 recent onset of abdominal symptoms and has no 25 history of prior anemia.</p>	<p style="text-align: right;">Page 63</p> <p>1 possibility that this patient was experiencing 2 some type of a bleed; correct? 3 A. I thought she needed to be followed 4 up. 5 Q. Well, certainly within your 6 differential, when you see those kind of labs, 7 you have to at least consider the possibility 8 that the patient may have some type of a bleed? 9 A. Sure. 10 Q. And given the labs, given that as a 11 possibility in terms of her having a bleed, did 12 you ever call over to the emergency room to ask 13 that someone in the emergency room send you the 14 full set of records so that you would have all 15 of the information about her symptoms and 16 everything else that might have been done in the 17 emergency room? 18 A. No, I didn't do that. 19 Q. Did you ever make inquiry at all of 20 Dr. Jones in terms of what he did or why he 21 discharged the patient? Anything along those 22 lines? 23 A. I did not. 24 Q. Would you do periodically rectal 25 exams on Mrs. Pultz?</p>
<p style="text-align: right;">Page 62</p> <p>1 A. Again, that's not complete 2 information. I would have to take the whole 3 picture. We know she had a urinary tract 4 infection, so that can cause abdominal pain. 5 Q. Would that cause the drop in the 6 hematocrit and hemoglobin? 7 A. No. 8 Q. And if you were concerned about the 9 drop in the hematocrit and hemoglobin, what type 10 of treatment would you need to provide? 11 A. Well, we would want to find out if 12 this is acute or chronic is what I would think. 13 Q. When is the last time that you looked 14 at the emergency room record? 15 A. I have not seen the emergency room 16 record. 17 Q. So all you have is the KUB result and 18 the labs? 19 A. That's correct. 20 Q. When you got the labs on October 1, 21 you were concerned about her labs with regard to 22 her hemoglobin, her hematocrit, platelet count; 23 correct? 24 A. I thought she needed follow up. 25 Q. And you certainly considered the</p>	<p style="text-align: right;">Page 64</p> <p>1 A. Not on a routine basis. 2 Q. In a patient that presents with a 3 finding suggestive of some form of anemia in a 4 patient who has not previously been anemic, 5 would you do a rectal exam? 6 A. Yes. 7 Q. And if a patient is quiac positive, 8 of what significance is that? 9 A. A quiac positive rectal exam would at 10 least suggest the possibility that 11 gastrointestinal blood loss could be causing the 12 anemia. 13 Q. Does that need to be followed up? 14 A. Probably, yes. 15 Q. Did Dr. Jones ever tell you that the 16 patient was quiac positive? 17 A. I did not get any information. 18 Q. If Dr. Jones had called you and told 19 you that the patient was quiac positive, that 20 she had the levels of hemoglobin, hematocrit and 21 the platelet count she did, and he had contacted 22 you when she was in the emergency room, would 23 you have requested that your patient be admitted 24 to the hospital for further evaluation? 25 MR. SWEENEY: Objection.</p>

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1 A. It would depend on the rest of the
2 examination. There are many other things that
3 go into it; if the stool is black or suggesting
4 an acute bleed or something like that.
5 Q. Assuming it was an acute bleed, would
6 you have wanted the patient, in order to be
7 reasonable and prudent, to be admitted for
8 evaluation?
9 A. If we had information that it was an
10 acute bleed, yes.
11 Q. October 1 you received or your office
12 receives the results of the blood. Can you tell
13 me why you didn't or your office didn't request
14 the entire record?
15 A. I can't tell you why.
16 Q. There was nothing preventing you from
17 requesting the entire record; correct?
18 A. No.
19 Q. Have you on occasion where you have
20 received labs but haven't received the entire
21 emergency room record requested the balance of
22 the clinical information in the emergency room
23 record?
24 A. I don't recall any occasions where I
25 have done that. The emergency room records are

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1 because, is this the very front of the chart?
2 A. Yes.
3 Q. And does it say -- because I don't
4 have your chart in front of me -- does it say
5 problem list?
6 A. Yes.
7 Q. And also you have the medication list
8 and the problem list?
9 A. Correct.
10 Q. Why wasn't Mrs. Pultz seen in your
11 office sooner than October 5?
12 A. I don't know. She was contacted and
13 told to follow up on the 1st.
14 Q. Who contacted her?
15 A. One of my medical assistants.
16 Q. Who was that?
17 A. It looks like Tammy Minowski.
18 MR. ROSSI: What was the date,
19 doctor?
20 THE WITNESS: October 1st, Tammy
21 Minowski.
22 Q. And that's the TM on the note?
23 A. Yes.
24 Q. And before that, you have written
25 down very anemic?

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1 usually -- you know, they don't provide all that
2 much more information.
3 Q. Well, based upon the labs and based
4 upon the KUB result, you can't tell me what her
5 clinical complaints were on September 25, can
6 you?
7 A. No, I can't.
8 Q. You didn't even know until I told you
9 that she was quiac positive, did you?
10 A. I did not know that.
11 Q. Your records along the right-hand
12 side, you have a sort of a checklist, review of
13 systems, and it looks like it's probably
14 preprinted on your progress notes; is that
15 correct?
16 A. That's correct.
17 Q. Towards the bottom of the review of
18 systems grid, if you will, you have reviewed
19 problem list and reviewed medication list. Can
20 you tell me what that means in simple parlance?
21 A. It just means that the problem list
22 that's on this side of the chart was reviewed
23 and the medication list on this side of the
24 chart at the time of that visit.
25 Q. And this side of the chart being --

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1 A. Yes.
2 Q. What does that mean?
3 A. It means that she was very anemic,
4 her blood count was low.
5 Q. And then it says, needs RTC?
6 A. Correct.
7 Q. Which stands for?
8 A. Return to the clinic, to the office.
9 Q. You didn't indicate on here when she
10 needed to return; correct?
11 A. Correct.
12 Q. You didn't give any instructions to
13 Tammy as to what she should indicate to
14 Mrs. Pultz as to the urgency of her return to
15 the clinic, did you?
16 A. That's correct.
17 Q. And without you giving information to
18 Tammy as to the urgency or nonurgency of that,
19 she doesn't know, does she?
20 A. No.
21 Q. Is she a nurse?
22 A. A medical assistant.
23 Q. But not an LPN or RN?
24 A. No.
25 Q. Does Tammy still work for you?

