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IN THE COURT OF COMMON PLEAS
OF CUYAHOGA COUNTY, OHIO
- - - - -
FRED W. PULTZ, Individually and as Administrator of the Estate of BARBARA A. PULTZ, deceased,

Plaintiff,

vs Case No. 433332
Judge Kilbane-Koch
DOUGLAS N. FLAGG, M.D., et al.,
Defendants.
- - - - -
DEPOSITION OF DOUGLAS N. FLAGG, M.D.
THURSDAY, DECEMBER 6, 2001
- - - - -

Deposition of DOUGLAS N. FLAGG, M.D., a Defendant herein, called by counsel on behalf of the Plaintiff for examination under the statute, taken before me, Vivian L. Gordon, a Registered Diplomate Reporter and Notary Public in and for the State of Ohio, pursuant to agreement of counsel, at the offices of Weston, Hurd, Fallon, Paisley & Howley, 2500 Terminal Tower, Cleveland, Ohio, commencing at 3:00 o'clock p.m. on the day and date above set forth.

APPEARANCES:
On behalf of the Plaintiff
Becker & Mishkind
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On behalf of the Defendant Flagg
Weston, Hurd, Fallon, Paisley & Howley
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On behalf of the Defendant Jones, M.D.
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On behalf of the Defendant Emergency Professional Services and Kimberly Chin-Li Chen, D.O.
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DOUGLAS N. FLAGG, M.D., a witness herein, called for examination, as provided by the Ohio Rules of Civil Procedure, being by me first duly sworn, as hereinafter certified, was deposed and said as follows:

EXAMINATION OF DOUGLAS N. FLAGG, M.D.

BY MR. MISHKIND:

Q. Would you state your name for the record.

A. Douglas Figgg.

Q. You are a doctor?

A. Yes.

Q. Dr. Flagg, my name is Howard Mishkind and I represent the Pultz family in connection with the lawsuit that you are one of a number of named parties. You understand that, don't you?

A. Uh-huh.

Q. That's a yes?

A. Yes.

Q. One of the things I'm going to tell you right away based upon your last answer is to make sure you keep your answers verbal. If Vivian is looking at her machine, she can't tell which way you are nodding your head.

A. Okay.

Q. Have you had your deposition taken before?

A. Not in a case I wasn't involved in, but in other cases, yes.

Q. In what connection have you had your deposition taken before?

A. As a witness for patients I have treated related to auto accidents.

Q. You have never had the situation occur where your deposition was taken in a medical negligence case; is that correct?

A. No.

Q. Let me just tell you that the purpose of my deposition today is to learn as much as I can from you about your care and treatment of Mrs. Pultz, in particular as it relates to the period of time from early October of '99 up through the time of her death.

I will tell you, however, I will ask some questions about your relationship with her prior to that date, some background information about her medical care, but the primary emphasis will be concerning that time period, okay?

A. Yes.

Q. I'm also going to ask you to give an

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overview or an outline, if you will, some questions about your background and your training and your experience, and then we will move into talking about Mrs. Pultz. Fair enough?
A. Yes.
Q. I will wait until you are done with your answer to any of my questions. Do me the favor and do Vivian the favor of waiting until I'm done with my question before you start answering, just so we don't have an overlap, okay?
A. Okay.
Q. If you don't understand what I'm asking you, tell me and I'll try to rephrase it. If I can't -- that sometimes happens -- I will have Vivian read the question back to you, okay?
A. Yes.
Q. Fair enough so far?
A. Yes.
Q. You are an internist; is that correct?
A. Internal medicine and rheumatology.
Q. I don't believe I have a CV for you, at least in the file that I have been provided.

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

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

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Q. I'm assuming that the February visit in '99 that you just referenced is the last time that he saw her. If I'm not correct, then clarify matters.
A. I think that's correct. I don't see a March '99 visit to myself, though.
Q. When do you show after February?
A. April 16th.
Q. She had labs done in March of '99, did she not?
A. Yes.
Q. March 26th, '99?
A. Yes.
Q. Were those ordered by you or --
A. Those were ordered by me.
Q. Did you see her on March 26th '99?
A. No. We frequently will order labs in advance of their follow-up visit.
Q. So the April visit that you just referenced a moment ago, the labs would have been drawn in anticipation of that April visit?
A. Correct.
Q. Is it fair to say that from the time that you ordered the labs on March 26th, '99 or where the lab work was performed on March 26th,

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'99, up through the remainder of Mrs. Pultz' life, as it relates to your office, you were the only one that saw her on a professional level?
It's not a well worded question, but I think you know what I'm talking about. Did any other physician see her?
A. No. Looks like Dr. Banozic took a few phone calls, but mine was the only office visit.
Q. We will talk about that in a moment. Are you board certified?
A. Yes.
Q. By what boards?
A. American Board of Internal Medicine and the American -- they have a subspecialty Board of Rheumatology also, so I'm boarded in both.
Q. When did you become board certified in internal medicine?
A. I think it was '89, September '89.
Q. Was that the first time that you were eligible to take the boards?
A. Yes.
Q. You were successful the first time?
A. Yes.

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Q. In rheumatology, when did you become board certified?
A. I believe it was '92, and that was the first time I was eligible.
Q. Successful the first time through?
A. Yes.
Q. You indicated that since '95 you are affiliated with University UPCP or University Physician --
A. University Primary Care Physicians Practices.
Q. Are you an employee of that group?
A. Yes.
Q. What affiliation does that group have, if you know, with University Hospitals?
A. I'm not really familiar with the details of their relationship.
Q. Prior to '95, you were in the department of rheumatology at University Hospitals?
A. Correct.
Q. An employee of University Hospitals?
A. Correct.
Q. Again, since I don't have the benefit of your CV right now, have you done any

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publishing of any articles, book chapters, anything in the medical literature?
A. Yes. I have one article in the Journal of Medicine. I think it was the year 1995.
Q. Any others?
A. No.
Q. What's the topic of that article?
A. Hypocomplementemic urticarical vasculitis syndrome.
Q. Does that relate to a rheumatological disorder?
A. Yes.
Q. Were you the lead author on that article?
A. No.
Q. Who was the lead author?
A. Jeff Wisnieski. He is at the V.A.
Q. Have you authored or co-authored any other literature?
A. No.
Q. You are affiliated with what hospitals?
A. Southwest General, Parma Hospital, and University.

