

State of Ohio,) SS:
County of Cuyahoga.)

- - -

IN THE COURT OF COMMON PLEAS

- - -

MARTIN T. McCUE,)
 Plaintiff,)

v.)

PARMA COMMUNITY GENERAL)
HOSPITAL, et al.,)

Defendants. - -) -

Case No. 326206

THE DEPOSITION OF RICHARD A. GITTINGER, M.D.

WEDNESDAY, DECEMBER 10, 9997

- - -

The deposition of RICHARD A. GITTINGER, M.D., a
witness, called for examination by the Plaintiff, under
the Ohio Rules of Civil Procedure, taken before me,
Janet M. Hoffmaster, Registered Professional Reporter
and Notary Public in and for the State of Ohio,
pursuant to notice, at the offices of Reminger &
Reminger, The 113 St. Clair Building, Cleveland, Ohio,
commencing at 9:00 a.m., the day and date above set
forth.

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1 APPEARANCES:

2 On behalf of the Plaintiff:

3 DAVID B. MALIK, ESQ.
4 8228 Mayfield Road
5 Chesterland, Ohio 44026
6 (440) 729-82607 MARK RUFF, ESQ.
8 Hoyt Block Building
9 700 West St. Clair
10 Cleveland, Ohio 44113
11 (216) 687-199912 On behalf of the Defendants Southwest Orthopedics and
13 Dr. Gittinger:14 STEPHEN E. WALTERS, ESQ.
15 Reminger & Reminger
16 The 113 St. Clair Building
17 Cleveland, Ohio 44114
18 (216) 687-131119 On behalf of the Defendant Parma Community General
20 Hospital:21 JOHN W. JEFFERS, ESQ.
22 Weston, Hurd, Fallon, Paisley & Howley
23 2500 Terminal Tower
24 Cleveland, Ohio 44113
25 (216) 687-3214

26 On behalf of the Defendant Dr. Lopez-Valez:

27 DAVID H. GUNNING, II, ESQ.
28 JOHN P. SLAGTER, ESQ.
29 Buckingham, Doolittle & Burroughs, L.L.P.
30 1375 East 9th Street
31 Cleveland, Ohio 44114
32 (216) 621-5300

33 - - -

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11 D and E 54

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15 OBJECTIONS BY

16 MR. WALTERS 7, 28, 36(3), 37, 38(2),
17 40(2), 48, 51, 56, 57, 66,
18 67, 68, 7419 MR. JEFFERS 5, 6, 7, 34, 37, 38,
20 42(2), 43, 46, 51, 58(2),
21 59, 60(2), 62(3), 63, 69,
22 70, 71(3), 72(2), 74

23 MR. MALIK: 77(5), 78, 79

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1 RICHARD A. GITTINGER, M.D.

2 a witness, called for examination by the Plaintiff,
3 under the Rules, having been first duly sworn, as
4 hereinafter certified, deposed and said as follows:

5 CROSS-EXAMINATION

6 BY MR. MALIK:

7 Q. Doctor, my name is David Malik. I have some
8 questions to ask you regarding Martin McCue.9 If there's anything that you want me to rephrase
10 for any reason, let me know, okay?

11 A. Okay.

12 Q. It's not the grand inquisition and just give me
13 straightforward answers as best you can.14 For the record would you please state your full
15 name?

16 A. Richard Alan Gittinger.

17 Q. Your business address?

18 A. 6681 Ridge Road, Parma, Ohio.

19 Q. Your occupation?

20 A. Orthopedic surgeon.

21 Q. Briefly tell us about your education.

22 A. Undergraduate study at John Carroll University,
23 medical school at Case Western Reserve, my residency at
24 St. Luke's Hospital in Cleveland, Ohio.

25 Q. Brief description of your employment the last 10

Page 5

1 years.

2 A. 1989 started with Southwest Orthopedics, which
3 is the -- at the 6681 address. And that was directly
4 from our residency.

5 Q. Okay. Your social security number?

6 A. 290-66-7644.

7 Q. Marital status?

8 A. Married.

9 Q. Office phone number?

10 A. 842-1570.

11 Q. Okay. Have you ever had your deposition taken
12 before?

13 A. I have.

14 Q. At the times when you had your deposition taken
15 before were you a plaintiff, a defendant or a witness?

16 MR. JEFFERS: objection.

17 I want time to get my objections in,
18 and I will object to this line.

19 A. Expert witness.

20 Q. Okay. Can you tell me the cases in which you
21 were an expert witness?

22 A. I don't recall the details.

23 Q. Were any of them medical malpractice cases?

24 A. No.

25 Q. Were they all personal injury cases?

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1 A. I would suspect they were, yes.
 2 Q. Were they in Cuyahoga County?
 3 A. Yes, they were.
 4 Q. Have you ever testified at a trial?
 5 A. No, I have not.
 6 Q. Have you ever had your deposition taken by
 7 videotape?
 8 A. Yes, I have.
 9 Q. Have you testified for both plaintiff and
 10 defendant?
 11 A. I don't understand the question.
 12 Q. Have you been an expert witness for the
 13 plaintiff side in any of those cases?
 14 A. I have always been the expert witness for the
 15 patient that I treated.
 16 Q. Have you ever been named as a defendant in a
 17 medical malpractice case other than this?
 18 J. JEFFERS: Objection
 19 A. I have been given several 180 day letters and I
 20 may have been named in one or two suits. Again, the
 21 details I'm not sure of.
 22 Q. In Cuyahoga County?
 23 A. Yes.
 24 Q. Have you ever been named as a defendant in any
 25 type of litigation?

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1 MR. JEFFERS: Object.
 2 MR. WALTERS: other than
 3 malpractice?
 4 Objection, go ahead.
 5 A. No.
 6 Q. Have you ever been a plaintiff in a case?
 7 A. I don't understand what plaintiff is.
 8 Q. Have you ever sued anybody?
 9 A. I have not, no.
 10 Q. That's refreshing.
 11 During 1995 and through 1996 did you have
 12 privileges at Parma Community Hospital?
 13 A. Yes, I did.
 14 Q. And did those privileges extend to the emergency
 15 room?
 16 A. Yes, they did.
 17 Q. Were there any limitations on those privileges?
 18 A. None.
 19 Q. Did those privileges include the authority to
 20 perform surgery at Parma?
 21 A. Yes, they did.
 22 Q. In 1995 how long had you had privileges?
 23 A. Since 1989.
 24 Q. What is Southwest Orthopedics?
 25 A. Southwest Orthopedics is a corporation which

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1 currently involves four orthopedic surgeons who
 2 practice solely orthopedic surgery based out of Parma
 3 Hospital.
 4 Q. Is Dr. Karns in that?
 5 A. Yes, he is.
 6 Q. Did Dr. Karns treat Mr. McCue?
 7 MR. JEFFERS: I couldn't
 8 hear you.
 9 MR. MALIK: Did he treat
 10 Mr. McCue.
 11 A. Not directly.
 12 Q. What was his involvement?
 13 A. Dr. Karns was taking weekend call for me while
 14 Mr. McCue was in the hospital during his post-op
 15 period.
 16 Q. Was his involvement in Mr. McCue's treatment
 17 limited to telephone conversations?
 18 A. That, and he would round on Mr. McCue on
 19 Saturday and Sunday of the weekend he was in. He made
 20 rounds meaning he went in and visited him, made sure,
 21 physically saw him.
 22 MR. WALTERS: Post-op, can
 23 we get him dismissed? Go ahead.
 24 BY MR. MALIK:
 25 Q. Are you an employee of Southwest Orthopedics?

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1 A. Technically I am, yes.
 2 Q. Are you an employee of Parma Community Hospital?
 3 A. I am not.
 4 Q. Were you ever an employee of Parma Community
 5 Hospital?
 6 A. I was not.
 7 Q. Does Southwest Orthopedics issue you a W-2?
 8 A. Yes, they do.
 9 Q. Are you an employee of any other entity?
 10 A. I am not.
 11 Q. Is there a contract that exists between
 12 Southwest Orthopedics and Parma Hospital?
 13 A. None.
 14 Q. Is there a contract that exists between you as a
 15 physician and Parma Hospital?
 16 A. None.
 17 Q. Is there a contract that exists between you as a
 18 physician and Southwest Orthopedics?
 19 A. Yes.
 20 Q. Would you at some point in the near future give
 21 your attorney a copy of that?
 22 A. Yes.
 23 MR. WALTERS: We won't
 24 necessarily give it to him, but we will
 25 make a decision in that regard as to its

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1 relevance, but go ahead.

2 BY MR. MALIK:

3 Q. Did there come a time when you received a
4 request for consultation regarding Martin McCue?

5 A. Yes.

6 Q. And how did that come about?

7 A. Mr. McCue was seen in the emergency room the
8 morning or the day of his injury. He was actually
9 treated by the emergency room physician and then the
10 extremity was -- the affected extremity was splinted
11 and he was discharged home from the emergency room with
12 instructions to follow up, to give my office a call,
13 make a follow-up appointment.

14 The same day through the answering service Mr.
15 McCue got in touch with me. I happened to be on call
16 for the group that night so I called Mr. McCue at home
17 and basically he said he was in so much pain that he
18 felt something needed to be done. And I wasn't sure of
19 the situation seeing as I never met the gentleman or
20 knew the specifics, so I asked that he return to the
21 emergency room and I met him there that same evening
22 and evaluated him then.

23 Q. The referral from the emergency room, was that
24 normal procedure for the emergency room to refer cases
25 to you?

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1 A. Yes.

2 Q. Are you aware of whether or not Southwest
3 Orthopedics is the exclusive referral network for Parma
4 Community Hospital?

5 A. We are not.

6 Q. Do you recall what day of the week this was?

7 A. Monday.

8 Q. And when you received the phone call where were
9 you?

10 A. I don't recall.

11 Q. But you weren't at the hospital?

12 A. I suspect I was at home.

13 Q. When you got to the hospital and you saw Mr.
14 McCue what occurred?

15 A. Again, from review of my records, I don't
16 remember specifically, but from review of my records I
17 examined him, I actually took a history from him, I
18 examined him, reviewed x-rays and then splinted the
19 extremity and he was again discharged home with plans
20 to follow up in the office within a week's time.