17 (Pages 65 to 68)

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1 A. Yes.
2 Q. Do you know as you sit here right now
3 from discussions with Tammy what it was that she
4 said when she left a phone message?
5 A. No. I have had no discussions with
6 Tammy.
7 Q. When it says left phone message, does
8 it mean that she reached someone?
9 A. Yes.
10 Q. Or might she have gotten an answering
11 machine?
12 A. I believe that she would have reached
13 someone.
14 Q. But it doesn't say who she reached;
15 right?
16 A. No.
17 MS. HENRY: What are we looking at?
18 I'm sorry.
19 THE WITNESS: This one.
20 MS. HENRY: Okay.
21 Q. And all it says there is left phone
22 message to return to clinic; correct?
23 A. That's correct.
24 Q. It doesn't say what time she made the
25 call; correct?

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1 A. Correct.
2 Q. It doesn't say what date or time she
3 needed to return to the clinic?
4 A. That's correct.
5 Q. In any event, for whatever reason,
6 Mrs. Pultz did not see you until October 5, '99;
7 correct?
8 A. Correct.
9 Q. Are you in any way critical of her
10 for not having returned to your office sooner
11 than October 5?
12 A. I don't know any of the circumstances
13 regarding why she came in on that date as
14 opposed to sooner.
15 Q. I guess what I'm asking you, is there
16 any basis that you have to suggest any criticism
17 from what you know in this case as it relates to
18 Mrs. Pultz for her not being seen in your office
19 before October 5, 1999?
20 A. I'm not sure I understand the
21 question.
22 Q. Do you feel that she should have been
23 seen by you sooner than October 5, 1999?
24 A. Without knowing the circumstances,
25 the information in the emergency room, you know,

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1 I really don't know. I think it needed follow
2 up.
3 Q. Do you fault her for not being seen
4 sooner than October 5 after this telephone call
5 was made by your office on October 1?
6 A. No.
7 Q. If you had had any communication from
8 the emergency room doctor on October 25, 1999 --
9 on that date or at any time, say, before you got
10 the KUB result -- that he wanted Mrs. Pultz to
11 return to you within a given period of time, did
12 you have a practice in your office, either you
13 personally or your office staff, in terms of
14 contacting the patient to follow up?
15 A. I'm not sure I understand the
16 question.
17 Q. Fair enough.
18 A. Or the dates involved.
19 Q. If you had communication from the
20 emergency room doctor any time between the 25th
21 and when you got the results of the KUB on the
22 27th, wherein you learned that the emergency
23 room doctor had suggested follow up within, say,
24 a 24 hour period, yet the patient had not
25 appointed with you, did you have a policy or a

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1 procedure in your office in terms of follow up
2 to get the patient in?
3 A. I'm not sure I'm entirely sure what
4 you are asking me.
5 MS. HENRY: Try and rephrase it,
6 then, Howard.
7 Q. What does your office do when follow
8 up is suggested by an emergency room physician
9 on one of your patients?
10 MS. HENRY: And they know about it?
11 Q. And you know about it.
12 A. If that occurred, we would try and
13 accommodate that. If not me, one of my
14 associates.
15 Q. Would you contact the patient to come
16 in?
17 A. If they contacted us and told us that
18 they want us to contact the patient or that they
19 want there to be follow up, yes.
20 Q. So you have had contact from time to
21 time by the emergency room suggesting follow up?
22 A. Yes.
23 Q. And sometimes you learn that directly
24 from the patient that the emergency room wanted
25 follow up?

18 (Pages 69 to 72)

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1 A. Correct.
2 Q. Now, you saw Mrs. Pultz on October 5;
3 correct?
4 A. That's correct.
5 Q. At that time, you did not refer her
6 for a GI consultation; correct?
7 A. That's correct.
8 Q. You certainly were concerned about
9 her having anemia; correct?
10 A. That's correct.
11 Q. And one of the causes of anemia that
12 you had not ruled out at that point was possibly
13 methotrexate precipitating the anemia?
14 A. That's correct.
15 Q. You ultimately ruled that out;
16 correct?
17 A. I believe so, yes.
18 Q. Your other potential cause of anemia
19 was the iron deficiency; correct?
20 A. Correct.
21 Q. And as to the cause of the iron
22 deficiency, you could not rule out some type of
23 a gastric ulcer; correct?
24 A. That's one of the things in the
25 differential, certainly.

