

IN THE COURT OF COMMON PLEAS  
OF CUYAHOGA COUNTY, OHIO

MICHAEL R. GERYAK, et al.,

Plaintiffs,

vs.

Case No.

GASTROENTEROLOGY ASSOCIATES

388997

OF CLEVELAND, INC., et al.,

Defendants.

- - - - -

Deposition of GARY GOTTLIEB, M.D.,  
called for examination under the statute, taken  
before me, Denise M. Munguia, a Registered Merit  
Reporter and Notary Public in and for the State  
of Ohio, pursuant to notice and stipulations of  
counsel, at the offices of Gastroenterology  
Associates of Cleveland, Inc., 6801 Mayfield  
Road, Suite 140, Mayfield Heights, Ohio, on  
Tuesday, December 12, 2000, at 6:00 o'clock p.m.

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## 1 APPEARANCES:

2  
3 On behalf of the Plaintiffs:

4 Finelli &amp; Margolis, by

5 **RONALD A. MARGOLIS, ESQ.**

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8 (216) 621-2222  
9

10 On behalf of the Defendants

11 Gastroenterology Associates of Cleveland,

12 Inc. and Gary Gottlieb, M.D.:

13 Bonezzi Switzer Murphy &amp; Polito

14 Co., L.P.A., by

15 **WILLIAM BONEZZI, ESQ.**

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21  
22  
23  
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25

1 APPEARANCES, Continued:

2  
3 On behalf of the Defendants

4 Aquilio C. Agliam, M.D., Inc. and

5 Aquilio C. Agliam, M.D.:

6 Weston Hurd Fallon Paisley & Howley

7 L.L.P., by

8 **RONALD A. RISPO, ESQ.**

9 2500 Terminal Tower

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13 ----

1 GARY GOTTLIEB, M.D., of lawful age,  
2 called for examination, as provided by the Ohio  
3 Rules of Civil Procedure, being by me first  
4 duly sworn, as hereinafter certified, deposed  
5 and said as follows:

6 EXAMINATION OF GARY GOTTLIEB, M.D.

7 BY MR. MARGOLIS:

8 Q. Doctor, we have had the opportunity  
9 to briefly meet before. My name is Ron  
10 Margolis and, along with Dan Finelli, we 18:01:38  
11 represent Michael Geryak in this pending case.

12 I'm going to be asking you a series  
13 of questions tonight. If at any time you don't  
14 understand the question I ask you, please tell  
15 me. I would ask that you please make all of 18:01:48  
16 your answers out loud.

17 If at any time you need to be able  
18 to take a break because you are paged or you  
19 have something else that comes up, just please  
20 indicate that you'd like a break and we'll 18:02:00  
21 stop. If at any point while I'm questioning  
22 you you feel the need to speak with your  
23 attorney, you just indicate that you'd like to  
24 take a break, I will ask no further questions  
25 and you can consult with your lawyer. 18:02:08

1 Do you understand kind of the 18:02:17  
2 ground rules as I have said them?

3 A. Yes.

4 Q. Have you ever been deposed prior to  
5 tonight, sir? 18:02:16

6 A. Yes.

7 Q. How many times have you given  
8 deposition testimony previously?

9 A. Once.

10 Q. Was that in the context of a 18:02:30  
11 medical malpractice case?

12 A. No.

13 Q. Please tell me your full residence  
14 address.

15 A. 2858 Brainard Road, Pepper Pike, 18:02:40  
16 Ohio 44124.

17 Q. Would you please, I don't have a  
18 CV, so could you briefly walk me through your  
19 medical education, your residency and the  
20 nature of your present practice? 18:02:52

21 A. I went to medical school at Temple  
22 University in Philadelphia. I did my  
23 internship, residency in internal medicine and  
24 fellowship in gastroenterology at University of  
25 Pittsburgh. I then stayed on there for another 18:03:06

1 five years as assistant professor of medicine. 18:03:10  
2 Then I went into private practice in western  
3 Pennsylvania, Beaver County, for two years and  
4 then came to Cleveland in 1983 to join this  
5 practice. 18:03:24

6 Q. And you have been practicing  
7 gastroenterology on a continuous basis in the  
8 Cleveland area from 83 till now?

9 A. Eighty -- did I say 83?

10 Q. Yes. 18:03:34

11 A. I must be nervous. 85 was when I  
12 came to Cleveland.

13 Q. Fine.

14 A. From 85 till now.

15 Q. Are you affiliated with any medical 18:03:42  
16 schools at present as an assistant professor or  
17 associate professor?