21 Q. Do you recall whether or not Mr. McCue was
22 cooperative?

23 A. Yes, he was.

24 Q. During the course of your treatment was there
25 ever a time when he wasn't cooperative?

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1 A. None that I can recall.

2 Q. Did you seem to be able to communicate well with
3 him?

4 A. Yes.

5 Q. So is it a fair statement to say you were
6 comfortable with the dialogue that occurred between the
7 two of you?

8 A. Yes.

9 Q. Now, you indicated that you took a history from
10 Mr. McCue. Feel free to refer to your note, but can
11 you briefly tell me what that history was?

12 A. Sure.

13 MR. WALTERS: still in the
14 emergency room?

15 A. Still in the emergency room, correct, I even
16 have a written copy of it here. A 38-year old
17 maintenance worker who had a granite gravestone fall on
18 the lateral aspect of his right knee in the afternoon,
19 that afternoon. He recalled the tearing sensation
20 about the medial aspect of that knee. The leg was
21 trapped under the gravestone for about 30 seconds.

22 He was then seen in the emergency room the
23 afternoon of the injury, x-ray showed a fibular neck
24 fracture. He was placed in a knee immobilizer and here
25 I have patient then contacted me by phone with

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1 complaints of severe knee, calf and ankle pain with a
2 numb feeling from the thigh to the foot. And then just
3 that his current medications include several
4 medications for asthma.

5 Q. I want to ask you a little bit about the asthma.

6 MR. JEFFERS: The what?

7 MR. MALIK: Asthma.

8 BY MR. MALIK:

9 Q. Other than the patient telling you that he had
10 asthma was there any other dialogue about the asthma in
11 the emergency room?

12 A. None that I could recall.

13 Q. Was there any reason at that time for you to be
14 concerned at all --

15 A. No.

16 Q. -- about the asthma?

17 I believe it was Dr. Markowitz in the emergency
18 room who referred him: is that correct?

19 A. I believe he was the physician who saw him in
20 his first ER visit.

21 Q. What is Vicodin?

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 10 Mr. McCue. Feel free to refer to your note, but can
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 15 A. Still in the emergency room, correct, I even
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 19 that afternoon. He recalled the tearing sensation
 20 about the medial aspect of that knee. The leg was
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 22 He was then seen in the emergency room the
 23 afternoon of the injury, x-ray showed a fibular neck
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 25 I have patient then contacted me by phone with

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 6 MR. JEFFERS: The what?
 7 MR. MALIK: Asthma.
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 18 room who referred him; is that correct?
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 20 his first ER visit.
 21 Q. What is Vicodin?
 22 A. Pain medication.
 23 Q. And who prescribed that?
 24 A. I know I had prescribed it once I had seen him
 25 in the office, but apparently I have at the bottom of

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1 my notes that he has Vicodin at home. I don't know who
2 prescribed that.

3 Q. And which note is that, what's the date on that
4 note?

5 A. This is 09-25-95, my initial emergency room
6 visit with him.

7 Q. So you're not aware of whether or not it was Dr.
8 Markowitz that prescribed the Vicodin at that time?

9 A. No, I'm not.

10 Q. Okay. Now, the records indicate the first
11 office visit was on 10-02 of '95; is that correct?

12 A. Correct.

13 Q. And was that visit at your offices at Southwest
14 Orthopedics?

15 A. Yes, it was.

16 Q. I was unable to read the handwritten portion of
17 the chart; could you read that?

18 A. Sure. It says medial knee, posterior calf,
19 posterior ankle, venous ultrasound, one week.

20 MR. JEFFERS: You're reading
21 from that date now.

22 THE WITNESS: October 2,
23 1995.

24 BY MR. MALIK:

25 Q. I assume you've had the opportunity to review

Page 15

1 the entire note?

2 A. Yes, I have.

3 Q. And you did that prior to your deposition?

4 A. I did, yes.

5 Q. Other than your office notes what else did you
6 review?

7 A. I reviewed the hospital chart and I reviewed our
8 entire office chart of Mr. McCue.

9 Q. When you say the hospital chart, is that the
10 hospital chart from Parma?

11 A. Correct.

12 Q. Did you review any University Hospital records?

13 A. I did not.

14 Q. There was an indication in one of your notes
15 during one of your office visits that Mr. McCue had
16 asked you to send a letter -- or to contact Dr.
17 Gillota?

18 A. M-hm.

19 MR. MALIK: This is
20 Victoria, she is our paralegal.

21 BY MR. MALIK:

22 Q. Did you ever send Dr. Gillota a letter?

23 A. In fact I had on several occasions. I usually
24 made a notation to that effect at the end of each of my
25 office notes. In fact, on January 15, send letter to

Page 16

1 Dr. Gillota, and that was the one time, correct.

2 Q. Okay. Your attorney sent me a copy of that
3 letter which I misplaced; do you have another copy of
4 it?

5 A. When we send letters to Dr. Gillota, basically
6 what we are doing is including a letter, basically a
7 face sheet, and then we send a copy of these actual
8 office notes with it, so that's basically what gets
9 done.

10 Q. Okay.

11 A. These would be the face sheets that go along
12 with the office notes.

13 Q. Okay.

14 MR. JEFFERS: I would like
15 copies of those.

16 BY MR. MALIK:

17 Q. I just want to make the January 18th Southwest
18 Orthopedics letter Exhibit A and the April 4, '96
19 exhibit B.

20 Is everything that you reviewed with you today?

21 A. Yes.

22 Q. And we will go through that a little bit later.
23 Why is part of the chart handwritten and part of
24 the chart typed?

25 A. You're making reference to this?

Page 17

1 Q. Yes, the office notes, right.

2 A. What I typically do is when I am seeing a
3 patient in the office I will take this portion in with
4 me such as this. While I'm talking I will make just
5 small notes, handwritten notes, basically just cues so
6 that I can come back and dictate the note, formal note,
7 and that's what the handwritten portion is.

8 Q. Do you have a tape recorder with you?

9 A. I do not, no.

10 Q. So I'm a little unclear. The basis of the
11 rewritten note is the handwritten part.

12 A. These are nothing more than small mental cues as
13 to my longer formal dictation that I do after the
14 patient leaves the office.

15 Q. And what period of time generally lapses between
16 the time you write your office note?

17 A. Could be anywhere from minutes to hours. Always
18 the same day.

19 Q. So then what the patient tells you you transform
20 into mental cues which are your handwritten portion,
21 correct?

22 A. Correct.

23 Q. And then I'm still unclear, how does it get
24 typed?

25 A. There is a dictation machine on my desk in my

Page 18

Page 20

1 office that I sit down at and then dictate the notes,
2 and then there's a transcriptionist in our office who
3 will from that tape recording type the notes.

4 Q. Who is the transcriptionist or who was the
5 transcriptionist?

6 A. We have several that work in our office and I
7 would -- their initials are always at the end of the
8 note, so I can see here there's at least two that had
9 worked on this particular chart.

10 Q. Who was that?

11 A. One of them would be Lee Kitanic and the other
12 would be Pat Ovan.

13 Q. What happens to the dictation?

14 A. The actual tape itself?

15 Q. Yes, sir.

16 A. Gets erased to be reused.

17 Q. Other than your office notes and what you
18 brought with you today, are there any other extraneous
19 materials, tapes, documents, notes pertaining to Mr.
20 McCue?

21 A. Perhaps some x-rays.

22 Q. Okay.

23 A. But other than that I'm not aware of anything.

24 Q. X-rays taken in your office?

25 A. Those x-rays I actually have. X-rays taken at

1 N L Is this a
2 t ing of a ic1 course or are we
3 going to get t the t n

4 MR. MALIK: We are going
5 to get there.

6 MR. WALTERS: I'm sorry. As
7 I t older --

8 MR. MALIK: There's a
9 method to my madness.

10 MR. WALTERS: I understand.

11 BY MR. MALIK:

12 Q. I e s t to the next visit on 10-19 of '95.

13 What I want you to do is summarize the
14 highlights of that note.

15 A. Two weeks from his injury, improvement in his
16 pain, the initial splint was removed, he had ecchymosis
17 of the knee and lower leg. Still remained markedly
18 tender along the medial aspect of the knee, as well as
19 the posterior calf. His neurologic exam was intact and
20 there was no obvious instability, but that was
21 considered secondary to muscle guarding.

22 Basically I felt he was improving and I wanted
23 him to start working on knee motion. I asked that he
24 maintain his nonweight bearing status and was to return
25 in one week.

Page 19

Page 21

1 Parma Hospital I don't have.

2 Q. I'm assuming when you were in the emergency room
3 with Mr. McCue at Parma that you reviewed x-rays?

4 A. Yes, I did.

5 Q. In terms of the presentation of his injury was
6 there anything out of the ordinary or unusual? Was it
7 pretty straightforward?

8 A. M-hm, yes.

9 Q. In terms of access to your notes in your file on
10 Mr. McCue, other than yourself, who has access to the
11 file?

12 A. The employees of the office.

13 Q. Are there any written policies or procedures as
14 to the format which the notes are supposed to take?

15 A. No, sir.

16 Q. Any special written directions to the typist at
17 all?

18 A. None that I'm aware of.

19 Q. Do you expect the transcriptionist to record the
20 information verbatim as you dictate it?

21 A. I expect that, yes.

22 Q. When you do your dictating are you specific in
23 the sense that you dictate where a period is when a
24 sentence ends?

25 A. I tend to do that, yes.

1 ~ At i time di you till d comfort d in
2 communicating with him what your wishes were?