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1 Q. And without referring the patient for
2 GI consultation, you could not confirm or rule
3 out a gastric ulcer; correct?
4 A. That's correct.
5 Q. Why didn't you refer the patient on
6 October 5, 1999 for a GI consult?
7 A. It was not clear to me at that time
8 whether it was iron deficiency or not.
9 Q. You ordered lab work?
10 A. That's correct.
11 Q. Where was the lab work performed?
12 A. It looks like this was done at
13 Southwest Hospital. We had a urinalysis done --
14 we have a lab that comes to our office and so we
15 obtained a urine sample there, but she had the
16 blood done at Southwest.
17 Q. The urine that was drawn on October 5
18 showed no growth on the bacterial culture;
19 correct?
20 A. That's correct.
21 Q. And of what significance is that in a
22 patient that has previously been diagnosed with
23 a urinary tract infection?
24 A. It's hard to say. We do see that
25 people sometimes don't have positive cultures.

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1 Q. You had the results of the urinalysis
2 right there on October 5, '99; correct?
3 A. No. This goes down to the lab at the
4 hospital. It looks like I received it on the
5 7th.
6 Q. It looks like it's printed on the
7 7th, but would you have had any type of notice
8 of the results on the 6th when it became final?
9 A. I don't believe we would. Usually
10 they directly fax the results to us.
11 Q. What were your instructions to
12 Mrs. Pultz on October 5 before she left the
13 office?
14 A. I ordered the blood work and got the
15 Darvocet. Though I didn't record it, I
16 scheduled her for a follow up in a couple weeks
17 to review these results.
18 Q. You scheduled. So the routine would
19 have been follow up in about 14 days?
20 A. Depending on what the results showed.
21 Q. You didn't schedule her for any
22 specific appointment? She wasn't scheduled to
23 return on the 14th; correct?
24 A. I don't have that recorded. I
25 believe she probably was. I routinely do, when

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1 I order blood work like that, schedule people
2 back.
3 Q. Nothing in the record that would
4 reflect that, is there?
5 A. No.
6 Q. Do you keep your calendars that show
7 appointments that are made back in 1999?
8 A. I don't believe we would still have
9 that.
10 Q. Was the blood drawn in the office and
11 sent?
12 A. No.
13 Q. So she had to actually go to the
14 hospital for that?
15 A. She would have gone to Southwest.
16 Q. What time was your appointment on the
17 5th?
18 A. I don't have a time recorded.
19 Q. What was within your differential on
20 October 5, 1999?
21 A. Well, I had the urinary tract
22 infection in the differential, anemia with iron
23 deficiency or possibly methotrexate, and then
24 her rheumatoid arthritis.
25 Q. And certainly the cause of the iron

19 (Pages 73 to 76)

<p>Page 77</p> <p>1 deficiency could have been a perforated ulcer or 2 a bleeding ulcer; correct? 3 A. That's correct. 4 Q. And she had abdominal pains on 5 October 5? 6 A. No. I have no record of any 7 abdominal pains. The abdominal exam was 8 nontender. 9 Q. Now, the results from the October 5 10 labs, tell me when they were received by your 11 office. 12 A. It's difficult to say exactly when 13 they were received. It looks like it was 14 probably the 8th. There is one fax that says 15 the 8th, and certainly we called in iron on the 16 8th. 17 Q. You have a faxed notation showing 18 that the labs came to you on the 8th? 19 A. I have for the iron studies a fax 20 received on the 8th. For the others, that 21 doesn't state. They were not a faxed result. 22 Q. And were the iron results consistent 23 with iron deficiency anemia? 24 A. Yes. Her iron was low. 25 Q. Were the other results in the</p>	<p>Page 79</p> <p>1 that I have on the copy and I think the original 2 you have, or at least your chart report, and I 3 see a note that says please pull chart today and 4 have either Dr. Huber or Dr. Banozic review. Do 5 you see that? 6 A. Yes. 7 Q. Whose handwriting is that? 8 A. Dr. Kuchynski's. 9 Q. Where were you? 10 A. I can presume I wasn't in the office 11 on the day that this was received. And so that 12 she asked -- we have two offices and 13 Dr. Kuchynski is in another office -- that she 14 asked one of those two to review the chart. 15 Q. Which office is Dr. Kuchynski in? 16 A. In Brunswick. 17 Q. Was this faxed to the Brunswick 18 office? 19 A. This is not a faxed result. 20 Q. Was it mailed to the Brunswick 21 office? 22 A. It doesn't look like it was mailed. 23 They usually put results in our -- we have a box 24 at the hospital and they put results there. 25 When we make our daily rounds, we pick them up.</p>
<p>Page 78</p> <p>1 chemistry, the general chemistry, consistent 2 with a patient that has iron deficiency anemia? 3 A. I believe so, yes. Her reticulocyte 4 count was not elevated, which tends to be 5 elevated. That means the body can't produce new 6 red blood cells. 7 Q. Of what significance was that to you 8 in terms of your diagnosis or your thought 9 process on whether she did or did not have iron 10 deficiency anemia? 11 A. It suggested that it was likely iron 12 deficiency anemia. Methotrexate could also 13 cause a low reticulocyte count. 14 Q. Is it fair to say that as it relates 15 to the hematology results from October 5, '99, 16 first, Mrs. Pultz was seen by you in the office, 17 and apparently went to the hospital as requested 18 the same day and had her lab work done; correct? 19 A. That's correct. 20 Q. As to when these results were sent to 21 you, can you tell me based upon what you have 22 there when they were first received? 23 A. I can't tell you for sure when they 24 were first received. 25 Q. All right. Now, there is a notation</p>	<p>Page 80</p> <p>1 Q. So is it likely that Dr. Kuchynski 2 picked up these results at the hospital? 3 A. I think it's possible. 4 Q. Again, you know the procedure better 5 than I do. Is that a reasonable conclusion? 6 A. I think it's reasonable, yes. 7 Q. And would that also explain why, 8 perhaps, we don't have a facsimile on it; 9 because she picked them up at the hospital? 10 A. Correct. 11 Q. Is it possible that she picked them 12 up at the hospital the date that they were 13 finalized; that being October 6th, 1999? 14 A. I have no idea. 15 Q. There is nothing to suggest that they 16 weren't available in the hard copy for you or 17 Dr. Kuchynski or anyone else from your practice 18 on October 6th, 1999; correct? 19 A. I can't say when they were available, 20 from the information that I have. 21 Q. I think there is a star and reference 22 to please pull the chart. Would that be the 23 handwriting of Dr. Kuchynski? 24 A. Yes. 25 Q. Did you ever talk to Dr. Kuchynski</p>