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Q. This is the first time your deposition has been taken in a medical negligence case, as you told me a moment ago.
Have you ever been named as a party in a medical negligence case before this?
A. No.
Q. You remember Mrs. Pultz, don't you?
A. Yes.
Q. Do you remember Mr. Pultz?
A. Yes.
Q. Did you meet any of the family, the children?
A. The daughter.
Q. Which daughter?
A. I am blanking on her name. Her last name is different. I can't remember what her name is offhand.
Q. Did you meet her in the context of physician/patient relationship or otherwise?
A. I believe I have seen her as a patient.
MS. HENRY: Objection.
MR. MISHKIND: I'm not going to ask about the particulars.
Q. But was there a physician/patient

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relationship?
A. I don't recall for sure.
Q. You believe that that may be how you met her?
A. Yes. She would accompany her mother to visits, too.
Q. What about Mr. Pultz, did you have a physician/patient relationship with him?
A. Again, I believe so.
Q. Did you have any contact with Mr. Pultz or Mrs. Pultz outside of the office setting? Did you see them socially?
A. No.
Q. You knew nothing about their personal lives outside of what he or she may have told you when they were in to see you; is that correct?
A. Correct.
Q. Did you have occasion to see Mrs. Pultz at any time while she was a patient at any local hospitals?
A. No.
Q. Did you ever admit her to a hospital?
A. No.
Q. I'm going to jump way ahead for a

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moment and then come back and talk about your care. Just so I don't confuse you, I'm telling you where I'm going right now.
In your record, there is an indication on October 26th, I believe, 1999 that you spoke to Mr. Pultz. This is after you had received a call from, I believe, the daughter-in-law --
A. Son.
Q. -- from the son-in-law that Mrs. Pultz had died; true?
A. Correct.
Q. Do you remember that conversation?
A. Not really. I remember having a conversation. I don't remember any of the details.
Q. Do you remember anything about the conversation, even though you don't remember details, do you remember any of the generalities of what Mr. Pultz told you or what you said to him?
A. No.
Q. Do you have any recollection as to how long that conversation lasted?
A. No, I don't.

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Q. This was on the phone; correct?
A. Yes.
Q. Did you initiate the call to him or did Mr. Pultz, to your knowledge, call you?
A. I initiated the call because of the call that had come in before, and I believe it was to -- there is no phone number here, so I just called the family.
Q. Was it essentially to extend your condolences?
A. That's correct.
Q. Even though you don't remember the specifics or the generalities of the conversation, do you have reason to believe that you said anything in particular, other than I extend my condolences?
A. No.
Q. Did you make any notes at all of that conversation?
A. Just what's in the chart.
Q. Are there any notes at all of any of the events that took place while you were treating Mrs. Pultz that are not reflected in actual office entries that are part of your chart?

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

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

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Q. Now, didn't you actually receive a copy of the KUB from the emergency room before you received the blood count?
A. Yes, there is a KUB report on September 27th.
Q. That was received by you on September 27th; correct?
A. Correct.
Q. So what you said a moment ago was actually not entirely accurate; correct?
A. I guess that's correct.
Q. You received the blood work on October 1, but you received the results of the KUB on September 27th; true?
A. True.
Q. Can you explain to me how it is that you -- this may be obvious -- how it is that you received the interpretation from the KUB from the emergency room or why it is that you received it?
A. It's routine. On essentially any of my patients that go to the emergency room that identify me as their doctor, they will send a faxed copy of the x-ray interpretation.
Q. And what is your routine in your

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office when you receive a faxed copy of any -- is it just of x-ray results?
A. X-rays and labs. We may see that, too.
Q. Do you routinely receive on patients that are yours, that are recorded as yours at the emergency room, do you receive copies of both the x-rays and the labs?
A. Yes.
Q. So on the 27th, which is two days after her emergency room visit, you received a copy of the KUB, x-ray interpretation; correct?
A. Correct.
Q. But you did not receive copies of the labs?
A. Correct.
Q. What did you do on September 27th when you received the KUB result?
A. I reviewed them, and seeing that there was no abnormalities and knowing that she had been seen by a physician, I took no further action.
Q. How did you know that she had been seen by a physician?
A. Because it's an emergency room x-ray.

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Q. In fact, Dr. Jones' name is written on there; correct?
A. Correct.
Q. When you received that result from Dr. Jones or from the emergency room, did you review it the same day that it came over?
A. I don't have that document.
Q. Is your normal custom and practice when you receive a fax of results of labs or results of x-rays on patients of yours that have been seen in the emergency room, that you review it the same day it comes over?
A. I try to review it the same day for labs that I haven't ordered. I may not review the same day, but generally I do.
Q. Do you have any reason to believe that the September 27th fax to you from Dr. Jones was not reviewed by you on the 27th?
A. I have no reason to believe.
Q. I guess what I'm asking, might you have been out of town on the 27th or the 28th?
A. Not that I recall.
Q. Fair enough.
I was asking you a moment ago what information you had received, what information

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you had reviewed. You have not seen any, for example, of Dr. Mahajan 's office chart, have you?
A. No.
Q. You know Dr. Mahajan, don't you?
A. Yes.
Q. And he is a gastroenterologist?
A. Correct.
Q. Is he the gastroenterologist of choice to you when you refer a patient for consultation?
A. No.
Q. Do you have a list of gastroenterologists that you select from?
A. No, we don't have a list.
Q. In this particular case, we know that on October 14 there is a reference to a referral to Dr. Mahajan. Can you tell me how it is that you chose Dr. Mahajan in this case for the referral?
A. She had previously seen Dr. Mahajan.
Q. Let's assume that she had not seen Dr. Mahajan before, but you felt that she needed to be seen by a gastroenterologist -- and I'll ask you in a moment to tell me why you felt she

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needed to be seen -- but how would you have gone about selecting the GI consultant?
A. That wasn't the case here. She had seen a gastroenterologist. But if she hadn't previously seen a gastroenterologist, we have a number of gastroenterologists that we routinely refer to based on our past experiences with them.
Q. Do you maintain some type of a consult list?
A. No.
Q. Who else besides Dr. Mahajan do you routinely refer patients to?
A. There are a couple other gastroenterologists: Dr. Modic and Dr. Pola and Dr. Davessar we refer to probably more than any other.
Q. Who would you have referred her to in this case, absent that relationship, is impossible for you to tell me?
A. Correct.
Q. Have you had occasion to talk to Dr. Mahajan since Mrs. Pultz died?
A. Yes.
Q. When did you talk with him?

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A. I have seen him at the hospital.
Q. Have you had occasion to talk to Dr. Mahajan since Mrs. Pultz died about Mrs. Pultz?
A. No.
Q. Did Dr. Mahajan contact you on October 19th, 1999, either prior to or while Mrs. Pultz was present at his office?
A. No.
Q. Did you have any contact with Dr. Mahajan between October 14th and October 19th when she was seen?
A. No.
Q. Explain to me the process that you follow in your office when a referral is made as it was on October 14 to Dr. Mahajan, what logistically takes place to get the patient to the referral.
A. It depends on the circumstance. Since she had a preexisting relationship with Dr. Mahajan, I didn't write what I did, but I presume I told her that she needed to contact Dr. Mahajan.
Q. Your record doesn't reflect how soon you wanted her to be seen by Dr. Mahajan, does

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it?
A. No.
Q. It doesn't reflect any urgency of her scheduling the appointment with Dr. Mahajan, does it?
A. No.
Q. In terms of providing Dr. Mahajan with any information to assist him in his consultation, your records don't reflect that you forwarded to him copies of any of the labs that you had drawn or the labs that you had received from the emergency room; is that correct?
A. Correct.
Q. After Mrs. Pultz was seen on the 19th, but before she was admitted to the hospital on the 20th, which was sometime around 4:00 o'clock in the afternoon, did you have any communication in any way, either by phone, or in person, with Dr. Mahajan about Mrs. Pultz?
A. No.
Q. Do your records reflect that you had any communication from either Mr. or Mrs. Pultz after Mrs. Pultz was seen by Dr. Mahajan on the 19th?