3 A. Yes.

4 Q. Was he able to communicate what his condition
5 was?

6 A. Yes.

7 Q. Let's go to the next visit. I believe that's
8 10-11.

9 A. No. 10-16.

10 Q. Is there a note on 10-11?

11 A. 10-11 was that Vicodin, 30 tablets, had been
12 called into his pharmacy.

13 Q. 10-16, can you summarize the highlights of that,
14 please?

15 A. Mr. McCue was three weeks from his injury, still
16 having pain mainly at night. Admitted he was probably
17 more afraid of his pain than actually experiencing
18 pain. Still ecchymosis about the knee and calf, still
19 tender.

20 Diagnosis remained unchanged and he was started
21 on physical therapy at that time.

22 Q. Any problems communicating with Mr. McCue?

23 A. None.

24 Q. Let's go to the next visit on 10-30 of '95,
25 please, would you summarize the highlights?

Page 22

Page 24

1 A. About five weeks from the injury, had
2 progressive improvement. Pain was now isolated to the
3 medial aspect of the knee and some about the ankle.
4 Exam of the leg showed some muscle atrophy,
5 still tender along the medial side, moderate knee
6 motion. X-rays of the ankle were done and shown to be
7 negative for fracture.
8 And then basically the plan was to start him on
9 anti-inflammatory medication, continue with physical
10 therapy, return in one month.
11 Q. What is it, Lodine?
12 A. Lodine, a nonsteroidal anti-inflammatory
13 medication, basically cuts down the inflammation,
14 swelling, pain.
15 Q. I believe the next visit was on 11-02 of '95.
16 A. No, 11-17-95.
17 Q. What was 11-02 of '95?
18 A. A prescription for Vicodin, 20 tabs.
19 MR. JEFFERS: what was the
20 date of that one?
21 MR. RUFF: 11-02.
22 BY MR. MALIK:
23 Q. Let's go to 11-17 of '95; would you please read
24 the highlights of that note?
25 A. That was a prescription for Vicodin as well. It

Page 23

1 was not an office visit.
2 Q. On when?
3 A. 11-17-95.
4 Q. Next visit, 11-27-95?
5 A. Correct.
6 Q. Would you summarize the highlights of that note?
7 A. Two months from injury, still not sleeping well
8 because of knee pain throughout the night. Most of his
9 pain still about the medial side of the knee. He is
10 improving and he was able to walk without significant
11 discomfort.
12 Examination of the leg shows that he has
13 regained good motion, but now he has a positive
14 Lachman's test which is a test we use to diagnosis a
15 tear of the anterior cruciate ligament.
16 At that time I suggested only nonoperative
17 treatment, with surgery only if necessary, and then he
18 was to continue physical therapy.
19 Q. Let's talk about physical therapy for a minute.
20 That was the first mention I saw in the records of
21 physical therapy. Did I miss something?
22 A. I believe so.
23 MR. WALTERS: Yes, you did.
24 MR. JEFFERS: He prescribed
25 physical therapy earlier. He testified to

1 i'
2 A. October 9th -- I'm sorry, October 16th.
3 Q. Okay. What kind of physical therapy?
4 A. Physical therapy at this time to begin working
5 on joint motion and muscle strength to the affected
6 extremity.
7 Q. Did you prescribe the place where he should go?
8 A. Sent to Parma Hospital for therapy.
9 Q. Next visit is on 12-18 of '95, read your
10 handwritten portion there.
11 A. I'm sorry, December 18th?
12 Q. M-hm.
13 A. Ankle much better, posterior lateral, excellent
14 motion, grade 1 MCL, positive Lachman's, night pain, in
15 one month.
16 Q. If you could summarize the highlights of the
17 remainder of the note?
18 A. Continuing to make progress, walking longer
19 distances, constant medial aching about the knee.
20 Physical therapist suggested an anterior cruciate
21 ligament brace because he demonstrates significant
22 instability.
23 On exam he again had full knee motion. The
24 medial collateral ligament was tightening up nicely and
25 he continued to have his positive Lachman's test and

Page 25

1 muscle atrophy.
2 Q. Up through this point did you still feel
3 comfortable with your ability to communicate with Mr.
4 McCue?
5 A. Yes.
6 Q. And was he able to enumerate what his problems
7 were to you?
8 A. As I recall, yes.
9 Q. Let's then go to the January 15th of '96 note.
10 Would you please read the handwritten portion for me?
11 A. Brace much improved, two and a half to three
12 hours per session, knee pain all night, patellar
13 instability, quad and medial patellar femoral pain,
14 taped. Lodine no help. Vicodin one-half each night
15 and Phil Gillota.
16 Q. Would you summarize the highlights of that note?
17 A. Sure. Four months from injury, has obtained his
18 knee brace, noted tremendous improvement in function
19 with the brace, strength therapy.
20 During the therapy he developed some patellar
21 femoral pain which improved with patellar taping.
22 Continues to use Vicodin each night for pain. Anxious
23 to proceed with ligament reconstruction as soon as
24 possible.
25 Exam showed he had regained some of his muscle

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1 mass, full motion, medial collateral ligament was
2 clinically healed, Lachman's test remained positive.

3 X-rays were taken of the knee and showed
4 complete healing of the fibular fracture. Felt the
5 patellar femoral pain was due to quad muscle weakness
6 and patellar maltracking.

7 Basically the inflammation in the knee had
8 subsided and he was ready to proceed with anterior
9 cruciate ligament reconstruction. The planned surgical
10 procedure was discussed. The rehab protocol and the
11 associated risks of the surgery were reviewed.

12 I asked that Dr. Gillota be notified of the
13 upcoming surgery since he has a history of mild asthma,
14 and surgery was scheduled for 02-01-96.

15 Q. Now, did you ask that Dr. Gillota be notified or
16 did the patient ask?

17 A. According to my note it says that he asked that
18 I notify Dr. Phil Gillota.

19 Q. Is this January 18, 1996 letter the
20 notification?

21 A. Yes.

22 Q. Was there any other communication to Dr. Gillota
23 other than this?

24 A. None that I recall.

25 Q. I'm going to ask you to, and it's a short

Page 27

1 portion, read into the record the portion of the note
2 that starts with planned surgical procedure, rehab
3 protocol to the end.

4 A. Planned surgical procedure, rehab protocol and
5 associated risks including anesthetic risk, infection,
6 deep vein thrombosis reviewed. Patient is aware he
7 will need to be on crutches once again, six weeks
8 post-op.

9 He asked that I notify Dr. Phil Gillota of the
10 upcoming surgery since he does have a history of mild
11 asthma. Surgery scheduled for 02-01-96, Parma
12 Hospital, on an extended recovery basis. Vicodin
13 renewed. Theraflu renewed until surgery. Send letter
14 to Dr. P. Gillota.

15 Q. Now, specifically what was the planned surgical
16 procedure?

17 A. Arthroscopic evaluation, anterior cruciate
18 ligament reconstruction using patellar tendon autograft
19 and a meniscal surgery as needed, should there be a
20 meniscus tear found.

21 Q. Can you define for me rehab protocol?

22 A. The rehab protocol that I use for anterior
23 cruciate ligament reconstruction involves crutch
24 ambulation with partial weight bearing for six weeks,
25 use of a brace for three months after surgery, and

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1 during that time extensive physical therapy.

2 Q. Will you define for me associated risks
3 including anesthetic risk?

4 A. When I speak to patients regarding anesthesia it
5 is almost -- it is typically my routine that I will say
6 in cases such as this that this procedure can be done
7 under either a general anesthetic or a spinal
8 anesthetic, and that decision is between the patient,
9 between the anesthesiologist and between the
10 physicians, primary care physician, if indicated.

11 In either case the anesthesia causes stress upon
12 the various systems including the heart, the lungs, the
13 kidneys, whatever, and therefore, again, those are the
14 risks I discuss in regard to the anesthesia.

15 Q. Okay. Let's role play for a moment. I want you
16 to assume that I'm Mr. McCue.

17 Other than what you just told me, is there
18 anything else that you're explaining to me about this
19 surgery that --

20 MR. WALTERS: First of all,
21 let me object to the let's role play for a
22 moment. I think if the question is, is
23 there anything else that was said to this
24 patient about the risk, that's a fair
25 question.

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1 I'm not going to get into role
2 playing, but go ahead, Doctor.

3 BY MR. MALIK:

4 Q. If you're not comfortable, that's fine, doesn't
5 matter.

6 MR. WALTERS: I am. Go
7 ahead, Doctor.

8 A. I would ask if you had any questions, and if so,
9 I would answer them appropriately. On occasion and
10 most times I do actually bring out models of a knee and
11 even some illustrations that we have in our office.

12 Q. Okay.

13 A. To help.

14 Q. Now, specifically what did you tell Martin
15 McCue?

16 A. Other than what I have in my notes, I don't
17 recall.

18 Q. Other than what you have in your written note on
19 January 15th of 1996?

20 A. No, what I have in my dictated note.

21 Q. For what period of time?

22 A. I don't understand the question.

23 Q. You said other than in your dictated note.
24 Which dictated note are we talking about?

25 MR. WALTERS: The question

Page 30

1 was what did you tell him on January 15,
 2 1996.
 3 MR. MALIK: well, that's
 4 what I want to know.
 5 BY MR. MALIK:
 6 Q. Is that what we are limiting it to, January 15
 7 of 1996?
 8 A. I feel confident that my notes are accurate no
 9 matter what date.
 10 Q. Okay. Listen to the question, please.
 11 You explained according to your note associated
 12 risks including anesthetic risk to Martin McCue,
 13 correct?
 14 A. M-hm.
 15 Q. Other than on January 15th of 1996 did you
 16 explain it to him at any other time?
 17 A. Not that I can recall.
 18 Q. Okay. You indicated infection, deep vein
 19 thrombosis reviewed.
 20 Can you explain to me what that means?
 21 A. Again, I would tell patients that with any
 22 operation, no matter whether it be minor, major,
 23 there's also the risk of an infection. And any time
 24 there is injury, surgery, trauma to a hip, a knee, a
 25 thigh, there is always a chance of a phlebitis or deep

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1 vein thrombosis developing in that leg.
 2 Q. As we sit here today do you recall the exact
 3 words that you used to describe the anesthetic risk to
 4 Martin McCue?
 5 MR. WALTERS: He already
 6 answered that, but go ahead.
 7 A. The exact words, no.
 8 Q. You indicated in your testimony that you would
 9 explain to the patient that they could have a general
 10 or a spinal, correct?
 11 A. M-hm.
 12 Q. That was the word you used, or.
 13 A. That this procedure can be done under a general
 14 or a spinal anesthetic.
 15 Q. Did there come a time ultimately when you found
 16 out the kind of anesthesia that Martin McCue had?
 17 MR. JEFFERS: The kind that
 18 he had, in the past tense.
 19 BY MR. MALIK:
 20 Q. During the surgery --
 21 MR. WALTERS: In February?
 22 Q. In February, correct.
 23 A. The question again is?
 24 Q. Did there come a time when you learned the kind
 25 of anesthetic that he had in February?