<p>Page 81</p> <p>1 about when she picked these up or what concerns 2 she had? 3 A. No. 4 Q. Dr. Kuchynski would have known that 5 you were the patient's primary care physician; 6 correct? 7 A. It says. 8 Q. So she didn't have to get too clever. 9 She would have had it printed right at the top; 10 correct? 11 A. Correct. 12 Q. Did she contact you to let you know 13 that labs had been drawn on your patient? 14 A. No. But like I said, I believe I 15 wasn't in the office that day. 16 Q. Now, the note of iron deficiency 17 anemia below that, is that your handwriting? 18 A. Yes. 19 Q. When did you write that? 20 A. It's not dated. I presume because 21 the iron was called in that day that would have 22 been on the 8th. 23 Q. Now, where it says called in October 24 8, 1999, that's calling in the iron for the 25 patient?</p>	<p>Page 83</p> <p>1 A. That's correct. 2 Q. You knew as of the 8th this patient 3 needed to have a gastroenterology contact? 4 A. That's correct. 5 Q. You certainly considered that she 6 might have a gastric ulcer as a cause of her 7 drop in her hemoglobin; correct? 8 A. That's one of the things that's in 9 the differential; correct. 10 Q. And you knew that this patient needed 11 to have endoscopy or upper GI workup to evaluate 12 the source of her potential bleed; correct? 13 MR. ROSSI: Objection. 14 A. Correct. 15 Q. You didn't note on October 8th that 16 the patient should contact Dr. Mahajan; correct? 17 A. I did not note that. 18 Q. Do you have any basis to tell me that 19 on October 8th you told the patient to schedule 20 an appointment with Dr. Mahajan? 21 A. Not specifically Dr. Mahajan. 22 Q. Or any gastroenterologist? 23 A. It's noted there that we recommended 24 that she see a gastroenterologist. 25 Q. You mark down needs to see GI, but is</p>
<p>Page 82</p> <p>1 A. That's correct. 2 Q. When was the patient contacted 3 relative to these results? 4 A. It would have been on the same day. 5 Q. Does it indicate that the patient was 6 called? 7 A. Well, at the bottom I asked about 8 whether she still had any symptoms from her 9 urinary tract infection and there is a note that 10 says she had frequency but no pain. 11 Q. Can you tell me what date that note 12 was written? 13 A. That would have been on the 8th. 14 Q. And what do you base that on? 15 A. The fact that it's the same person 16 and the same date there. And I wrote it all at 17 one time to query the patient on that date. 18 Q. Now, you note here says needs to see 19 GI? 20 A. Correct. 21 Q. You didn't schedule her to see a GI, 22 did you? 23 A. No, I didn't. 24 Q. In fact, she came back in to see you 25 on the 14th; correct?</p>	<p>Page 84</p> <p>1 there any indication that this patient was told 2 that she needed to see a gastroenterologist? 3 A. It's not recorded. 4 Q. In fact, if you said that she needs 5 to see a GI doctor, can you tell me why on 6 October 14th she would return to you rather than 7 to a GI doctor? 8 A. I can't explain that. 9 Q. And when you saw her on the 14th, do 10 you have any recollection of asking her why are 11 you here; I expected that you were going to be 12 seen by a GI doctor? 13 A. I don't have any recollection of 14 that. 15 Q. Are you going to testify that she 16 shouldn't have come back to see you on the 14th; 17 that she should have been seen by a 18 gastroenterologist? 19 MS. HENRY: Doctor, why don't you 20 look at your notes for the 14th before you 21 testify about anything here. 22 THE WITNESS: I didn't understand the 23 question. 24 MR. MISHKIND: That's why we bring 25 Vivian along.</p>

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1 (Record read.)
2 A. I heard the question. I didn't
3 understand the question. I'm not quite sure
4 exactly what you are asking.
5 Q. Well, she returned on October 14th,
6 1999; correct?
7 A. That's correct.
8 Q. Let's approach it this way. Tell me
9 what her complaints were, what your findings
10 were on October 14th, 1999.
11 A. Well, the note says that she was
12 there for a follow up for arthritis and anemia.
13 It appeared to be iron deficiency anemia; that
14 she felt a little more energetic.
15 Q. And it says cola?
16 A. Color.
17 Q. Color. Cola good -- color good,
18 okay.
19 What else did you note by way of
20 findings, clinical findings?
21 A. At that visit I noted that she was
22 going to see Dr. Mahajan, and that previous
23 examinations she had been "hem" negative.
24 When I saw her this time I realized I
25 hadn't recorded that, but I had done an