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

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A. I have one now for the first time in many years.
Q. Do you have residents also that rotate through your office?
A. They are no longer rotating residents in offices, in peripheral offices.
Q. Have you taught at the medical school?
A. Yes.
Q. Are you currently teaching at the medical school?
A. No.
Q. What have you taught?
A. I gave a lecture on soft tissue pain syndromes.
Q. When was that, sir?
A. It would have been in the years that I was at University full time.
Q. Between '91 and '95?
A. Correct.
Q. When you were full time at University, were you a full-time clinical faculty member or were you also an academic?
A. There is not really a differentiation. I was primarily a clinical.

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Q. Were you teaching at the medical school also at that time?
A. Yes.
Q. Did you have a particular course that you were teaching?
A. No. They have a musculoskeletal segment and I taught that. That's when I gave that one lecture.
Q. Other than the one lecture that you just referenced, have you done any teaching, either on a regular or guest basis, at any time during your career?
A. No, with the exception of medical students that come to the office that I had rotate with me when I was faculty.
Q. What percentage of your practice, doctor, is rheumatologically based?
A. Probably 50 percent.
Q. Do you have any other area in internal medicine that you consider yourself to have a subinterest in, aside from rheumatology?
A. No.
Q. A general internal medicine practice, aside from the rheumotologically end?
A. Yes.

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Q. So you see patients with diabetes, you see patients with cardiovascular diseases and the whole gamut; true?
A. That's correct.
Q. What journals do you subscribe to?
A. We subscribe to a number of journals in the office that we rotate between us. New England Journal, Annals of Internal Medicine, American Journal of Internal Medicine. Arthritis and Rheumatism. There is Current Opinion in Rheumatology, Archives of Internal Medicine, and Clinics in Rheumatic Diseases.
Q. Did you review any articles at all in any of those journals in preparation for today's deposition?
A. No.
Q. Have you reviewed any articles in any of those journals at any time since the lawsuit has been filed?
MS. HENRY: Other than his routine review?
MR. MISHKIND: Sure.
Q. Other than your routine review with Mrs. Pultz' case in mind.
A. No.

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Q. So as you sit here now, there are no articles from any of those journals that you can cite me to that support the care and treatment that you provided to Mrs. Pultz; true?
A. True.
Q. What about medical textbooks, internal medicine books? I presume you own Harrison's?
A. Yes.
Q. Are there any other internal medicine texts that you own besides Harrison's?
A. I have a large number of internal medicine texts.
Q. Putting aside the rheumatological texts, Principles of Internal Medicine, other than Harrison's text, are there others that you own, as well?
A. Yes. I have a number that more specialize, labs diagnosis, all kinds of various texts, pharmacological texts.
Q. Which lab texts do you own?
A. I have numerous ones. Lexicom has a lab diagnosis text.
Q. Which pharmacological texts do you own?

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A. I have the PDR, Goodman and Gellman. I use the Internet base, Hypocrites Pharmacological book.
Q. Do you do a lot of research on the Internet?
A. Yes.
Q. Have you done any research on the Internet in connection with any aspect of Mrs. Pultz' case?
A. No.
Q. Do you consider Harrison's to be a reliable source of information in the area of internal medicine?
A. I think it's a reliable source of information. I don't think it's a definitive source of all opinions.
Q. You refer to it from time to time?
A. Yes.
Q. And I presume that there is information in there on the treatment of anemia, diagnosis and treatment of anemia?
A. I would imagine.
Q. And treatment of patients with rheumatoid arthritis, as well?
A. Yes. I don't believe I have ever

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read the chapters on rheumatoid arthritis there because I use the subspecialty books.
Q. Which subspecialty books do you look to for reliable information on rheumatological diseases and rheumatoid arthritis, in particular?
A. On both rheumatoid arthritis, rheumatological disease and internal medicine, we always consult a broad variety; looking for updated stuff on the Internet, new articles, you know, a variety of texts.
The text that I probably use the most would be Kelly's Textbook of Rheumatology.
Q. Suffice it to say that you did not review Kelly's for purposes of today's deposition?
A. That's correct.
Q. You did not review it in connection with this case?
A. That's correct.
Q. Are there any journal articles or texts that you deem to be, aside from what we already talked about, deem to be authoritative in the area of internal medicine?
A. I can't think of any others. I mean,

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there is a broad variety of texts and they all have their pros and cons.
Q. And the same question in terms of any journals, journal articles or texts that you deem to be authoritative, other than what we have talked about, in the area of rheumatological diseases?
A. The same answer.
Q. Very good.
Have you had an opportunity to talk with any physicians -- we have already talked about Dr. Mahajan for a moment -- as it relates to your care and treatment of Mrs. Pultz since her death? And by that I mean to just review and go over what you did or what you didn't do.
A. No.
Q. Before 1999, you had occasion to see Mrs. Pultz; is that true?
A. I believe that's correct, yes.
Q. Tell me -- because I'm not going to go through all of your treatment -- I want to get sort of a global idea in terms of when your relationship as a physician with Mrs. Pultz began prior to 1999, and then I'm going to ask you a few questions about your treatment of her.

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

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A. That's correct.
Q. What are some of the common concerns that you as a rheumatologist or a subspecialist in the area of rheumatology have when a patient is on methotrexate on a long-term basis?
A. My major concern is liver abnormalities and cirrhosis of the liver.
Q. Were one of the tests that you were sending her for to check the liver enzymes?
A. That's correct.
Q. You would have to prod her to have the tests from time to time?
A. That's correct.
Q. She would eventually get them; correct?
A. Not within the time frame that I recommended.
Q. Did her failure to get them in the time period that you recommended, did that, in your opinion, adversely affect her overall condition?
A. I'm not sure I understand the question.
Q. The fact that she didn't get the test done within the period of time that you wanted

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

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

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

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ulcer, no.
Q. She also was on ketoprofen?
A. Correct.
Q. Which is a nonsteroidal antiinflammatory?
A. That's correct.
Q. She was a pretty full dose of ketoprofen?
A. That's correct.
Q. And ketoprofen has side effects of causing gastritis and gastric ulcers; correct?
A. That's correct.
Q. She was on Darvocet, was it?
A. Yes.
Q. And what was the reason that she was on Darvocet?
A. For pain.
Q. In reviewing your records, and correct me if I am wrong, but it appears as if with the use of Darvocet that controlled the pain associated with her rheumatoid arthritis pretty well?
A. It's hard for me to say. She didn't have any stronger medications for pain.
Q. Did she voice many complaints of pain