18 A. No.

19 Q. And are you board certified in  
20 gastroenterology? Are their separate boards 18:03:52  
21 for that specialty?

22 A. Yes, the American Board of Internal  
23 Medicine has a board test for gastroenterology  
24 and I am certified.

25 Q. And you hold licenses in the State 18:04:04

1 of Ohio in the State of Pennsylvania? 18:04:06

2 A. No more in -- just in Ohio  
3 currently.

4 Q. Doctor, would you please tell me  
5 what the nature of your present practice is? 18:04:12  
6 As a gastroenterologist, what type of patients  
7 you see, things like that.

8 A. Yes. I see patients with  
9 gastroenterological problems and hepatic  
10 problems, such as abdominal pain, diarrhea, 18:04:28  
11 bleeding, jaundice, other kinds of liver  
12 disease.

13 Excuse me, I'd like to just look at  
14 my page.

15 Q. That's fine. 18:04:44

16 A. This can wait.

17 Q. Okay. What hospitals do you have  
18 privileges at, Doctor?

19 A. I have privileges at South Pointe  
20 Hospital, Bedford Medical Center, Hillcrest 18:05:00  
21 Hospital, Huron Hospital, Euclid Hospital,  
22 Southwest General Hospital, and Lake West.

23 Q. Doctor, do the majority of the  
24 patients that come to you, are they referred to  
25 you by their primary care physician? 18:05:20



1 A. I don't know. 18:05:26

2 Q. Did there come a point in time  
3 where you were referred a patient by the name  
4 of Michael Geryak?

5 A. Yes. 18:05:34

6 Q. And please feel free to make  
7 reference to the office notes in your chart,  
8 and specifically if you would please look at  
9 Exhibit 2. And we'll go off the record a  
10 second. 18:05:56

11 (Discussion had off the record.)

12 Q. Back on the record.

13 Doctor, was the first time that you  
14 had the opportunity to see Mr. Geryak as a  
15 patient on November 3rd of 1994? 18:06:16

16 A. Yes.

17 Q. And it's nice that your office  
18 notes are typed, so I don't have to ask you to  
19 read them into the record.

20 Is it correct, sir, that Mr. Geryak 18:06:28  
21 was referred to you for evaluation of his  
22 abdominal pain from his family physician,  
23 Dr. Agliam?

24 A. Yes.

25 Q. Have you had referrals prior to 18:06:38

1 Mr. Geryak sent to you by Dr. Agliam? 18:06:41

2 A. Yes.

3 Q. And have you had referrals since --

4 A. I'm sorry.

5 Q. That's okay. And have you had the 18:06:57  
6 opportunity since the last time you saw  
7 Mr. Geryak, which was May 30th of 1997, to have  
8 referrals of patients made to you by  
9 Dr. Agliam?

10 A. I don't know for sure. I don't 18:07:11  
11 know.

12 Q. Please tell me what the purpose was  
13 of your evaluating Mr. Geryak on November 3rd,  
14 1994.

15 A. He was referred for evaluation of 18:07:32  
16 abdominal pain.

17 Q. And can you walk me through what  
18 you did in evaluating him on November 3rd of  
19 94?

20 A. I took a history, I performed a 18:07:41  
21 physical examination.

22 Q. Can I interrupt you for one moment,  
23 sir?

24 A. Sure.

25 Q. Would it be fair to say that, given 18:07:54

1 the fact that the history does not have any 18:07:56  
2 notation of complaints of testicular pain, that  
3 Mr. Geryak made no complaints to you of  
4 testicular pain on the November 3rd, 94 visit?

5 A. Yes, he did not complain of 18:08:12  
6 testicular pain.

7 Q. And you performed a physical  
8 examination of Mr. Geryak on November 3rd, 1994  
9 after the history?

10 A. Yes. 18:08:28

11 Q. And please tell me what the  
12 physical examination consisted of.

13 A. A general evaluation of what he  
14 looked like, his height, weight, vital signs,  
15 mental status, I examined his head, ears, eyes, 18:08:42  
16 nose and throat, lymph nodes, chest, heart,  
17 abdomen, extremities, and pulses, and his  
18 neurologic exam.

19 Q. When you say lymph nodes, what area  
20 of the body specifically? Was it more up in 18:09:00  
21 the area of the neck?