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1 Q. When you saw her on the 14th, did you
2 indicate to her how soon she needed to be seen
3 by Dr. Mahajan?
4 A. I didn't record that. The notes seem
5 to indicate that she had already arranged follow
6 up. They had a preexisting relationship with
7 Dr. Mahajan.
8 Q. So from this, are you interpreting
9 that prior to October 14th she had already
10 scheduled an appointment to be seen by
11 Dr. Mahajan?
12 A. That's the way I'm interpreting it,
13 yes.
14 Q. And we know that she was seen by
15 Dr. Mahajan on October 19th. That we know in
16 retrospect. You don't know how soon before
17 October 14th that appointment had been
18 scheduled, if it had been scheduled already?
19 A. I didn't record that.
20 Q. When you received the results of the
21 October 5, '99 labs and saw her hemoglobin, her
22 hematocrit levels, did you consider having this
23 patient admitted to the hospital for blood
24 transfusions?
25 MS. HENRY: Are you talking about

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1 examination the time before.
2 Q. And you didn't know that she had been
3 positive in the emergency room, did you?
4 A. I did not know that.
5 Q. Now, why did you say that you doubted
6 methotrexate toxicity on that date?
7 A. Based on the low iron levels.
8 Q. Did you have a strong feeling as to
9 what had caused such a profound drop in her
10 hemoglobin from the March levels to the levels
11 that you were now seeing from September 25 and
12 your October 5 results?
13 A. There is a number of things in the
14 differential. So what was your question again?
15 Q. Did you have a sense as to what was
16 causing such profound drop in her hemoglobin and
17 hematocrit?
18 A. I really didn't know what caused the
19 drop. I didn't at the time characterize it as
20 profound. She had significant anemia. I don't
21 know what time frame it came over. It could
22 have been over a very long period of time.
23 Q. Well, you at least knew it didn't
24 extend back prior to March.
25 A. That's correct.

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1 October 5th, Howard?
2 Q. When you received the results from
3 October 5, '99, did you consider having this
4 patient admitted to the hospital for blood
5 transfusions?
6 A. I didn't record that. I considered
7 that, given that she was negative to my exam and
8 this appeared to be a chronic iron deficiency
9 and I treated her with iron.
10 Q. What caused you -- and I want to
11 fully understand. Why do you say this was a
12 chronic iron deficiency? What is it about
13 Mrs. Pultz, given everything that you knew about
14 her, her prior history, that causes you to say
15 that it was a chronic iron deficiency as opposed
16 to an acute bleed?
17 A. Iron deficiency takes a little while
18 to happen. You don't deplete your iron stores
19 quickly. So that almost by definition, iron
20 deficiency is more chronic than acute. So in
21 other words, if somebody has a GI bleed, they
22 are not iron deficient.
23 Q. As you were trying to evaluate what
24 was causing this patient's anemia, did you
25 consider in terms of possible treatment

22 (Pages 85 to 88)

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1 protocols admitting her to the hospital and
2 having her receive blood transfusions?
3 A. I don't recall my exact thoughts, but
4 certainly I would have considered that as one of
5 the options.
6 Q. You didn't note that as an option;
7 correct?
8 A. Correct.
9 Q. Obviously, whether you thought of it
10 or not, you didn't pursue that option; correct?
11 A. That's correct.
12 Q. Why didn't you?
13 A. I felt that she had chronic iron
14 deficiency anemia of unknown cause and that she
15 should respond to iron treatment. There was no
16 evidence of ongoing bleeding to my examination.
17 Q. You didn't feel as if the patient
18 needed to be seen on a stat basis by a GI as of
19 October 14th?
20 A. No.
21 Q. If you felt that she needed to have
22 an urgent or emergent workup by a
23 gastroenterologist, would you have picked up the
24 phone and called Dr. Mahajan, if that's who she
25 was likely to see, to arrange for her to be

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1 had an acute bleed as opposed to chronic iron
2 deficiency, would it have been reasonable and
3 prudent to have admitted her or made
4 arrangements to have her admitted to the
5 hospital that day or within, say, 24 hours?
6 A. If I had thought that, that would
7 have been reasonable.
8 Q. And blood transfusions certainly
9 would have been within the treatment regimen
10 that you would have ordered; correct?
11 A. It would have been a consideration.
12 Q. As well as GI consultation; correct?
13 A. Yes.
14 Q. Now, her sed rate was over 100, I
15 believe, on October 5, '99 when you got the labs
16 back. What caused that elevation, in your
17 opinion?
18 A. She had a number of reasons to have
19 an elevated sedimentation rate. Anemia itself
20 can cause a sedimentation rate; a urinary tract
21 infection, as well as her underlying arthritis.
22 Q. Did you have an opinion as of the
23 time that you saw her on the 14th as to what was
24 the most likely cause for her sed rate being
25 over 100?

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1 seen?
2 A. Yes.
3 Q. And if you felt that this patient had
4 an issue that needed urgent or emergent
5 evaluation, would you agree that waiting until
6 the 19th to be seen would not be reasonable and
7 prudent?
8 MR. ROSSI: Objection.
9 MS. HENRY: Objection. You are
10 asking him to assume something that he didn't
11 assume or see at the time, Howard.
12 MR. MISHKIND: Hypothetically, if he
13 felt --
14 MS. HENRY: Why don't you tell him
15 you are going to give him a hypothetical
16 question.
17 Q. Everything I just said to you is
18 hypothetical. If you had felt that way.
19 A. I felt she had a chronic nonacute
20 iron deficiency. Had I felt she was acutely
21 bleeding, she would have been worked up quicker.
22 Q. And waiting until the 19th would not
23 have been reasonable and prudent; correct?
24 A. Correct.
25 Q. If you had reason to suspect that she