Page 32

1 MR. WALTERS: He was there.
 2 A. I was in the room.
 3 Q. And what did he have?
 4 A. He had a general anesthetic.
 5 Q. Did he have a spinal?
 6 A. He had a spinal injection.
 7 Q. A spinal injection of what?
 8 A. Of morphine.
 9 Q. On January 15th of 1996 did you tell Martin
 10 McCue that he was going to have a spinal injection of
 11 morphine?
 12 A. I did not.
 13 Q. Why not?
 14 A. Because that decision is up to the
 15 anesthesiologist.
 16 Q. On January 15th of 1996 were you aware that it
 17 was a possibility Mr. McCue would have had a spinal
 18 injection?
 19 A. Yes, only in that my patients do receive spinal
 20 injections from time to time.
 21 Q. For this particular surgery, correct?
 22 A. For this and many other surgeries.
 23 Q. Okay. Did you explain to Mr. McCue on January
 24 15th of 1996 that he would subsequently be speaking to
 25 the anesthesiologist?

Page 33

1 MR. WALTERS: He already
 2 said that, but go ahead.
 3 A. I said that the decision as to whether this is a
 4 general or spinal anesthetic is between the patient and
 5 the anesthesiologist.
 6 Q. Did Mr. McCue have any questions for you on
 7 January 15th of 1996?
 8 A. None that I can recall specifically.
 9 Q. Do you know why he asked you to contact Dr.
 10 Gillota?
 11 A. According to my note because he had a history of
 12 mild asthma.
 13 Q. Why would a history of mild asthma be
 14 significant?
 15 A. I'm assuming because of the upcoming surgery.
 16 Q. Would the asthma be significant because he was
 17 to receive anesthesia?
 18 A. Yes.
 19 Q. Why would the fact that he had asthma
 20 potentially be significant with respect to anesthesia?
 21 MR. WALTERS: If you know,
 22 Doctor.
 23 A. I don't pretend to be an anesthesiologist and
 24 therefore I don't feel comfortable answering that
 25 question.

Page 34

Page 36

1 Q. In terms of an explanation of the **risks** of
2 anesthesia, you certainly would notify the patient that
3 there are in fact **risks**, correct?

4 A. **Correct.**

5 MR. WALTERS: Are you going
6 beyond what he already said?

7 BY MR. MALIK:

8 Q. Now, hold on, in terms of what the specific
9 **risks** are, is that **up** to the anesthesiologist or is
10 that your responsibility?

11 A. **In regard to the anesthesia?**

12 Q. M-hm.

13 A. **Anesthesiologist.**

14 Q. It's the anesthesiologist's responsibility to
15 define the specific **risks**?

1 A. **Of the anesthesia.**

17 Q. **Do** you know when it was decided that Mr. McCue
18 was to receive a spinal?

19 MR. WALTERS: spinal what?

20 MR. JEFFERS: objection.

21 MR. MALIK: Injection.

2 A. **I do not.**

23 (Thereupon, there was a brief
2 recess.)

25 (Thereupon, Plaintiff's Exhibts A and

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1 **B to the deposition of Richard Gittinger,**
2 **M.D. were marked for identification.)**

3 BY MR. MALIK:

4 Q. If it's the anesthesiologist's job to explain
5 the specific **risks** of anesthesia, why then did you
6 explain the **risks** according to your notes of January
7 15th of 1996?

8 MR. WALTERS: I *think* the
9 question would be more fair, why didn't
10 you tell him what you told him that you
11 already told Mr. Malik, and --

12 A. **These are the general --**

13 MR. MALIK: Just note I
14 like the question the way I asked it.

15 MR. WALTERS: I want to be
16 fair.

17 THE WITNESS: Can you repeat
18 the question for me, please?

19 MR. MALIK: Janet, repeat
20 the question.

21 THE NOTARY: Question:

22 "If it's the anesthesiologist's job to
23 explain the specific **risks** of anesthesia,
24 why then did you explain the risks
25 according to your notes of January 15th of

1 1996?"

2 MR. WALTERS: Objection.

3 A. **When I explain the risks involved with an**
4 **operation I realize that anesthesia is one of the areas**
5 **where risks are involved, and with that I discuss the**
6 **possible anesthetic risk that is involved. The details**
7 **of those risks are left to the anesthesiologist.**

8 Q. I guess what I'm trying to get at is, and
9 correct me if I **am** wrong, what I hear you telling me is
10 that there are limitations on what you tell the patient
11 with respect to anesthesia.

12 MR. WALTERS: objection.

13 Go ahead, Doctor.

14 A. **I do not pretend to be an anesthesiologist, I**
15 **did not study anesthesia, I don't feel that it's my**
16 **place or I'm in the position to discuss the details of**
17 **aesthetic, simply because I was never educated in**
18 **anesthesia, and that the discussion of the risks are**
19 **left to the person who has studied and is educated in**
20 **anesthesia.**

21 Q. **Is** it a fair statement then to say that you in
22 your practice and in this case in particular delegated
23 the explanation of the specific risks to the
24 anesthesiologist?

25 MR. WALTERS: Objection.

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1 MR. JEFFERS: objection to
2 the term delegated.

3 MR. WALTERS: And it's not
4 even the term delegated because that's not
5 a delegable duty, as you know. They are
6 independent physicians and I think it's a
7 bad question.

8 It is not a fair question, but go
9 ahead, Doctor, if you think you can answer
10 it.

11 THE WITNESS: Can you repeat
12 the question again, please?

13 THE NOTARY: Question:
14 "Is it a fair statement then to say that
15 you in your practice and in this case in
16 particular delegated the explanation of
17 the specific **risks** to the
18 anesthesiologist?"

19 MR. WALTERS: same
20 objection.

2 A. **In my practice when I discuss an operation and**
22 **the risks and benefits, I inform a patient there is a**
23 **risk involved with the anesthesia. That risk is that**
24 **the anesthetic is a stress on the entire system. And**
25 **that is -- and that's where I leave it, that the**

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1 anesthesia is a risk.
 2 And details beyond that I don't get into because
 3 I'm not qualified to get into them. I'm not an
 4 anesthesiologist.

5 Q. So let's go back to the question. In fact then
 6 the specifics of the anesthetic risk are delegated to
 7 the anesthesiologist?

8 MR. WALTERS: objection.

9 BY MR. MALIK:

10 Q. Their explanation, correct?

11 MR. WALTERS: objection.

12 MR. JEFFERS: objection.

13 Delegated is an improper word because
 14 it has certain inferences when one looks
 15 at the dictionary as to control and other
 16 aspects, and that is why it is an improper
 17 use of that term under the circumstances
 18 just described by the doctor.

19 MR. WALTERS: They are not
 20 one unit, David, you know that.

21 Go ahead, Doctor.

22 A. I leave the discussion of the specifics up to
 23 the anesthesiologist.

24 Q. Okay. In your note you indicated an extended
 25 recovery, but then the next note in the chart on

Page 39

1 02-01-96 says surgery, short stay.

2 Can you reconcile that for me?

3 A. It's basically just a difference in terminology.
 4 At that time the hospitals were basically changing
 5 their terminology over. They both mean the same thing.

6 Q. Short stay and extended recovery mean the same
 7 thing?

8 A. Basically they both mean an overnight stay.

9 Q. When you use the term mild asthma, can you tell
 10 me what mild means?

11 A. I'm assuming that's how Mr. McCue related his
 12 asthma to me.

13 Q. Specifically you sent Dr. Gillota a letter dated
 14 January 18, 1996, and am I correct in understanding you
 15 included your notes up through January 15th of '96?

16 A. To be honest I don't know if it included only
 17 the note of January 15th or if it included all of my
 18 notes.

19 Q. Okay.

20 A. I do not know.

21 Q. Were there any telephone conversations between
 22 you and Dr. Gillota?

23 A. None that I can recall.

24 Q. Did Mr. McCue express any concern about
 25 anesthesia on January 15th?

Page 40

1 A. None that I recall.

2 Q. Did he tell you that he didn't want a spinal?

3 A. Not that I recall.

4 Q. Did you feel that he understood what you were
 5 telling him about anesthesia?

6 A. Yes.

7 Q. Am I correct in understanding that on January
 8 15th of 1996, other than saying you could have a

9 general or a spinal, no discovery of the manner in
 10 which the anesthesia would be delivered took place?

11 MR. WALTERS: objection.

12 A. I don't understand your question.

13 MR. RUFF You used the

14 word discover, you mean discussion.

15 BY MR. MALIK:

16 Q. Other than telling Mr. McCue he would have a
 17 general or a spinal, am I correct in understanding
 18 there wasn't any discussion as to how the anesthesia
 19 would be delivered?

20 MR. WALTERS: object only

21 because he has answered this about four
 22 times.

23 Go ahead, Doctor.

24 A. I don't recall any discussion.

25 Q. Tell me if you agree or disagree with the

Page 41

1 following rule of thumb, statement, do you agree or
 2 disagree that the duty to disclose pertinent

3 information regarding the manner in which anesthesia is
 4 to be delivered to a patient rests with the surgeon.