22 A. Cervical and axillary.

23 Q. Thank you. Am I correct that you  
24 did not perform a testicular examination of  
25 Mr. Geryak on November 3rd, 1994? 18:09:14

1 A. That is correct. 18:09:18

2 Q. And would that be because, based  
3 upon the limited purpose that he was referred  
4 to you, for a gastrointestinal workup, that a  
5 testicular exam was not indicated? 18:09:28

6 A. Yes.

7 Q. And would I be correct in stating  
8 that a testicular exam on November 3rd, 1994  
9 was not indicated by the history that he  
10 provided to you? 18:09:38

11 A. Yes.

12 Q. And a testicular exam, at least on  
13 the November 3rd, 94 evaluation, was not  
14 indicated, based upon the clinical picture that  
15 the patient presented? 18:09:48

16 A. Yes.

17 Q. Did you form an impression or a  
18 diagnosis of Mr. Geryak based upon your  
19 November 3rd, 1994 visit?

20 A. Yes. 18:10:08

21 Q. And would you please share with me  
22 what that was, sir?

23 A. Abdominal pain due to irritable  
24 bowel syndrome and prescription drug  
25 dependence. 18:10:18

1 Q. Now, the prescription drug 18:10:14  
2 dependence, that would have been the drugs that  
3 he was taking, paregoric, Librax, Toradol and  
4 Fioricet?

5 A. Yes. 18:10:24

6 Q. Do you know who the physician was  
7 that referred -- or excuse me, that gave him  
8 prescriptions for those drugs?

9 A. No, I don't know that.

10 Q. One of the things that you were 18:10:40  
11 concerned about, Mr. Geryak, based upon the  
12 November 3rd, 94 evaluation that you performed,  
13 was that he was chemically dependent on certain  
14 prescription narcotic drugs; is that accurate?

15 A. The word "narcotic" is not 18:10:58  
16 accurate, but the general idea is accurate.

17 Q. Okay. Is Toradol a narcotic?

18 A. No.

19 Q. Is that an antiinflammatory?

20 A. Yes. 18:11:08

21 Q. Is paregoric a narcotic?

22 A. Yes.

23 Q. Fioricet?

24 A. Yes.

25 Q. Librax is a tranquilizer? 18:11:16

1 A. Yes. 18:11:18

2 Q. So two out of the four drugs he was  
3 taking were narcotics?

4 A. And then there's Tranxene.

5 Q. I missed that. Okay. And what is  
6 that? 18:11:24

7 A. It's a tranquilizer.

8 Q. So fair to say that, based upon  
9 your November 3rd, 94 visit, you had a concern  
10 that this patient had a chemical dependency  
11 issue? 18:11:34

12 A. Yes.

13 Q. And you communicated that concern  
14 of a chemical dependency issue back to  
15 Dr. Agliam, is that accurate, after the  
16 November 3rd, 94 visit? I don't know if  
17 there's -- 18:11:46

18 A. I don't see a letter from that  
19 time. I see a letter from 97.

20 Q. Right. Maybe -- okay. I don't  
21 believe that there would be a letter that your  
22 chart reflects to Dr. Agliam after the November  
23 3rd, 94 visit, but under the plan portion of  
24 your November 3rd, 94 visit you indicate  
25 patient is referred back to Dr. Agliam with 18:12:28

1 advice to seek assessment for chemical 18:12:32  
2 dependency. Did you have any communication  
3 with Dr. Agliam at all after your November 3rd,  
4 94 visit relative to the patient's condition  
5 and prior to his next visit of May 30th, 97? 18:12:46

6 A. I don't remember.

7 Q. Would it be your normal habit and  
8 routine practice, if a patient is referred to  
9 you for a gastrointestinal consult, such as the  
10 type of Mr. Geryak on November 3rd, 94, that 18:13:06  
11 you would communicate to the referring  
12 physician what your conclusions were about the  
13 patient's condition?

14 A. Yes.

15 Q. And if that isn't done in a written 18:13:18  
16 format, it would usually be done probably with  
17 a telephone conference?

18 A. Yes.

19 Q. And would that have been the normal  
20 course that you would have followed in November 18:13:26  
21 of 1994?

22 A. I'm not sure what you are asking  
23 me. Was it or would it have been? I'm not  
24 sure what you're asking me.

25 Q. Yes, I guess my question is, 18:13:38

1 Doctor, if that would be your normal course of 18:13:40  
2 practice, if a patient is referred to you for a  
3 GI consult by a family doc and there's no  
4 letter from you to the family doc, you have  
5 indicated that you would probably communicate 18:13:50  
6 your findings and assessment to the family doc  
7 over a telephone call?

8 A. That's my usual practice.

9 Q. Okay. And my question is, although  
10 you may not have a specific recollection of 18:14:00  
11 that fact, do you believe that that would have  
12 been the usual practice that you would have  
13 followed relative to your 11-3-94 evaluation of  
14 Mr. Geryak and communicating the results of  
15 that exam to Dr. Agliam? 18:14:20

16 A. My usual practice.

17 Q. Okay. And it would have been your  
18 usual practice back then as well?

19 A. Yes.

20 Q. Okay. Fair enough. And then I 18:14:30  
21 believe Mr. Geryak presented back to your  
22 office on May 30th of 1997; is that correct?