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

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

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pain.
Q. The only time you can say as a fact that she had breakthrough pain was this April and July of '99 that you just referenced?
A. That's correct.
Q. Is there a reason in Mrs. Pultz' case that you did not order a liver biopsy at any time between '93 and when she died?
A. At that point in time I was not routinely ordering liver biopsies in patients with rheumatoid arthritis.
Q. Did you then purposely not order a liver biopsy on her?
A. That's correct.
Q. As opposed to an oversight?
A. Correct.
Q. Did you and Mrs. Pultz get along okay?
A. Sure.
Q. You had seen her for a long period of time, so as a physician, you developed sort of a relationship with the patient. Did you have a good physician/patient relationship with her?
A. Yes.
Q. Did she share with you events that

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were taking place with her family or with her husband, anniversaries or birthdays or things of that nature?
A. I don't recall specifically, but that's routine.
Q. Do you remember anything that she shared with you about her family life or her relationship with her husband that stands out in your mind?
A. Nothing specifically.
Q. Anything that she shared with you that was negative or derogatory or bad that she shared with you about her husband or her family?
A. No.
Q. Since the conversation with Mr. Pultz on the 26th of October, up to the present date, have you had any occasion to run into him in town anywhere and see him?
A. No.
Q. Any communication by phone with him since October 26th?
A. No.
Q. What is iron deficiency anemia?
A. Iron is a necessary building block for red blood cells, so if it's deficient, then

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not enough are produced and that causes anemia.
Q. What causes iron deficiency anemia?
A. A large number of things can cause it. Blood loss, menstrual blood loss, gastrointestinal blood loss, colon cancer, which causes gastrointestinal blood loss, frequent blood donation, malabsorption of iron, or a diet deficient in iron.
Q. Are there classic findings, clinical findings that you see in a patient that has iron deficiency anemia?
A. On physical examination?
Q. Yes, sir.
A. No. I mean, anemia sometimes has some very characteristic findings, but it's not specific to iron deficiency.
Q. What about lab results? What are the classic findings that you expect to see in iron deficiency anemia?
A. Generally we go by measurement of the serum iron, iron binding capacity, ferritin levels and reticulocyte counts.
Q. Is it fair to say that in Mrs. Pultz' case that prior to 1999 she did not experience anemia?

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A. It looks like in the time that I saw her she was not anemic. Whether she was previously to that, I don't know.
Q. Do you know what percentage of patients develop a gastric ulcer perforate?
A. No, I don't.
Q. Do you know whether it's more common to have a gastric ulcer bleed as opposed to gastric ulcer perforate?
A. I'm not sure which is more common.
Q. Have you in your practice been called upon to manage gastric ulcers?
A. Yes.
Q. First, how do you go about diagnosing a gastric ulcer?
A. Usually a gastric ulcer is diagnosed by an endoscopy.
Q. Do you do endoscopic procedures?
A. No.
Q. That would be referral to a GI?
A. Correct.
Q. Are there other modalities that you use in your practice to diagnose gastric ulcers?
A. We do an upper GI. I don't routinely order them now and haven't for a number of

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years.
Q. Why is that?
A. Well, for gastric ulcer, sometimes they can be caused by cancer and so biopsy is important. So we generally just go straight to that, because that can be done at the time of the endoscopy.
Q. Other than the endoscopy or upper GI, any other modalities that you use to diagnose ulcers?
A. That would be the primary.
Q. How do you treat gastric ulcers?
A. Usually with an acid blocking agent.
Q. When did you see Mrs. Pultz before September 25, '99? When was the last time you had seen her before?
A. August 6th of '99.
Q. And before the August date, when had you seen her?
A. July 28th of '99.
Q. Before July?
A. July 16th of '99.
Q. Before then?
A. June 4th of '99.
Q. And before that?

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A. April 16th.
Q. Is that the date that you had the result from the labs?
A. Correct.
Q. On the visits that you just mentioned to me, in April, June, July, August, did Mrs. Pultz have any abdominal complaints on any of those visits?
MR. ROSSI: What was the date? Through August 6th?
MR. MISHKIND: Through whatever the last date was that he saw Mrs. Pultz before we get to the September 25, '99 visit.
A. So can you repeat the question?
Q. Any complaints in any of those visits between April and the last visit before her emergency room visit where she had any abdominal complaints?
A. No.
Q. The labs that were drawn on March 26th and reported to you with regard to her hemoglobin and hematocrit were normal; is that correct?
A. That's correct.
Q. And her platelet count was normal, as

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well; correct?
A. Correct.
Q. What was Mrs. Pultz seen for on the visits that you just referenced? Without you going into all of the detail, can you sort of characterize the visits?
A. This is from April, including the April visit?
Q. Yes.
A. The April visit was for follow up of her diabetes. I will give you my diagnoses. Rheumatoid arthritis, adult onset diabetes with proteinuria, bronchitis and hyperlipidemia. That was April.
June 4, acute bronchitis and adult onset of diabetes.
July 16th, adult onset diabetes, rheumatoid arthritis, elevated lipid and hypertension.
And on July 28th, sinusitis and rheumatoid arthritis.
Do you want the August one, too?
Q. Please.
A. August was a cough, which I queried might be caused by possible ace inhibition,

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which is a blood pressure medication that frequently can cause a cough.
Q. When you would do labs on her, you would also check her sedimentation rate; correct?
A. Sometimes.
Q. Do all rheumatological, rheumatoid arthritis patients have an elevation in their ESR?
A. No.
Q. Is it more common to have an elevation in the sed rate in a rheumatoid arthritis patient than you or I who presumably don't have rheumatoid arthritis?
A. Yes.
Q. But finding a normal ESR in a rheumatoid arthritis patient such as Mrs. Pultz would not be uncommon; true?
A. That's correct.
Q. In fact, her sed rate usually was within normal limits, was it not, when you would see her?
A. I don't recall. I may have missed it in this review, but I don't see it.
Q. In fairness to you, there is a sed

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rate in '97 that I'm looking at. Would a 30 sed rate be within normal limits?
A. It's on the upper limit of normal.
Q. But still nothing that you would consider to be abnormal; true?
A. Not in a patient with rheumatoid arthritis.
Q. Her hemoglobin and her hematocrit in March -- her hemoglobin was 12.5 in March; correct?
A. That's correct.
Q. And the hematocrit was 38.1?
A. That's correct.
Q. Entirely normal; correct?
A. That's correct.
Q. Now, when you received the September 27th, '99 results of the KUB from the emergency room, did this record come with anything else other than the one page?
A. To the best of my knowledge, this is all I received. It would be in the chart.
Q. It would be in your chart?
A. Correct.
Q. Again, the only reason -- I'm just looking at the fax date. Did this record

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

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know, numerous things.
Q. Based upon what you knew on September 27th, why did she go to the emergency room on September 25? Could you tell?
A. I couldn't tell.
Q. Dr. Jones, the emergency room doctor, didn't contact you on September 27th, did he?
A. No, he did not.
Q. He didn't contact you when she was seen in the emergency room on September 25, did he?
A. No.
Q. Now, you received another document from the emergency room on October 1; correct?
A. Correct.
Q. Can you tell me why it is that you received a fax on October 1 from the emergency room?
A. Generally the emergency room does like to keep us up to date on our patients, so when they are in, they will send us a copy of the lab results.
Q. Do you know why these labs were not provided to you before October 1, 1999?
A. No, I don't.