5 A. Can you repeat that again, please?

6 Q. Tell me whether you agree or disagree with the
 7 following, the duty to disclose pertinent information
 8 regarding the manner in which anesthesia is to be
 9 delivered to the patient rests with the surgeon.

10 A. I disagree with that.

11 Q. Okay. Do you recall any specific needs of Mr.
 12 McCue on January 15th, 1996 with respect to anesthesia?

13 A. None.

14 Q. When you said to Mr. McCue he could have a
 15 general or a spinal, did that anticipate the type of
 16 injection that he received for pain?

17 MR. WALTERS: Taking

18 specifically about the morphine injection?

19 MR. MALIK: Yes, about

20 Duramorph or morphine injection.

21 A. I suppose it did.

22 Q. Do you know for sure whether it did?

23 A. I don't understand your question completely.

24 Q. We can agree he received a morphine injection,
 25 correct?

Page 42

Page 44

1 A. Yes.

2 Q. Was that in the form of a spinal?

3 MR. JEFFERS: Objection.

4 A. Spinal injection.

5 Q. When you said you can have a general or a

6 spinal, is that what you were referring to?

7 A. Referring to a general or a spinal anesthetic.

8 Q. And is that different than the morphine

9 injection?

10 A. Yes, it is.

11 Q. How is it different?

12 A. General or a spinal anesthetic is a means of

13 basically preparing the patient so that he basically

14 feels no pain during the procedure, whether it's under

15 a general or spinal anesthetic. A spinal injection is

16 given as a means of post-operative pain management.

17 Q. Is the administration of an anesthetic and the

18 administration of post-operative pain management via a

19 spinal two separate procedures?

20 MR. JEFFERS: objection.

21 You keep using the term via a spinal which

22 is a word of art.

23 BY MR. MALIK:

24 Q. spinal injection.

25 Is that two separate and distinct procedures?

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1 MR. WALTERS: Can you read

2 that back? I'm confused.

3 BY MR. MALIK:

4 Q. Is the administration of a general anesthetic a

5 separate and distinct procedure from the administration

6 of a spinal injection for pain?

7 A. Yes, it is.

8 Q. Do you have an opinion as to whether or not

9 those distinct procedures require separate informed

10 consents?

11 MR. JEFFERS: objection.

12 You're only talking about a spinal

13 injection for pain versus general

14 anesthetic.

15 MR. WALTERS: Let's look at

16 the consent he is talking about.

17 MR. MALIK: I don't want

18 him to look at it.

19 MR. WALTERS: I do.

20 MR. MALIK: I want him to

21 tell me.

22 MR. WALTERS: I don't care

23 what you want to do at this point. This

24 is the consent he signed and he wants to

25 know if there's a separate consent

1 required for a morphine injection versus a

2 -- and a spinal anesthetic.

3 A. No, there is not a separate informed consent

4 needed.

5 Q. Why not?

6 A. Because these are both actions being done by the

7 anesthesiologist.

8 Q. So it's your testimony today that anything

9 that's being done by the anesthesiologist is covered

10 under one informed consent.

11 MR. WALTERS: That assumes

12 -- he doesn't know what the

13 anesthesiologist told the patient, but

14 that assumed the anesthesiologist --

15 A. I can't answer that without knowing what the

16 informed consent says.

17 Q. Am I correct in understanding that in your

18 practice you don't believe that there are separate

19 informed consents required to give a spinal injection

20 for pain postsurgery?

21 MR. WALTERS: Excuse me, are

22 we talking about a document or are we

23 talking about providing information to the

24 patient?

25 MR. MALIK: I'm talking

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1 about his practice.

2 MR. WALTERS: well, no, when

3 you use the term informed consent, from my

4 standpoint I'm now thinking of a document

5 that the patient signs that says he has

6 been informed and consents to the

7 procedure.

8 Now, it also could mean, and I want

9 to be clear so the record is clear, the

10 fact that the patient is informed and

11 consents to the procedure without a

12 document being generated. I just want to

13 know what we are talking about so the

14 doctor knows.

15 MR. MALIK: okay.

16 BY MR. MALIK:

17 Q. I can rephrase this to clarify it.

18 Is the patient entitled to know that he is going

19 to receive a spinal injection for pain?

20 A. Yes.

21 Q. And at what point is he entitled to know that?

22 A. Upon discussion with the anesthesiologist.

23 Q. When should that discussion with the

24 anesthesiologist take place as to the determination of

25 a spinal injection for pain?

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1 MR. JEFFERS: Objection.
 2 **A. That's entirely up to the anesthesiologist.**
 3 Q. Would you consider it appropriate for that
 4 discussion to take place when you're in the pre-op area
 5 prior to surgery on the day of surgery within minutes
 6 of surgery?
 7 **A. Yes.**
 8 Q. And why would you feel that that's appropriate?
 9 **A. I'm having a hard time with this question. I'm**
 10 **not an anesthesiologist and it's not one of my duties**
 11 **to do this, to make this discussion, so I feel**
 12 **uncomfortable with the question.**
 13 Q. Okay.
 14 **A. It's a hypothetical question.**
 15 Q. No problem.
 16 Would you agree with me that informed consent is
 17 a process as opposed to just the mere signing of forms?
 18 MR. JEFFERS: It's what?
 19 **A. Can you define process?**
 20 Q. Let me rephrase the question this way, informed
 21 consent is not just the signing of forms, correct?
 22 **A. Correct.**
 23 Q. When I use the term informed consent what does
 24 that mean to you?
 25 **A. That the patient has been informed and consents**

1 a horse up here and beat on it.
 2 MR. MALK: would you
 3 repeat the question?
 4 THE NOTARY: Question:
 5 "Understanding that you're not an
 6 anesthesiologist, what is the extent of
 7 the information the patient is entitled to
 8 receive?"
 9 **A. The patient has to be informed as to what is**
 10 **going to be done and the risks and benefits of that**
 11 **procedure.**
 12 Q. What degree of detail of the risks and benefits
 13 is required by you?
 14 MR. WALTERS: In regard to
 15 what?
 16 BY MR. MALIK:
 17 Q. Regarding the explanation of the risk of
 18 anesthesia.
 19 MR. WALTERS: objection.
 20 Go ahead.
 21 **A. Basically, as stated before, there is risk**
 22 **involved with the anesthesia, that it's a stress on the**
 23 **entire system.**
 24 Q. Prior to surgery or at the time of surgery what
 25 records did you have in front of you to review for the

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1 **to the procedure.**
 2 Q. Understanding that you're not an
 3 anesthesiologist, what is the extent of the information
 4 the patient is entitled to receive?
 5 MR. WALTERS: About the
 6 anesthesia?
 7 MR. MALIK: About the
 8 anesthesia.
 9 MR. WALTERS: David, I don't
 10 mean to --
 11 MR. MALIK: If his answer
 12 is I don't know, then let that be his
 13 answer.
 14 MR. JEFFERS: He said it is
 15 outside --
 16 MR. WALTERS: He already
 17 stated certain things about what he
 18 expects, but in the same respect he has
 19 also stated that he doesn't do this and
 20 doesn't typically do it. And from that
 21 standpoint I mean I feel like we are
 22 beating a dead horse a little bit.
 23 MR. MALIK: To some degree
 24 we are, but there's a reason.
 25 MR. WALTERS: I guess. Drag

1 case?
 2 **A. I had my -- before the surgery?**
 3 Q. M-hm.
 4 **A. I had my office notes and any x-rays that I**
 5 **thought were pertinent to the case.**
 6 Q. Were you aware at the time of surgery that Mr.
 7 McCue had a spinal injection for pain?
 8 MR. JEFFERS: Could I have
 9 that back? I want to hear the time
 10 sequence in there.
 11 THE NOTARY: Question:
 12 "Were you aware at the time of surgery
 13 that Mr. McCue had a spinal injection for
 14 pain?"
 15 **A. Yes.**
 16 Q. And at what point did you become aware of it?
 17 **A. In the operating room.**
 18 Q. When you got into the operating room was Mr.
 19 McCue awake, was he out; do you recall?
 20 **A. I don't recall the specifics, other than what I**
 21 **have in my notes, upon review of my notes. Since I**
 22 **dictated that in my operative note I must assume I was**
 23 **in the room when Mr. McCue was being given his spinal**
 24 **injection.**
 25 Q. At that time did you have any objection to the

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1 spinal?
 2 A. None.
 3 Q. Did there come a time later on when Mr. McCue
 4 saw you after the surgery that he indicated he had had
 5 a spinal and that you were surprised by that?
 6 A. None that I recall.
 7 Q. Did you ever tell Mr. McCue he was never
 8 supposed to have a spinal injection?
 9 A. No.
 10 Q. Were you aware that the spinal injection was
 11 morphine?
 12 A. Yes.
 13 Q. Were you aware at the time that Mr. McCue had
 14 asthma?
 15 A. Yes.
 16 Q. I want to go to your progress notes.
 17 A. From the hospital chart?
 18 Q. From the hospital chart, correct.
 19 Other than the entry on 02-01 of '96, this is
 20 what I'm looking at right here, is there any other
 21 indication in your handwriting, which I have a hard
 22 time reading, of any anesthesia?
 23 A. That is all.
 24 Q. And would you read that?
 25 A. Anesthesia spinal, morphine. General with ET

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1 tube, which means endotracheal intubation.
 2 Q. Did Mr. McCue sign any forms, any so-called
 3 informed consents, written informed consent in your
 4 office?
 5 A. No.
 6 Q. Does your practice provide any?
 7 A. No.
 8 Q. Did you expect that Mr. McCue would sign an
 9 informed consent?
 10 A. In the hospital, yes.
 11 Q. And did you also expect that that would be
 12 provided by somebody at the hospital?
 13 A. Correct.
 14 Q. Other than yourself and other than the
 15 anesthesiologist, did you expect anybody to explain the
 16 risks -- anybody else to explain the risks of
 17 anesthesia to Mr. McCue?
 18 MR. WALTERS: Objection.
 19 Go ahead.
 20 MR. JEFFERS: Objection.
 21 A. There's an anesthesiologist who sees the
 22 patients in the pre-op holding who would also discuss
 23 the anesthesia.
 24 Q. In this case I believe that was Dr.
 25 Pacita-Garcia?