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1 A. You know, there was a multiplicity of
2 reasons she could have had elevated
3 sedimentation rate.
4 Q. Do you have any one or more of what
5 you just said to me as the most likely
6 explanation?
7 A. I don't believe so.
8 Q. Do you remember the October 14th
9 visit independent of the record?
10 A. No, not really.
11 Q. From what you have noted in the
12 record, or from just sort of thinking back on
13 this, do you have any recollection of suggesting
14 or discussing with the patient the possibility
15 of her needing to be admitted to the hospital
16 for blood transfusions?
17 A. I don't have any recollection.
18 Q. Is it fair to say that as of October
19 14, 1999, while you may have considered blood
20 transfusions, that was not your anticipated
21 treatment plan for this patient?
22 A. That's correct. We may have
23 discussed it. I did not record that, but that
24 was not the treatment plan.
25 Q. And as to why Mrs. Pultz was not seen

23 (Pages 89 to 92)

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1 by Dr. Mahajan until October 19th or five days
2 after you saw her, you don't have any
3 explanation for that, do you?
4 A. I don't know what went into that.
5 Q. Do you have any criticism of
6 Mrs. Pultz for not seeing Dr. Mahajan sooner
7 than October 19th?
8 A. No.
9 Q. You wanted her to be seen by
10 Dr. Mahajan for endoscopy or upper GI?
11 A. Yes, for a workup of iron deficiency
12 anemia, preferably an endoscopy, a colonoscopy.
13 There are a number of sites that people can
14 loose blood to lead to iron deficiency anemia.
15 Q. Did you give Mrs. Pultz anything to
16 take with her to Dr. Mahajan's office to give
17 him some education on why it was that she was
18 coming?
19 A. I don't recall if I did. Sometimes
20 we copy the labs and give it to patients, but
21 more often than not -- for example, somebody is
22 referred to me, we call the referring doctor and
23 get the records before their visit.
24 Q. Do you have any evidence in this case
25 that you called Dr. Mahajan's office or they

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1 called you before October 19th to get the
2 information?
3 A. That's not recorded.
4 Q. Do you have an opinion, doctor, in
5 this case, if Mrs. Pultz' anemia had been, that
6 the cause of her anemia had been diagnosed prior
7 to October 20th and she had received blood
8 transfusions whether or not she would have
9 survived?
10 MR. ROSSI: Objection.
11 MR. AUCIELLO: Objection.
12 MS. HENRY: Objection. You are
13 asking for opinions here. He doesn't intend to
14 give any expert opinions at this point in time.
15 If he is going to give an expert opinion, I will
16 advise you according to the new case and then
17 you can redepose him on his expert opinion after
18 you produced your expert. So he is instructed
19 not to answer that question. He is only a fact
20 witness today.
21 MR. MISHKIND: You don't even have to
22 instruct him not to answer, because actually,
23 technically if I venture into that area, I do it
24 at my own peril, so I'll take you away from
25 instructing him not to answer it.

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1 I will reserve the right to question
2 Dr. Flagg based upon any opinion testimony that
3 he intends to provide once I have been,
4 obviously, provided with a report from the
5 doctor, as well as providing you with my expert
6 reports.
7 MS. HENRY: Why did you ask that
8 question then, Howard?
9 MR. MISHKIND: Not everybody is
10 looking to enforce that case. Whether I agree
11 with it or disagree with it, I think sometimes
12 it's created more problems and I wasn't
13 intending to.
14 MS. HENRY: Actually, I don't think
15 as a philosophical discussion that anyone is
16 entitled to ask expert opinions of a fact
17 witness.
18 MR. MISHKIND: We can discuss that.
19 With all due respect, I disagree with you since
20 the doctor is an expert, or at least arguably an
21 expert, based upon the rules. Be that as it
22 may, we added three pages of transcript, so I'm
23 going to go on.
24 MS. HENRY: Thank you.
25 Q. Have you seen the autopsy?

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1 A. Just with my attorney.
2 Q. With regard to the patient, the
3 ultimate autopsy results, do you see where there
4 is an indication that the patient sustained an
5 anterior wall infarct?
6 A. I don't recall.
7 MS. HENRY: Howard, I didn't show him
8 the autopsy.
9 MR. MISHKIND: Either you did or you
10 didn't.
11 MS. HENRY: I didn't show him the
12 whole autopsy.
13 Q. So you didn't see the part on the
14 cardiovascular system or either the gross or
15 anatomical description of the heart?
16 A. I did not see that.
17 Q. So when I am telling you that she
18 sustained an acute MI, what you are telling me
19 on the record is that you are not aware of that
20 until I just shared that with you?
21 A. That's correct.
22 Q. Do you know whether a patient that
23 has a drop in their hemoglobin down into very
24 critical levels, whether that can cause a
25 patient to experience a heart attack?

24 (Pages 93 to 96)

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1 MS. HENRY: Hold on. We are back
2 into the expert testimony here. Again, you are
3 asking him an opinion as to whether those
4 findings can cause that. If you want to ask him
5 that later as an expert, if he is going to
6 testify on that, that's fine.

7 MR. MISHKIND: Dierdre, I'm not
8 sure --

9 MS. HENRY: Just because you ask the
10 question in the way, you don't have an opinion,
11 doesn't mean you are not asking for one. He is
12 testifying about his care and treatment of this
13 patient and what his knowledge is, and I think
14 that's what we are here for and that's what he
15 is testifying to.

16 MR. MISHKIND: Only because I'm tired
17 and I don't feel like arguing with you, I'm
18 going to move on. I will save my arguments for
19 another time.

20 MS. HENRY: Later if he is going to
21 give opinions in that area, you have the right
22 to redepose him.

23 Q. You have seen parts of the autopsy,
24 but not relative to the existence or
25 nonexistence of the patient experiencing a heart

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1 known about.