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

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

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Q. I believe it was September 29th. I may be off.
A. Yes.
Q. Was it September 29th?
A. Yes, September 29th.
Q. And what was it that Mr. Pultz was coming into the office for?
A. Routine medication refill.
Q. Did you see him when he came in to get this medication refill?
A. It's very unlikely that I saw him.
Q. Given the fact that you had the results from the KUB from the 27th, did you question Mr. Pultz about his wife's condition when he came in to pick up the prescription?
A. As I said, it's very unlikely that I saw him. Had I seen him, which I didn't, there was nothing there that would have made me particularly concerned.
Q. Had you received the lab results at the same time you received the KUB results, would you have acted differently?
A. I probably would have, but I didn't have those results at the time.
Q. I understand that. And if you had

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

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

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A. That's correct.
Q. Given the history that you had with the patient, and absent any evidence that the patient was given any blood on September 25th, 1999, if you had received the labs sooner than October 1, 1999, and taken no action in terms of getting ahold of the patient or scheduling her to come back in, would that have been below accepted standards of care?
MR. AUCIELLO: Objection.
A. It's very difficult for me to answer that, because I didn't receive the labs, you know, so it's difficult to say. And I was not aware of what treatment, if any, was given in the emergency room.
Q. I'm asking you to assume that the patient was not given any blood in the emergency room and had those results. If that information had been provided to you sooner than October 1, 1999, would a reasonable and prudent physician have acted upon those results immediately?
A. I think that's reasonable.
Q. Now, the elevation in the platelet count on September 25, from the September 25 labs, was 490. That's abnormal, is it not?

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A. That's correct.
Q. Of what significance is this in your patient?
A. Elevated platelet counts can occur in two circumstances that would be significant here. One is chronic iron deficiency and the other would be active inflammation.
Q. Chronic iron deficiency?
A. Correct.
Q. Or an inflammatory condition?
A. That's two that I can think of offhand.
Q. To what do you attribute the elevation of 490 in platelets on September 25, 1999?
MS. HENRY: Given what he knows now or what he knew at the time?
MR. MISHKIND: Given what you know now.
MS. HENRY: I'll object to that and instruct him not to answer that, Howard. That's a retrospective question.
MR. MISHKIND: It may be a retrospective question and it may be objectionable, but I don't know of any privilege

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basis that you can instruct him not to answer that question. With all due respect, your objection is noted, but you don't have a basis to instruct him not to answer.
MS. HENRY: Where do you have a basis to ask that question when it's not appropriate?
MR. MISHKIND: Based upon the platelet result, he can certainly answer that, even though we know that she died. I want to know from a medical standpoint what causes the platelet level to be 490.
MS. HENRY: He told you the two things that can cause it.
MR. MISHKIND: In this particular patient, even though it is in retrospect, and I acknowledge that, what does he believe that 490 was attributable to?
MS. HENRY: Go ahead and answer with the proviso that it is based on everything that you might know about the patient; that she died and all that.
It's not a fair question. You should know better.
MR. MISHKIND: You let me know that and you have reprimanded me, but nonetheless the

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doctor can answer.
A. There is nothing in these labs that can tell me what that is from, whether it could be inflammation, she had an inflammatory disease, or whether it could be iron deficiency.
Q. Now, the UA in the emergency room showed two plus protein and large amount of blood but few bacteria; true?
A. What date was that?
Q. September 25.
A. Yes. It showed protein.
Q. Two plus protein?
A. Large amount of blood, moderate leukocyte esterase, red blood cells and white blood cells and few bacteria.
Q. Is this consistent with a UTI?
A. Yes.
Q. Is this a classic finding for a patient with a UA?
A. Yes. We knew she had protein in her urine from diabetes, too, but this would be perfectly consistent with urinary tract infection.
Q. When you received the results on October 1 for the labs, did you feel that there

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was any cause for alarm?
A. Not for alarm. Because you can presume when somebody is being seen in an emergency room, they have received treatment. And there was nothing to tell me whether anything was acute or chronic, so I thought she needed follow up.
Q. What type of treatment would you expect in an emergency room to be provided for a patient that has the hemoglobin and the hematocrit and the platelets that she had?
MR. SWEENEY: Objection.
MR. AUCIELLO: Objection.
A. I'm not an emergency room doctor. I'm not competent to tell them what to do.
MS. HENRY: That's enough.
Q. You, as an internist, if you see a patient with that kind of hemoglobin, hematocrit, and platelet level, what type of treatment would you expect that you would give?
A. Without clinical information, I can't say.
Q. Assume the patient presents with recent onset of abdominal symptoms and has no history of prior anemia.

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A. Again, that's not complete information. I would have to take the whole picture. We know she had a urinary tract infection, so that can cause abdominal pain.
Q. Would that cause the drop in the hematocrit and hemoglobin?
A. No.
Q. And if you were concerned about the drop in the hematocrit and hemoglobin, what type of treatment would you need to provide?
A. Well, we would want to find out if this is acute or chronic is what I would think.
Q. When is the last time that you looked at the emergency room record?
A. I have not seen the emergency room record.
Q. So all you have is the KUB result and the labs?
A. That's correct.
Q. When you got the labs on October 1, you were concerned about her labs with regard to her hemoglobin, her hematocrit, platelet count; correct?
A. I thought she needed follow up.
Q. And you certainly considered the

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possibility that this patient was experiencing some type of a bleed; correct?
A. I thought she needed to be followed up.
Q. Well, certainly within your differential, when you see those kind of labs, you have to at least consider the possibility that the patient may have some type of a bleed?
A. Sure.
Q. And given the labs, given that as a possibility in terms of her having a bleed, did you ever call over to the emergency room to ask that someone in the emergency room send you the full set of records so that you would have all of the information about her symptoms and everything else that might have been done in the emergency room?
A. No, I didn't do that.
Q. Did you ever make inquiry at all of Dr. Jones in terms of what he did or why he discharged the patient? Anything along those lines?
A. I did not.
Q. Would you do periodically rectal exams on Mrs. Pultz?