1 A. I believe so, yes.
 2 Q. Did you ever discuss this case with Dr. Garcia?
 3 A. No.
 4 Q. Did you discuss the case with Dr. Midis?
 5 A. I'm sorry, are you asking after the surgery?
 6 Q. First let's go before the surgery.
 7 A. Just during the procedure itself.
 8 Q. Do you recall what was said?
 9 A. No, I don't.
 10 Q. After the surgery did you discuss the case?
 11 A. On one occasion, had to be shortly after Mr.
 12 McCue first noted he was having headaches. I recall
 13 actually in the locker room getting ready for another
 14 case and the anesthesiologist was there and I just
 15 basically mentioned that Mr. McCue is still having
 16 headaches and whether he thought they could be related
 17 to the spinal injection.
 18 Q. And how long after the surgery was that?
 19 A. Well, Mr. McCue first mentioned the headaches in
 20 the fourth week after surgery, so I'm assuming this was
 21 shortly thereafter, but I don't know a particular time.
 22 Q. Did you have the opportunity to review the
 23 informed consent form from Parma Hospital?
 24 A. Yes, I did.
 25 Q. And that's a form that you signed, right?

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1 A. Correct.
 2 Q. And that's a form that's not dated, right?
 3 A. It's not dated by myself, correct.
 4 Q. Do you recall when you signed that?
 5 A. I do not.
 6 Q. Do you know why it is not dated?
 7 A. I do not.
 8 Q. Could it have been signed before the form was
 9 explained to Mr. McCue?
 10 A. No.
 11 (Thereupon, Plaintiff's Exhibit C to
 12 the deposition of Richard Gittinger, M.D.
 13 was marked for identification.)
 14 BY MR. MALIK:
 15 Q. Handing you Exhibit C, can you identify that for
 16 me?
 17 A. Yes, I can.
 18 Q. what is it?
 19 A. This is the consent to operation and treatment
 20 signed by Mr. McCue.
 21 Q. Is that something you would have had prior to
 22 the surgery?
 23 A. I am first given access to this at the time of
 24 surgery.
 25 Q. Is that prior to surgery or after surgery?

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1 A. In the operating room.

2 Q. So then it was sometime in the operating room or
3 sometime afterwards that you signed your name?

4 A. Correct.

5 Q. Handing you what I'm marking as Exhibit D, which
6 is called Parma Community General Hospital anesthesia
7 evaluation, is that something that you also saw at the
8 time of surgery?

9 (Thereupon, Plaintiff's Exhibit D to
10 the deposition of Richard Gittinger, M.D.
11 was marked for identification.)

12 A. That is not, no. That's one form I tend not to
13 review since it is again an anesthesia evaluation.

14 Q. Okay. Handing you what I am marking as Exhibit
15 E entitled physician orders, can you explain that, what
16 that is?

17 (Thereupon, Plaintiff's Exhibit E to
18 the deposition of Richard Gittinger, M.D.
19 was marked for identification.)

20 A. This is a standing anesthesia pre-op order sheet
21 with basically standing or regularly occurring orders
22 for patients in the preoperative phase.

23 Q. Did you say this was a Tuesday when the surgery
24 occurred?

25 A. Thursday.

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1 Q. Is that your normal operating day?

2 A. That is my major operating day.

3 Q. How many cases normally do you have on that day?

4 A. It varies anywhere from no cases to three or
5 four cases.

6 Q. Okay. At any time during the surgery did you
7 check any of the anesthesia?

8 MR. JEFFERS: Check what?

9 MR. MALIK: Did he check
10 any of the anesthesia.

11 BY MR. MALIK:

12 Q. Was it your responsibility --

13 MR. WALTERS: Monitor.

14 Q. Thank you.

15 -- to monitor any of the anesthesia?

16 A. I don't understand your question, meaning --

17 Q. In the operating room was it your responsibility
18 to perform any function relating to anesthesia?

19 A. No, sir.

20 Q. Was the anesthesiologist in the operating room
21 the entire time?

22 A. As I recall, yes.

23 Q. If Dr. Midis had left the operating room would
24 that be noted anywhere?

25 A. I couldn't answer that question. I don't know.

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1 Q. Were you in the operating room the entire time?

2 A. Yes, I was.

3 Q. At any time did you explain any alternative
4 methods of pain control other than the spinal injection
5 to Mr. McCue?

6 A. Typically don't make it a routine to discuss
7 pain management.

8 Q. Tell me if you agree or disagree with the
9 following statement, please, responsibility for
10 obtaining consent rests with the attending physician.
11 It is a matter within the realm of his responsibility
12 to the patient.

13 MR. WALTERS: I'll object,
14 but go ahead, Doctor.

15 A. The consent for the particular procedure, yes.

16 Q. Not the consent for the anesthesia.

17 MR. WALTERS: There is an
18 attending anesthesiologist as well.

19 MR. MALIK: I understand.

20 MR. WALTERS: Are you saying
21 --just so I can clarify in my mind, are
22 you talking about the attending being only
23 one person?

24 MR. MALIK: I'm talking
25 about the attending being Dr. Gittinger.

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1 MR. WALTERS: And you're

2 saying the anesthesiologist has no
3 responsibility under that scenario that
4 you read in your little statement there;
5 is that correct?

6 MR. MALIK: In my little
7 statement I'm asking him --

8 MR. WALTERS: In fairness
9 there's more than one doctor involved in
10 this case, more than one attending
11 physician involved in this case.

12 MR. MALIK: I understand.

13 Janet, would you repeat the question?

14 THE NOTARY: Question:

15 "Tell me if you agree or disagree with the
16 following statement, please,
17 responsibility for obtaining consent rests
18 with the attending physician. It is a
19 matter within the realm of his
20 responsibility to the patient."

21 MR. WALTERS: Objection.

22 A. I would have to disagree, not only my
23 responsibility.

24 Q. The anesthesiologist's responsibility as well?

25 A. Any physician involved.

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1 Q. Okay. **As** one of Mr. McCue's attending
 2 physicians, if you want to make that distinction, do
 3 you believe he was entitled to have notice of the
 4 spinal injection, spinal morphine injection?
 5 MR. JEFFERS: Objection.
 6 A. Yes.
 7 Q. If in fact Mr. McCue was to have a spinal
 8 morphine injection would you expect it to be noted on
 9 the anesthesia evaluation marked as Exhibit D?
 10 A. No, I would not.
 11 Q. Why not?
 12 A. I suppose I feel uncomfortable with that
 13 question, but that is oftentimes a decision made by the
 14 anesthesiologist who is doing the case.
 15 Q. Now, Exhibit D is a form that Mr. McCue signed.
 16 Is it your testimony today that he shouldn't be
 17 notified via this specific form, this anesthesia
 18 evaluation form, that he is going to have a spinal
 19 injection for pain?
 20 MR. JEFFERS: Objection.
 21 A. I am not familiar with that form. I don't deal
 22 with that form.
 23 Q. Do you **think** that Mr. McCue is entitled to
 24 notice in writing at all, at all, that he is going to
 25 have a spinal injection for pain?

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1 MR. JEFFERS: objection.
 2 MR. WALTERS: Entitled in
 3 writing.
 4 A. No.
 5 Q. Handing you exhibit F, do you know what that is?
 6 (Thereupon, Plaintiff's Exhibit F to
 7 the deposition of Richard Gettinger, M.D.
 8 was marked for identification.)
 9 A. It's a sheet that we use in our office,
 10 basically. It's a face sheet that gets put on the
 11 patient's chart when we schedule surgery.
 12 Q. Is that handwriting on there a member of your
 13 office staff?
 14 A. One of our nurses.
 15 Q. Do you know who?
 16 A. I do not know.
 17 Q. Do you know when it was filled out?
 18 A. I'm assuming 01-15-96, that's the date that's
 19 written at the top.
 20 Q. Did you review that at all?
 21 A. No.
 22 Q. That is just something you would expect to go
 23 out as a matter of course?
 24 A. This is basically a checklist that the nurses
 25 work off of to make sure they have done all their work.

1 Q. And who does that go to?
 2 A. It stays on the front of the chart.
 3 Q. For the pre-anesthesia evaluation does the chart
 4 or that document go to the hospital?
 5 A. No.
 6 Q. Let me ask you a couple questions about informed
 7 consent and responsibility of parties.
 8 You would agree with me that you do have a
 9 responsibility to inform Mr. McCue of the anesthesia
 10 risk, correct?
 11 A. Correct.
 12 Q. And would you agree that Dr. Pacita Garcia who
 13 did the pre-anesthesia evaluation has responsibility?
 14 A. Correct.
 15 Q. Do you agree Dr. Midis has a responsibility?
 16 A. Yes.
 17 Q. Are there any nurses that have responsibility?
 18 MR. JEFFERS: objection.
 19 A. I don't even know if nurses talk to him
 20 beforehand about anesthesia.
 21 Q. And Dr. Lopez-Valez who saw Mr. McCue before the
 22 pre-anesthesia evaluation?
 23 MR. GUNNING: objection.
 24 MR. JEFFERS: Objection.
 25 A. I'm not sure of her role in this entire case to

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1 be honest with you.
 2 Q. Let me establish a few things, we are almost
 3 done, I have a few questions from Mark.
 4 There existed a physician/patient relationship
 5 between yourself and Martin McCue, correct?
 6 A. Correct.
 7 Q. Did that physician/patient relationship cease at
 8 any time?
 9 A. I saw him in September of '96 in the office.
 10 Q. Do you still consider yourself his physician?
 11 MR. WALTERS: YOU mean after
 12 he sued him?
 13 Has he been back to see you since he
 14 filed a lawsuit.
 15 THE WITNESS: No.
 16 BY MR. MALIK:
 17 Q. You had a duty to provide certain risk
 18 information which you indicated on January 15th?
 19 A. Correct.
 20 Q. You provided some of it, correct?
 21 A. Yes. If I might, I provided all the risk
 22 information that I felt was my duty.
 23 Q. None of that risk information included
 24 discussion about a central spinal fluid leak however,
 25 correct?