2 Q. When Mrs. Pultz was admitted to
3 Southwest, her hemoglobin, I will tell you,
4 because perhaps you are not aware, her
5 hemoglobin was 4.6.

6 Let me first ask you, were you aware
7 of that fact before I just told you that?

8 MS. HENRY: Well, Howard --

9 MR. MISHKIND: I'm asking was he
10 aware of the fact. I'm not going to ask him the
11 source of that information.

12 MS. HENRY: He had no knowledge of
13 anything having to do with what happened in the
14 hospital outside of any conversation he had with
15 me. So even asking him if he was aware of it is
16 going to reveal a source, obviously, and part of
17 a discussion with an attorney.

18 Q. Doctor, before this deposition began,
19 did you have an opportunity to review any of the
20 labs from Southwest General Hospital?

21 A. No.

22 Q. At any time prior to the deposition,
23 had you had occasion during the course of this
24 case to look at personally the labs that were
25 drawn when Mrs. Pultz was admitted to Southwest

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1 attack; true?

2 A. That's correct.

3 Q. You never treated the patient at any
4 time during your care and treatment for any
5 cardiovascular disease; correct?

6 A. That's correct.

7 Q. The patient had not exhibited during
8 your treatment any evidence of any coronary
9 artery disease; correct?

10 A. That's correct.

11 Q. You had never referred the patient or
12 felt the need to refer the patient for any form
13 of cardiac diagnostics by way of catheterization
14 or stress testing; correct?

15 A. That's correct.

16 Q. When you found out about Mrs. Pultz'
17 death, did you attempt to determine from anyone
18 at Southwest what it was that caused her death?

19 A. No.

20 Q. Did anyone ever share with you, other
21 than your attorney, what was the cause of her
22 death?

23 A. I spoke to the husband. I don't
24 remember the specifics of that conversation.

25 That would have been the only thing I would have

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1 General Hospital?

2 A. No.

3 Q. Based upon your treatment of
4 Mrs. Pultz through October 14th, 1999, did she,
5 as of October 14, 1999, in your professional
6 opinion have a decreased life expectancy?

7 MR. ROSSI: Objection.

8 MR. AUCIELLO: Objection.

9 MS. HENRY: Objection. We are into
10 the same thing.

11 MR. MISHKIND: I'm asking him as a
12 treating physician. I'm not asking any
13 questions relative to opinions on the standard
14 of care, which I think is what --

15 MR. AUCIELLO: Expert opinions,.

16 MS. HENRY: Expert opinions.
17 Proximate cause, standard of care and
18 anything --

19 MR. AUCIELLO: I don't like the case
20 either.

21 MR. MISHKIND: I think it's
22 ridiculous.

23 Let me state on the record if that's
24 the way you want to do it, if the doctor intends
25 to provide any opinions on cause of death, on

25 (Pages 97 to 100)

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1 proximate cause, on life expectancy, then I will
2 expect that a report outlining those opinions
3 will be provided and we will reconvene the
4 deposition at that point.
5 MS. HENRY: That's fine.
6 Q. Doctor, aside from what you have told
7 me about in terms of the visits on October 14th,
8 October 5th, and the way in which the KUB result
9 came to you, and the way in which you became
10 aware of the labs from the September 25th visit
11 that were faxed to you on October 1, is there
12 any other information between September 25 and
13 October 14th in terms of labs, clinical
14 findings, that we have not talked about
15 concerning your patient, Mrs. Pultz?
16 A. On October 5th, we didn't go into my
17 examination of her abdomen at the time.
18 Q. Why don't you tell me about that.
19 A. She had active bowel sounds. It was
20 soft, nontender; no hematosplenomegaly, no
21 enlargement of the liver and spleen and no flank
22 tenderness.
23 Q. Of what significance is that?
24 A. Well, it tells me that she did not
25 have -- well, it suggests that she doesn't have

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1 Q. You just didn't feel it needed to be
2 done on an emergent or urgent basis?
3 A. Correct.
4 Q. Anything else clinically,
5 diagnostically that we haven't talked about on
6 the visits between September 25 and when you
7 last saw her?
8 A. I believe we have pretty much covered
9 it.
10 MR. MISHKIND: Doctor, I have no
11 further questions at this point, with the
12 reservation -- and it's a big reservation --
13 that you and I will undoubtedly meet again
14 before trial.
15 Thank you, sir. The other lawyers
16 may have some questions for you.
17 EXAMINATION OF DOUGLAS N. FLAGG, M.D.
18 BY MR. AUCIELLO:
19 Q. Doctor, I represent Dr. Jones and I
20 just have one area of questions.
21 The emergency room record indicates
22 that the patient was told to follow up with your
23 office within 24 hours. Is there any evidence
24 in your records that any attempt was made to
25 make an appointment with you during the last

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1 what we call an acute abdomen.
2 Q. Of what significance is that in terms
3 of whether or not she has a gastric ulcer
4 causing the hemoglobin to be at the levels that
5 they were at?
6 A. In terms of the anemia, it doesn't
7 make a strong statement one way or another, but
8 the lack of tenderness is probably significant.
9 Q. In terms of speaking against it?
10 A. Yes.
11 Q. So is it your feeling clinically as
12 of October 14th that she did not have clinical
13 evidence of a gastric bleed or a gastric
14 perforation or both?
15 A. From my clinical exam, there was no
16 evidence of a perforation, gastric bleed.
17 Certainly there was no evidence of a gastric
18 bleed that I could tell by my exam.
19 Q. But certainly the clinical exam
20 couldn't permit you to rule out a gastric bleed
21 as a potential explanation for her anemia?
22 A. Not entirely, no.
23 Q. That's why you felt that she needed
24 to have this workup?
25 A. Right.