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A. Not on a routine basis.
Q. In a patient that presents with a finding suggestive of some form of anemia in a patient who has not previously been anemic, would you do a rectal exam?
A. Yes.
Q. And if a patient is quiac positive, of what significance is that?
A. A quiac positive rectal exam would at least suggest the possibility that gastrointestinal blood loss could be causing the anemia.
Q. Does that need to be followed up?
A. Probably, yes.
Q. Did Dr. Jones ever tell you that the patient was quiac positive?
A. I did not get any information.
Q. If Dr. Jones had called you and told you that the patient was quiac positive, that she had the levels of hemoglobin, hematocrit and the platelet count she did, and he had contacted you when she was in the emergency room, would you have requested that your patient be admitted to the hospital for further evaluation?
MR. SWEENEY: Objection.

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

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

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because, is this the very front of the chart?
A. Yes.
Q. And does it say -- because I don't have your chart in front of me -- does it say problem list?
A. Yes.
Q. And also you have the medication list and the problem list?
A. Correct.
Q. Why wasn't Mrs. Pultz seen in your office sooner than October 5?
A. I don't know. She was contacted and told to follow up on the 1st.
Q. Who contacted her?
A. One of my medical assistants.
Q. Who was that?
A. It looks like Tammy Minowski.
MR. ROSSI: What was the date, doctor?
THE WITNESS: October 1st, Tammy Minowski.
Q. And that's the TM on the note?
A. Yes.
Q. And before that, you have written down very anemic?

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A. Yes.
Q. What does that mean?
A. It means that she was very anemic, her blood count was low.
Q. And then it says, needs RTC?
A. Correct.
Q. Which stands for?
A. Return to the clinic, to the office.
Q. You didn't indicate on here when she needed to return; correct?
A. Correct.
Q. You didn't give any instructions to Tammy as to what she should indicate to Mrs. Pultz as to the urgency of her return to the clinic, did you?
A. That's correct.
Q. And without you giving information to Tammy as to the urgency or nonurgency of that, she doesn't know, does she?
A. No.
Q. Is she a nurse?
A. A medical assistant.
Q. But not an LPN or RN?
A. No.
Q. Does Tammy still work for you?

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A. Yes.
Q. Do you know as you sit here right now from discussions with Tammy what it was that she said when she left a phone message?
A. No. I have had no discussions with Tammy.
Q. When it says left phone message, does it mean that she reached someone?
A. Yes.
Q. Or might she have gotten an answering machine?
A. I believe that she would have reached someone.
Q. But it doesn't say who she reached; right?
A. No.
MS. HENRY: What are we looking at? I'm sorry.
THE WITNESS: This one.
MS. HENRY: Okay.
Q. And all it says there is left phone message to return to clinic; correct?
A. That's correct.
Q. It doesn't say what time she made the call; correct?

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A. Correct.
Q. It doesn't say what date or time she needed to return to the clinic?
A. That's correct.
Q. In any event, for whatever reason, Mrs. Pultz did not see you until October 5, '99; correct?
A. Correct.
Q. Are you in any way critical of her for not having returned to your office sooner than October 5?
A. I don't know any of the circumstances regarding why she came in on that date as opposed to sooner.
Q. I guess what I'm asking you, is there any basis that you have to suggest any criticism from what you know in this case as it relates to Mrs. Pultz for her not being seen in your office before October 5, 1999?
A. I'm not sure I understand the question.
Q. Do you feel that she should have been seen by you sooner than October 5, 1999?
A. Without knowing the circumstances, the information in the emergency room, you know,

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

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procedure in your office in terms of follow up to get the patient in?
A. I'm not sure I'm entirely sure what you are asking me.
MS. HENRY: Try and rephrase it, then, Howard.
Q. What does your office do when follow up is suggested by an emergency room physician on one of your patients?
MS. HENRY: And they know about it?
Q. And you know about it.
A. If that occurred, we would try and accommodate that. If not me, one of my associates.
Q. Would you contact the patient to come in?
A. If they contacted us and told us that they want us to contact the patient or that they want there to be follow up, yes.
Q. So you have had contact from time to time by the emergency room suggesting follow up?
A. Yes.
Q. And sometimes you learn that directly from the patient that the emergency room wanted follow up?

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A. Correct.
Q. Now, you saw Mrs. Pultz on October 5; correct?
A. That's correct.
Q. At that time, you did not refer her for a GI consultation; correct?
A. That's correct.
Q. You certainly were concerned about her having anemia; correct?
A. That's correct.
Q. And one of the causes of anemia that you had not ruled out at that point was possibly methotrexate precipitating the anemia?
A. That's correct.
Q. You ultimately ruled that out; correct?
A. I believe so, yes.
Q. Your other potential cause of anemia was the iron deficiency; correct?
A. Correct.
Q. And as to the cause of the iron deficiency, you could not rule out some type of a gastric ulcer; correct?
A. That's one of the things in the differential, certainly.

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

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

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I order blood work like that, schedule people back.
Q. Nothing in the record that would reflect that, is there?
A. No.
Q. Do you keep your calendars that show appointments that are made back in 1999?
A. I don't believe we would still have that.
Q. Was the blood drawn in the office and sent?
A. No.
Q. So she had to actually go to the hospital for that?
A. She would have gone to Southwest.
Q. What time was your appointment on the 5th?
A. I don't have a time recorded.
Q. What was within your differential on October 5, 1999?
A. Well, I had the urinary tract infection in the differential, anemia with iron deficiency or possibly methotrexate, and then her rheumatoid arthritis.
Q. And certainly the cause of the iron

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deficiency could have been a perforated ulcer or a bleeding ulcer; correct?
A. That's correct.
Q. And she had abdominal pains on October 5?
A. No. I have no record of any abdominal pains. The abdominal exam was nontender.
Q. Now, the results from the October 5 labs, tell me when they were received by your office.
A. It's difficult to say exactly when they were received. It looks like it was probably the 8th. There is one fax that says the 8th, and certainly we called in iron on the 8th.
Q. You have a faxed notation showing that the labs came to you on the 8th?
A. I have for the iron studies a fax received on the 8th. For the others, that doesn't state. They were not a faxed result.
Q. And were the iron results consistent with iron deficiency anemia?
A. Yes. Her iron was low.
Q. Were the other results in the

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chemistry, the general chemistry, consistent with a patient that has iron deficiency anemia?
A. I believe so, yes. Her reticulocyte count was not elevated, which tends to be elevated. That means the body can't produce new red blood cells.
Q. Of what significance was that to you in terms of your diagnosis or your thought process on whether she did or did not have iron deficiency anemia?
A. It suggested that it was likely iron deficiency anemia. Methotrexate could also cause a low reticulocyte count.
Q. Is it fair to say that as it relates to the hematology results from October 5, '99, first, Mrs. Pultz was seen by you in the office, and apparently went to the hospital as requested the same day and had her lab work done; correct?
A. That's correct.
Q. As to when these results were sent to you, can you tell me based upon what you have there when they were first received?
A. I can't tell you for sure when they were first received.
Q. All right. Now, there is a notation

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that I have on the copy and I think the original you have, or at least your chart report, and I see a note that says please pull chart today and have either Dr. Huber or Dr. Banozic review. Do you see that?
A. Yes.
Q. Whose handwriting is that?
A. Dr. Kuchynski's.
Q. Where were you?
A. I can presume I wasn't in the office on the day that this was received. And so that she asked -- we have two offices and Dr. Kuchynski is in another office -- that she asked one of those two to review the chart.
Q. Which office is Dr. Kuchynski in?
A. In Brunswick.
Q. Was this faxed to the Brunswick office?
A. This is not a faxed result.
Q. Was it mailed to the Brunswick office?
A. It doesn't look like it was mailed. They usually put results in our -- we have a box at the hospital and they put results there. When we make our daily rounds, we pick them up.