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1 MR. JEFFERS: objection.
 2 There's no evidence of that.
 3 MR. WALTERS: Let me just
 4 say this, I think we went over what he
 5 remembers telling this patient ad nauseam
 6 at this point, but go ahead, Doctor, do
 7 you remember telling him anything about a
 8 central spinal fluid leak?
 9 A. No.
 10 Q. Do you believe that information regarding a
 11 central spinal fluid leak as a potential risk of a
 12 spinal injection is information a patient should know?
 13 MR. JEFFERS: Objection.
 14 A. I'm not an anesthesiologist. I don't feel
 15 comfortable answering that.
 16 Q. Would you agree that it's a fair statement that
 17 the patient is entitled to have as much material
 18 information, pertinent information about the risks
 19 involved in anesthesia in order to make an informed
 20 consent?
 21 MR. JEFFERS: objection.
 22 I don't think that's a complete
 23 sentence, you left out the center of the
 24 sentence. I don't think it's intelligent.
 25 MR. MALIK: Thank you,

1
 2 A. Yes.
 3 Q. Do you feel comfortable with him?
 4 A. Yes.
 5 Q. Did there ever come a time when Mr. McCue told
 6 you he didn't want any information about his
 7 anesthesia?
 8 A. None that I can recall.
 9 Q. And is it your testimony today because you're
 10 not an anesthesiologist you don't feel comfortable
 11 commenting on the standard of disclosure in terms of
 12 anesthesia risks?
 13 A. Correct.
 14 Q. In terms of probabilities for these kinds of
 15 surgeries, what percentage of patients receive a spinal
 16 injection for pain in your operating room?
 17 A. I couldn't tell you, to be honest with you. I
 18 don't know.
 19 Q. Although you're not an anesthesiologist can you
 20 tell me the difference between a spinal and a general?
 21 MR. WALTERS: You're talking
 22 now anesthetic.
 23 A. A spinal anesthetic is considered a regional
 24 anesthetic or, in laymen's terms, being numb basically
 25 from the waist down, whereas with a general anesthetic

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1 I've been called worse.
 2 Janet, read it back.
 3 THE NOTARY: Question:
 4 "Would you agree that it's a fair
 5 statement that the patient is entitled to
 6 have as much material information,
 7 pertinent information about the risks
 8 involved in anesthesia in order to make an
 9 informed consent?"
 10 MR. JEFFERS: objection.
 11 A. Not being an anesthesiologist I couldn't comment
 12 on the extent of the information needed to give a
 13 patient.
 14 Q. Dr. Midis is part of the anesthesia group, isn't
 15 he?
 16 A. I believe so. I'm not sure of the
 17 technicalities of his job.
 18 MR. WALTERS: YOU sued him
 19 under Parma Anesthesia Associates,
 20 Incorporated.
 21 BY MR. MALIK:
 22 Q. In terms of your operating room, has he been in
 23 your operating room before?
 24 A. Yes.
 25 Q. Is he a regular, so to speak, in your operating

1 the entire body is affected and they are affected to
 2 the point where they have to be placed on a respirator
 3 many times because of the entire whole body
 4 involvement.
 5 Q. How are those two distinguished from an
 6 epidural; if you know?
 7 A. As far as I am aware -- I'm sorry, which two?
 8 Q. The general, spinal, and then I'm categorizing
 9 epidural as a third category.
 10 MR. WALTERS: That's
 11 assuming it is a third category.
 12 MR. MALIK: Right.
 13 MR. WALTERS: Go ahead,
 14 Doctor.
 15 A. Epidural injection is simply an injection of
 16 medication given into a different location other than
 17 the spinal anesthetic.
 18 MR. WALTERS: still a local
 19 anesthetic, correct?
 20 THE WITNESS: It's a
 21 regional anesthetic, correct.
 22 BY MR. MALIK:
 23 Q. When you talked to the anesthetist I think you
 24 said it was in the locker room about Mr. McCue's
 25 headaches, what did he say?

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1 A. I don't recall specifically other than that he
2 did not believe that his headaches at four weeks out
3 were still related to a spinal injection. And
4 admittedly that's just paraphrasing. I don't remember
5 the details.

6 MR. MALIK: Can we take a
7 two-minute break?
8 (Thereupon, there was a brief
9 recess.)

10 BY MR. MALIK:

11 Q. Doctor, is it your opinion that the acceptable
12 standard of care requires a physician to fully inform
13 the patient of all material risks prior to performing
14 surgery on the patient, including the risk of both the
15 surgery itself as well as the administration of
16 anesthetic?

17 A. I as the surgeon, it is my --

18 MR. WALTERS: object, first.

19 Go ahead, Doctor.

20 A. It's my duty to discuss the procedure, the rehab
21 and the risks involved. Not with the particulars in
22 regard to the anesthesia.

23 Q. But in order that the patient be fully informed,
24 the risks of anesthesia need to be explained, correct?

25 A. The fact there are risks involved, correct.

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1 Q. Okay. And the specific risks involved, correct?

2 MR. JEFFERS: And the what?

3 MR. MALIK: specific

4 risks

5 A. By whom? Who is discussing these?

6 Q. Well, regardless of by whom, the specific risks
7 need to be explained to the patient, correct?

8 A. Yes.

9 Q. What are the risks of the administration of
10 general endotracheal anesthesia?

11 A. I don't feel comfortable commenting on that.

12 Q. And what are the risks of giving a patient a
13 spinal injection?

14 A. I'm not an anesthesiologist.

15 Q. Do you agree that you told Martin McCue prior to
16 surgery that when you performed arthroscopic anterior
17 cruciate ligament reconstruction surgery that you would
18 do it with general endotracheal anesthetic?

19 A. I stated that it could be done under either
20 general or spinal anesthetic.

21 Q. Did he chose one of the two?

22 A. I do not recall.

23 Q. You agree Mr. McCue didn't suffer from severe
24 headaches prior to the surgery of February 1, 1996?

25 MR. WALTERS: objection.

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1 There's no way he could know.

2 A. I never asked him; he never told me.

3 Q. Would you agree that a physician is prohibited
4 from administering treatment to a patient without the
5 patient's consent, correct?

6 MR. JEFFERS: I could not
7 hear that.

8 MR. WALTERS: you're taking
9 an emergency situation out of it.

10 MR. MALIK: Taking
11 emergency situation out of it.

12 MR. JEFFERS: would you
13 repeat it?

14 THE NOTARY: Question:
15 "Would you agree that a physician is
16 prohibited from administering treatment to
17 a patient without the patient's consent,
18 correct?"

19 MR. WALTERS: object.

20 It happens everyday, go ahead.

21 A. I agree.

22 Q. Did Mr. McCue ever bring his fiancee Nancy with
23 him to any of the appointments?

24 A. Yes.

25 Q. Was she present in the room during any of the

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1 appointments?

2 A. On occasion.

3 Q. Do you recall whether or not Mi. McCue or Nancy
4 had told you prior to the surgery that Marty did not
5 want a spinal administered?

6 A. I do not recall.

7 Q. Do you recall whether or not he told you that he
8 heard of too many complications resulting from the
9 administration of a spinal?

10 A. I do not recall.

11 Q. Did you tell Mi. McCue that you perform all of
12 your procedures with endotracheal gas?

13 MR. JEFFERS: With what?

14 MR. MALIK: Endotracheal

15 gas

16 A. I do not recall.

17 Q. Would you agree that the risks of administering
18 spinal narcotics are different from that of
19 administering endotracheal gas?

20 A. There are different risks.

21 Q. Do you agree that general anesthetic does not
22 have the post-operative risk of severe headaches?

23 MR. JEFFERS: Objection.

24 A. I can't comment on that.

25 Q. Would you agree that urinary retention is not a

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1 A. It went along very nicely.
 2 Q. And how is he today in terms of the function
 3 with his knee?
 4 A. I couldn't comment. I haven't seen him in over
 5 a year.
 6 Q. The last time you saw him, how was he doing?
 7 A. I thought he was doing very well. He still had
 8 some muscle weakness but was otherwise progressing very
 9 nicely.
 10 Q. In terms of the kind of person that Mr. McCue
 11 is, you saw him on a number of occasions, correct?
 12 Were you able to formulate an opinion as to his
 13 directness and truthfulness with you?
 14 MR. JEFFERS: objection.
 15 MR. WALTERS: object, but as
 16 best you can, go ahead.
 17 A. I had no difficulties.
 18 Q. Did you feel that he was forthcoming when he
 19 spoke with you?
 20 A. Yes.
 21 Q. Did you feel that he wanted to help himself when
 22 he spoke with you?
 23 A. He was willing to participate in therapy and
 24 help himself, yes.
 25 Q. Is it a fair statement to say he was a compliant

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1 patient?
 2 A. Yes.
 3 Q. Did he present you any specific problems?
 4 A. As far as --
 5 Q. As far as his treatment.
 6 MR. WALTERS: You mean not
 7 suing him.
 8 MR. MALIK: Correct.
 9 MR. WALTERS: It seems like
 10 a problem to me, I'm just a lay person, I
 11 don't know. Go ahead.
 12 A. As far as his compliance with my
 13 recommendations, he was fine.
 14 Q. Are you on staff at any other hospitals other
 15 than Parma?
 16 A. Southwest General Health Center.
 17 Q. Have you had the opportunity to perform surgery
 18 at Southwest?
 19 A. Yes.
 20 Q. And are there informed consent forms at
 21 Southwest also?
 22 A. I would imagine, but I don't recall the specific
 23 form at this point.
 24 Q. Is the procedure for performing surgery at
 25 Southwest as it relates to you and informing the

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1 patient of anesthetic risks any different than it is at
 2 Parma?
 3 MR. JEFFERS: objection.
 4 Go ahead.
 5 A. I do the same whether the patient is being done
 6 at Parma or Southwest.
 7 Q. After surgery what medications was Mr. McCue on?
 8 A. May I refer to my notes?
 9 Q. Sure.
 10 A. You're talking immediately after surgery?
 11 Q. I'm talking through the time you saw him in
 12 September.
 13 A. I couldn't give you the exact details.
 14 MR. WALTERS: You don't want
 15 him to go through the hospital record.
 16 What you prescribed for him as an
 17 outpatient.
 18 A. I prescribed at various times either Vicodin or
 19 Darvocet for pain.
 20 MR. MALIK: That's it.
 21 - - -
 22 BY MR. JEFFERS:
 23 Q. Do you have any complaints about any of the care
 24 provided by any other medical care providers during the
 25 period February 1 through February 4, 1996?