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1 week of September of 1999?
2 A. No.
3 Q. And I believe if I understood your
4 testimony, in fact, it was your office that
5 contacted the patient, Mrs. Pultz, once you got
6 the abnormal lab results from the emergency
7 room; correct?
8 A. That's correct.
9 Q. So am I safe in assuming that the
10 October 5 visit with Mrs. Pultz was occasioned
11 by your office, not her?
12 A. Correct.
13 MR. AUCIELLO: No further questions.
14 Thank you.
15 EXAMINATION OF DOUGLAS N. FLAGG, M.D.
16 BY MR. ROSSI:
17 Q. I'm Greg Rossi and I represent
18 Dr. Mahajan, and I have a few questions for you.
19 When Dr. Mahajan saw her on October
20 19th, he showed that she weighed 179 pounds.
21 Did you consider her to be obese?
22 A. No.
23 Q. She did have adult onset of diabetes,
24 didn't she?
25 A. Correct.

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1 Q. She was insulin dependent; right?
2 A. She did take insulin. Whether she is
3 insulin dependent, I mean, there may have been
4 some way to treat her with other medications but
5 she was on insulin.
6 Q. A long history of rheumatoid
7 arthritis?
8 A. That's correct.
9 Q. Did she have hyperlipidemia?
10 A. Yes.
11 Q. Hypertension?
12 A. Yes.
13 Q. She had a history of heart disease,
14 didn't she, her mother?
15 A. Are you asking me if she had a
16 history?
17 Q. Mrs. Pultz had a history of heart
18 disease?
19 MR. MISHKIND: Family history?
20 MR. ROSSI: Yes, family history.
21 MR. MISHKIND: I thought you were
22 telling us something we didn't know.
23 MR. ROSSI: I scared Howard for a
24 moment.
25 Q. I will cut to the chase. Dr. Mahajan

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1 you have it in front of you, doctor?
2 A. Yes.
3 Q. Do you see at the very top of the
4 page where the fax transmission sheet is? Maybe
5 you can look at my copy. It will be a little
6 easier for you. Do you see that it indicates
7 page three?
8 A. Yes.
9 Q. Do you have any idea what pages one
10 and two were?
11 A. No, I don't. I'm not sure how they
12 fax. We get a lot of faxes from them. There may
13 have been results from other patients. I don't
14 know if they fax that way or not.
15 MR. SWEENEY: Thanks. That's all I
16 wondered. Thank you.
17 MR. VAN WAGNER: No questions.
18 MR. MISHKIND: I have no follow up.
19 I presume the doctor will read the
20 transcript?
21 MS. HENRY: Yes.
22 MR. MISHKIND: We will, for the
23 record, reflect that he can have 28 days to read
24 it.
25 (Deposition concluded at 5:35 p.m.)

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1 showed in one of his notes that her mother died
2 of a heart attack. Do you have any reason to
3 doubt that or anything in your chart that
4 confirms that?
5 MR. MISHKIND: Let me object to the
6 form of the question, for the record.
7 A. On her initial visit to us there is
8 nothing recorded as to what her mother died
9 from. It just says not living. It doesn't give
10 any reason.
11 Q. Would you agree that there were times
12 when Mrs. Pultz was noncompliant with your
13 recommendations?
14 A. That's correct.
15 MR. ROSSI: That's all I have for
16 you. Thanks.
17 EXAMINATION OF DOUGLAS N. FLAGG, M.D.
18 BY MR. SWEENEY:
19 Q. Doctor, my name is Tim Sweeney. One
20 quick question for you.
21 MS. HENRY: He represents Southwest
22 General Hospital.
23 Q. The results that you received from
24 the lab by fax on October 8th, I think you
25 testified it was -- I have the page here. Do

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1 AFFIDAVIT
2 I have read the foregoing transcript from
3 page 1 through 107 and note the following
4 corrections:
5 PAGE LINE REQUESTED CHANGE
6
7
8
9
10
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12
13
14
15
16
17
18 DOUGLAS N. FLAGG, M.D.
19 Subscribed and sworn to before me this
20 day of , 2001.
21 Notary Public
22
23 My commission expires .
24
25

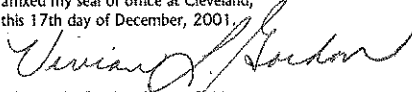
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CERTIFICATE

1
2
3 State of Ohio,
4 SS:
5 County of Cuyahoga.
6
7
8 I, Vivian L. Gordon, a Notary Public within
and for the State of Ohio, duly commissioned and
9 qualified, do hereby certify that the within
named DOUGLAS N. FLAGG, M.D. was by me first
10 duly sworn to testify to the truth, the whole
truth and nothing but the truth in the cause
11 aforesaid; that the testimony as above set forth
was by me reduced to stenotypy, afterwards
12 transcribed, and that the foregoing is a true
and correct transcription of the testimony.
13

14 I do further certify that this deposition
was taken at the time and place specified and
was completed without adjournment; that I am not
15 a relative or attorney for either party or
otherwise interested in the event of this
16 action. I am not, nor is the court reporting
firm with which I am affiliated, under a
17 contract as defined in Civil Rule 28 (D).

18 IN WITNESS WHEREOF, I have hereunto set my
hand and affixed my seal of office at Cleveland,
19 Ohio, on this 17th day of December, 2001.

20
21 
22

23 Vivian L. Gordon, Notary Public
Within and for the State of Ohio
24 My commission expires June 8, 2004.
25

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