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Q. So is it likely that Dr. Kuchynski picked up these results at the hospital?
A. I think it's possible.
Q. Again, you know the procedure better than I do. Is that a reasonable conclusion?
A. I think it's reasonable, yes.
Q. And would that also explain why, perhaps, we don't have a facsimile on it; because she picked them up at the hospital?
A. Correct.
Q. Is it possible that she picked them up at the hospital the date that they were finalized; that being October 6th, 1999?
A. I have no idea.
Q. There is nothing to suggest that they weren't available in the hard copy for you or Dr. Kuchynski or anyone else from your practice on October 6th, 1999; correct?
A. I can't say when they were available, from the information that I have.
Q. I think there is a star and reference to please pull the chart. Would that be the handwriting of Dr. Kuchynski?
A. Yes.
Q. Did you ever talk to Dr. Kuchynski

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about when she picked these up or what concerns she had?
A. No.
Q. Dr. Kuchynski would have known that you were the patient's primary care physician; correct?
A. It says.
Q. So she didn't have to get too clever. She would have had it printed right at the top; correct?
A. Correct.
Q. Did she contact you to let you know that labs had been drawn on your patient?
A. No. But like I said, I believe I wasn't in the office that day.
Q. Now, the note of iron deficiency anemia below that, is that your handwriting?
A. Yes.
Q. When did you write that?
A. It's not dated. I presume because the iron was called in that day that would have been on the 8th.
Q. Now, where it says called in October 8, 1999, that's calling in the iron for the patient?

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A. That's correct.
Q. When was the patient contacted relative to these results?
A. It would have been on the same day.
Q. Does it indicate that the patient was called?
A. Well, at the bottom I asked about whether she still had any symptoms from her urinary tract infection and there is a note that says she had frequency but no pain.
Q. Can you tell me what date that note was written?
A. That would have been on the 8th.
Q. And what do you base that on?
A. The fact that it's the same person and the same date there. And I wrote it all at one time to query the patient on that date.
Q. Now, you note here says needs to see GI?
A. Correct.
Q. You didn't schedule her to see a GI, did you?
A. No, I didn't.
Q. In fact, she came back in to see you on the 14th; correct?

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A. That's correct.
Q. You knew as of the 8th this patient needed to have a gastroenterology contact?
A. That's correct.
Q. You certainly considered that she might have a gastric ulcer as a cause of her drop in her hemoglobin; correct?
A. That's one of the things that's in the differential; correct.
Q. And you knew that this patient needed to have endoscopy or upper GI workup to evaluate the source of her potential bleed; correct?
MR. ROSSI: Objection.
A. Correct.
Q. You didn't note on October 8th that the patient should contact Dr. Mahajan; correct?
A. I did not note that.
Q. Do you have any basis to tell me that on October 8th you told the patient to schedule an appointment with Dr. Mahajan?
A. Not specifically Dr. Mahajan.
Q. Or any gastroenterologist?
A. It's noted there that we recommended that she see a gastroenterologist.
Q. You mark down needs to see GI, but is

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there any indication that this patient was told that she needed to see a gastroenterologist?
A. It's not recorded.
Q. In fact, if you said that she needs to see a GI doctor, can you tell me why on October 14th she would return to you rather than to a GI doctor?
A. I can't explain that.
Q. And when you saw her on the 14th, do you have any recollection of asking her why are you here; I expected that you were going to be seen by a GI doctor?
A. I don't have any recollection of that.
Q. Are you going to testify that she shouldn't have come back to see you on the 14th; that she should have been seen by a gastroenterologist?
MS. HENRY: Doctor, why don't you look at your notes for the 14th before you testify about anything here.
THE WITNESS: I didn't understand the question.
MR. MISHKIND: That's why we bring Vivian along.

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

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

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

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

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

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seen?
A. Yes.
Q. And if you felt that this patient had an issue that needed urgent or emergent evaluation, would you agree that waiting until the 19th to be seen would not be reasonable and prudent?
MR. ROSSI: Objection.
MS. HENRY: Objection. You are asking him to assume something that he didn't assume or see at the time, Howard.
MR. MISHKIND: Hypothetically, if he felt --
MS. HENRY: Why don't you tell him you are going to give him a hypothetical question.
Q. Everything I just said to you is hypothetical. If you had felt that way.
A. I felt she had a chronic nonacute iron deficiency. Had I felt she was acutely bleeding, she would have been worked up quicker.
Q. And waiting until the 19th would not have been reasonable and prudent; correct?
A. Correct.
Q. If you had reason to suspect that she

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

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

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

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

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

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A. Just with my attorney.
Q. With regard to the patient, the ultimate autopsy results, do you see where there is an indication that the patient sustained an anterior wall infarct?
A. I don't recall.
MS. HENRY: Howard, I didn't show him the autopsy.
MR. MISHKIND: Either you did or you didn't.
MS. HENRY: I didn't show him the whole autopsy.
Q. So you didn't see the part on the cardiovascular system or either the gross or anatomical description of the heart?
A. I did not see that.
Q. So when I am telling you that she sustained an acute MI, what you are telling me on the record is that you are not aware of that until I just shared that with you?
A. That's correct.
Q. Do you know whether a patient that has a drop in their hemoglobin down into very critical levels, whether that can cause a patient to experience a heart attack?