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1 A. No.
 2 Q. Were you aware that Mr. McCue is obtaining
 3 Vicodin and perhaps other prescription drugs from other
 4 physicians?
 5 MR. MALIK: objection.
 6 A. I was not.
 7 Q. He did not tell you about that, correct?
 8 MR. MALIK: Objection.
 9 A. No. If I can, the other physicians in my
 10 office --
 11 Q. No, outside of your office.
 12 A. No.
 13 MR. MALIK: objection.
 14 BY MR. JEFFERS:
 15 Q. For example, he didn't tell you that Dr. Boswell
 16 had been giving him Vicodin?
 17 A. I don't know who Dr. Boswell is.
 18 MR. MALIK: objection.
 19 Q. He did not advise you Dr. Gillota had been
 20 providing him with prescription drugs, correct?
 21 A. No.
 22 MR. MALIK: objection.
 23 Q. By the way, I note that in your note of
 24 September 25, 1995 you make a comment that you had a
 25 call from Marty's wife that evening saying he was in

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1 excruciating pain. You describe her as Marty's wife.
2 Did Marty tell you that the woman that has been
3 described as his girlfriend, as Nancy, did he tell you
4 that was his wife?

5 A. I'll be honest, I had never quite figured out
6 that relationship until later on down the road.

7 Q. Okay. But he implied apparently or she implied
8 it was Marty's wife when she was calling, correct?

9 MR. MALIK: Objection.

10 A. That was my impression of the situation at that
11 time.

12 Q. Duramorph, another name for morphine, is used
13 for pain control generally speaking, correct, for
14 surgical procedures, correct?

15 A. Correct.

16 Q. In terms of post-op urine retention, that is not
17 an unusual occurrence after surgery, correct?

18 A. It is not unusual.

19 Q. Were you ever told about any antidepressant
20 medications that Mr. McCue was receiving prior to
21 September 25, 1995?

22 A. Prior to, no.

23 Q. Certainly Mr. McCue never told you about that?

24 A. In fact, in my ER note I have listed just the
25 asthma medications, nothing more.

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1 Q. Did Mr. McCue ever have a cardiac arrest in
2 recovery after your surgery?

3 A. Not that I'm aware of.

4 Q. Have you ever heard that he makes a claim that
5 he did?

6 A. This is the first.

7 MR. MALIK: objection to
8 that.

9 BY MR. JEFFERS:

10 Q. Were you aware that he had any seizures
11 subsequent to your surgery at Parma Community General
12 Hospital?

13 A. No.

14 Q. He never made that claim to you or you were not
15 aware of it by anything that occurred at the hospital,
16 right?

17 A. Correct.

18 Q. In fact, it did not occur, correct, at the
19 hospital?

20 A. Not that I'm aware of, no.

21 Q. You know he didn't have a cardiac arrest at the
22 hospital.

23 A. Not that I'm aware of.

24 Q. Did he ever claim to you that he had a leak in
25 his urethra, Mi. McCue, did he ever discuss that with

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1 you?

2 A. Post-operatively?

3 Q. Yes.

4 A. Yes.

5 Q. Did he ever tell you that that was, there was a
6 study done at University Hospital where they did a
7 cystogram and there was no evidence -- I'm sorry.

8 Did you ever receive information that he was
9 tested for that at University Hospital and it was
10 determined that he had no problem with a urinary
11 problem?

12 A. If I might refer to my notes, just says that
13 patient reports that the urinary retention may be due
14 to urethral scarring, and this was secondary to
15 evaluation by an urologist at University Hospital.

16 Q. Do you know if that was Dr. Klein?

17 A. I do not know.

18 Q. Did you know they did a cystoscopy on him?

19 A. He did tell me that, yes.

20 Q. Did he tell you the results were normal caliber
21 urethra and normal bladder and no lesions in either the
22 urethra or bladder with normal mucosa? Did he ever
23 mention anything about that to you?

24 A. No.

25 Q. He left you with the impression that he had a

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1 problem and it was --

2 A. Yes.

3 Q. Now, to go to the cystogram, were you ever aware
4 that they did a cystopuncture and there was no evidence
5 of a leak at all in terms of his urinary problem?

6 A. No.

7 Q. I should say in terms of his spinal leak --
8 alleged spinal leak.

9 A. I am not aware of that study.

10 MR. WALTERS: You aren't
11 aware of any follow-up records?

12 A. What I am aware of is a note from a doctor at
13 Metro who did an evaluation who makes mention of a
14 study, but that was only my review for this person for
15 this case.

16 Q. Were you aware there was no CSF leak determined?

17 A. I was not aware of that, no.

18 Q. When was the last time you saw this patient?

19 A. September 16, 1996.

20 Q. Was he still discussing problems that he had
21 with a leak with you at that point or after June 24,
22 1996?

23 A. Says in my September note, says in regard to
24 headaches he reports the fluid leak healed, headaches
25 are less but still complains of chronic frontal

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1 headaches.
 2 Q. State that again, please.
 3 A. In regard to headaches he reports the fluid leak
 4 has healed, headaches are less but he still complains
 5 of chronic frontal headaches.
 6 Q. Did he ever tell you he had a CT of the head?
 7 A. No.
 8 Q. In March of 1996.
 9 A. No.
 10 Q. Did he ever advise you that he had three
 11 seizures subsequent to your surgery?
 12 A. I am aware of the reported blackouts only, what
 13 the patient reported to me.
 14 Q. You were not aware, if I recall, that Dr.
 15 Gillota was treating him for depression as early as
 16 1995?
 17 A. I was not aware of that, no.
 18 Q. Dr. Boswell reports on April 17, 1996 that it
 19 was reported to him by Mr. McCue that his post-op
 20 course was complicated by questionable seizures six
 21 hours post-op with severe post-op vomiting.
 22 Were you aware of either?
 23 A. Again, from review of the notes I noticed at one
 24 point he had an emesis of about 150 ccs, minimal, and
 25 no mention ever of any seizures in the hospital chart.

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1 Q. So such a statement would not be true if that
 2 were the statement made to Dr. Boswell?
 3 A. Correct.
 4 Q. On July 23, 1996 did University Hospital
 5 indicate that he had a spinal at Parma Community
 6 General Hospital of morphine as part of the anesthetic
 7 process resulting in convulsions and a hole in his
 8 spine?
 9 You're not aware of anything to support that
 10 claim, correct?
 11 A. No, I'm not.

19 MR. JEFFERS: That's all.
 20 MR. GUNNING: None for me.

21 ---
 22 BY MR. MALIK:

23 Q. Doctor, handing you Exhibit G, I want you to tell
 24 me if you can identify this.
 25 (Thereupon, Defendant's Exhibit G to

Page

1 the deposition of Richard Gittinger, M.D.
 2 was marked for identification.)
 3 BY MR. MALIK:
 4 Q. Handing you Exhibit G which is peri-operative
 5 patient care record and plan, have you seen that
 6 before?
 7 A. Yes, I have.
 8 Q. Is your signature on there anywhere?
 9 A. No.
 10 Q. What does peri-operative mean?
 11 A. It means at the time or around the time of the
 12 surgery.
 13 Q. As far as you can recollect and after your
 14 review of the records were there any complications
 15 whatsoever post-operatively in terms of Mr. McCue's
 16 breathing?
 17 A. None.
 18 MR. MALIK: That's it.
 19 MR. WALTERS: Anything else?
 20 MR. JEFFERS: No.
 21 MR. WALTERS: We'll read it
 22 if it's typed.
 23 (DEPOSITION CONCLUDED.)
 24
 25 Richard Gittinger, M.D. Date

Page {

1 County of Cuyahoga.
 2 I, Janet M. Hoffmaster, a Registered Professional,
 3 Reporter and Notary Public within and for the State of
 4 Ohio, duly commissioned and qualified, do hereby
 5 certify that the within-named witness, RICHARD A.
 6 GITTINGER, M.D., was by me first duly sworn to tell the
 7 truth, the whole truth and nothing but the truth in the
 8 cause aforesaid; that the testimony then given by him
 9 was reduced to stenotypy, and afterwards transcribed by
 10 me through the process of computer-aided transcription,
 11 and that the foregoing is a true and correct transcript
 12 of the testimony so given by him as aforesaid.
 13 I do further certify that this deposition was
 14 taken at the time and place in the foregoing caption
 15 specified.
 16 I do further certify that I am not a relative,
 17 employee or attorney of either party, or otherwise
 18 interested in the event of this action.
 19 IN WITNESS WHEREOF, I have hereunto set my hand
 20 and affixed my seal of office at Cleveland, Ohio, on
 21 this 9th day of January 1998.
 22
 23 Janet M. Hoffmaster, RPR and Notary Public
 24 in and for the State of Ohio.
 25 My Commission expires September 12, 2002.

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