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MS. HENRY: Hold on. We are back into the expert testimony here. Again, you are asking him an opinion as to whether those findings can cause that. If you want to ask him that later as an expert, if he is going to testify on that, that's fine.
MR. MISHKIND: Dierdre, I'm not sure --
MS. HENRY: Just because you ask the question in the way, you don't have an opinion, doesn't mean you are not asking for one. He is testifying about his care and treatment of this patient and what his knowledge is, and I think that's what we are here for and that's what he is testifying to.
MR. MISHKIND: Only because I'm tired and I don't feel like arguing with you, I'm going to move on. I will save my arguments for another time.
MS. HENRY: Later if he is going to give opinions in that area, you have the right to redepose him.
Q. You have seen parts of the autopsy, but not relative to the existence or nonexistence of the patient experiencing a heart

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attack; true?
A. That's correct.
Q. You never treated the patient at any time during your care and treatment for any cardiovascular disease; correct?
A. That's correct.
Q. The patient had not exhibited during your treatment any evidence of any coronary artery disease; correct?
A. That's correct.
Q. You had never referred the patient or felt the need to refer the patient for any form of cardiac diagnostics by way of catherization or stress testing; correct?
A. That's correct.
Q. When you found out about Mrs. Pultz' death, did you attempt to determine from anyone at Southwest what it was that caused her death?
A. No.
Q. Did anyone ever share with you, other than your attorney, what was the cause of her death?
A. I spoke to the husband. I don't remember the specifics of that conversation. That would have been the only thing I would have

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known about.
Q. When Mrs. Pultz was admitted to Southwest, her hemoglobin, I will tell you, because perhaps you are not aware, her hemoglobin was 4.6.
Let me first ask you, were you aware of that fact before I just told you that?
MS. HENRY: Well, Howard --
MR. MISHKIND: I'm asking was he aware of the fact. I'm not going to ask him the source of that information.
MS. HENRY: He had no knowledge of anything having to do with what happened in the hospital outside of any conversation he had with me. So even asking him if he was aware of it is going to reveal a source, obviously, and part of a discussion with an attorney.
Q. Doctor, before this deposition began, did you have an opportunity to review any of the labs from Southwest General Hospital?
A. No.
Q. At any time prior to the deposition, had you had occasion during the course of this case to look at personally the labs that were drawn when Mrs. Pultz was admitted to Southwest

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General Hospital?
A. No.
Q. Based upon your treatment of Mrs. Pultz through October 14th, 1999, did she, as of October 14, 1999, in your professional opinion have a decreased life expectancy?
MR. ROSSI: Objection.
MR. AUCIELLO: Objection.
MS. HENRY: Objection. We are into the same thing.
MR. MISHKIND: I'm asking him as a treating physician. I'm not asking any questions relative to opinions on the standard of care, which I think is what --
MR. AUCIELLO: Expert opinions,.
MS. HENRY: Expert opinions. Proximate cause, standard of care and anything --
MR. AUCIELLO: I don't like the case either.
MR. MISHKIND: I think it's ridiculous.
Let me state on the record if that's the way you want to do it, if the doctor intends to provide any opinions on cause of death, on

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proximate cause, on life expectancy, then I will expect that a report outlining those opinions will be provided and we will reconvene the deposition at that point.

MS. HENRY: That's fine.

Q. Doctor, aside from what you have told me about in terms of the visits on October 14th, October 5th, and the way in which the KUB result came to you, and the way in which you became aware of the labs from the September 25th visit that were faxed to you on October 1, is there any other information between September 25 and October 14th in terms of labs, clinical findings, that we have not talked about concerning your patient, Mrs. Pultz?

A. On October 5th, we didn't go into my examination of her abdomen at the time.

Q. Why don't you tell me about that.

A. She had active bowel sounds. It was soft, nontender; no hematosplenomegaly, no enlargement of the liver and spleen and no flank tenderness.

Q. Of what significance is that?

A. Well, it tells me that she did not have -- well, it suggests that she doesn't have

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what we call an acute abdomen.

Q. Of what significance is that in terms of whether or not she has a gastric ulcer causing the hemoglobin to be at the levels that they were at?

A. In terms of the anemia, it doesn't make a strong statement one way or another, but the lack of tenderness is probably significant.

Q. In terms of speaking against it?

A. Yes.

Q. So is it your feeling clinically as of October 14th that she did not have clinical evidence of a gastric bleed or a gastric perforation or both?

A. From my clinical exam, there was no evidence of a perforation, gastric bleed. Certainly there was no evidence of a gastric bleed that I could tell by my exam.

Q. But certainly the clinical exam couldn't permit you to rule out a gastric bleed as a potential explanation for her anemia?

A. Not entirely, no.

Q. That's why you felt that she needed to have this workup?

A. Right.

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Q. You just didn't feel it needed to be done on an emergent or urgent basis?

A. Correct.

Q. Anything else clinically, diagnostically that we haven't talked about on the visits between September 25 and when you last saw her?

A. I believe we have pretty much covered it.

MR. MISHKIND: Doctor, I have no further questions at this point, with the reservation -- and it's a big reservation -- that you and I will undoubtedly meet again before trial.

Thank you, sir. The other lawyers may have some questions for you.

EXAMINATION OF DOUGLAS N. FLAGG, M.D.

BY MR. AUCIELLO:

Q. Doctor, I represent Dr. Jones and I just have one area of questions.

The emergency room record indicates that the patient was told to follow up with your office within 24 hours. Is there any evidence in your records that any attempt was made to make an appointment with you during the last

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week of September of 1999?

A. No.

Q. And I believe if I understood your testimony, in fact, it was your office that contacted the patient, Mrs. Pultz, once you got the abnormal lab results from the emergency room; correct?

A. That's correct.

Q. So am I safe in assuming that the October 5 visit with Mrs. Pultz was occasioned by your office, not her?

A. Correct.

MR. AUCIELLO: No further questions. Thank you.

EXAMINATION OF DOUGLAS N. FLAGG, M.D.

BY MR. ROSSI:

Q. I'm Greg Rossi and I represent Dr. Mahajan, and I have a few questions for you.

When Dr. Mahajan saw her on October 19th, he showed that she weighed 179 pounds.

Did you consider her to be obese?

A. No.

Q. She did have adult onset of diabetes, didn't she?

A. Correct.

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Q. She was insulin dependent; right?
A. She did take insulin. Whether she is insulin dependent, I mean, there may have been someway to treat her with other medications but she was on insulin.
Q. A long history of rheumatoid arthritis?
A. That's correct.
Q. Did she have hyperlipidemia?
A. Yes.
Q. Hypertension?
A. Yes.
Q. She had a history of heart disease, didn't she, her mother?
A. Are you asking me if she had a history?
Q. Mrs. Pultz had a history of heart disease?
MR. MISHKIND: Family history?
MR. ROSSI: Yes, family history.
MR. MISHKIND: I thought you were telling us something we didn't know.
MR. ROSSI: I scared Howard for a moment.
Q. I will cut to the chase. Dr. Mahajan

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

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

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AFFIDAVIT

I have read the foregoing transcript from page 1 through 107 and note the following corrections:

PAGE	LINE	REQUESTED CHANGE

DOUGLAS N. FLAGG, M.D.

Subscribed and sworn to before me this day of , 2001.

Notary Public

My commission expires .

CERTIFICATE

State of Ohio,
SS:
County of Cuyahoga.

I, Vivian L. Gordon, a Notary Public within and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within named DOUGLAS N. FLAGG, M.D. was by me first duly sworn to testify to the truth, the whole truth and nothing but the truth in the cause aforesaid; that the testimony as above set forth was by me reduced to stenotypy, afterwards transcribed, and that the foregoing is a true and correct transcription of the testimony.

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

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

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