23 A. Yes.

24 Q. And again you took a history?

25 A. Yes, I did. 18:14:52



1 Q. And in your history I believe you 18:14:54  
2 indicate that in November of 94 it was your  
3 impression that he had a prescription drug  
4 dependency; is that accurate?

5 A. Yes. 18:15:08

6 Q. So we can agree that when you saw  
7 this man in November of 1994, it was your  
8 clinical and professional impression that he  
9 had a prescription drug dependency?

10 A. Yes. 18:15:22

11 Q. And that would be a prescription  
12 drug dependency on the drugs that are referred  
13 to in your November 3rd, 94 office note?

14 A. Yes.

15 Q. Did you perform a testicular exam 18:15:48  
16 on Mr. Geryak in the course of your May 30th,  
17 97 evaluation of him in your office?

18 A. No.

19 Q. Did Mr. Geryak present any  
20 complaints to you of testicular pain in your 18:16:04  
21 May 30th, 97 office visit?

22 A. No.

23 Q. Did the clinical evaluation and  
24 assessment that you performed of Mr. Geryak on  
25 May 30th, 97 disclose any reason or findings 18:16:18

1 that would alert you as to the need to perform 18:16:22  
2 a testicular exam?

3 A. No.

4 Q. Doctor, as a physician practicing 18:16:40  
5 medicine, is it the responsibility of a family  
6 physician to treat a patient who has a  
7 prescription drug dependency if that  
8 information is made known to the family  
9 practitioner?

10 A. To treat? It's not as -- 18:17:00

11 Q. To address it in some form?

12 A. To address it.

13 Q. And in the context of a family  
14 practitioner, addressing a patient with a  
15 prescription drug dependency would involve 18:17:18  
16 possibly ordering a chemical assessment,  
17 dependency assessment of the patient, or  
18 referring the patient to a physician who  
19 specializes in treating people that are  
20 chemically addicted to drugs? 18:17:34

21 A. Yes.

22 Q. Your impression of Mr. Geryak on  
23 May 30th of 97 was irritable bowel syndrome,  
24 functional abdominal pain and, again, chemical  
25 dependency, especially prescription drug abuse; 18:17:52

1 is that accurate?

18:17:56

2 A. Yes.

3 Q. Did you at all learn from the two  
4 visits you had with Mr. Geryak who the  
5 physician was that was writing these  
6 prescriptions to the medications that you  
7 concluded he was suffering from a prescription  
8 drug dependency?

18:18:06

9 A. Well, I don't remember if I knew  
10 who was prescribing the drugs. It's not  
11 mentioned in my note.

18:18:28

12 Q. Now, in your evaluation of  
13 Mr. Geryak on May 30th, 1997 you provided him  
14 with the telephone number of a facility that  
15 specializes in treating people who are  
16 chemically dependent; is that correct?

18:18:44

17 A. What date?

18 MR. BONEZZI: Excuse me, what date  
19 was that?

20 MR. MARGOLIS: May 30th of 97.

18:18:52

21 MR. BONEZZI: Thank you.

22 Q. Under the planned portion of that  
23 visit, sir?

24 A. Oh, yes. Yes, I did.

25 Q. So in your care and treatment of

18:18:58

1 Mr. Geryak on May 30th, 1997, you came to the 18:19:00  
2 medical opinion that his chemical dependency  
3 problems were sufficient enough that you took  
4 it upon yourself, as a physician, to refer him  
5 to a facility that specializes in treating 18:19:14  
6 people who have chemical dependencies; is that  
7 accurate?

8 A. Yes.

9 Q. In the context of the two visits  
10 that you had with Mr. Geryak, would I be 18:19:30  
11 correct in assuming that if a testicular  
12 examination was indicated, that that would be  
13 something that you would rely on the family  
14 physician to perform?

15 A. I don't know that. I mean the 18:19:58  
16 patient could be referred to another  
17 specialist. I don't know. I mean I can  
18 imagine it could be a urologist, but I don't  
19 know that.

20 Q. But based upon the two visits that 18:20:10  
21 you had with Mr. Geryak, he made no complaints  
22 to you about testicular discomfort; is that  
23 correct?

24 A. That is correct.

25 Q. And there was nothing on your 18:20:20

1 clinical exams which disclosed to you that he 18:20:20  
2 had any testicular abnormalities?

3 A. That is right.

4 Q. If a patient were to complain to  
5 you about testicular pain or testicular 18:20:34  
6 swelling, would that be something, in the  
7 context of the GI consult, that you would  
8 probably refer the patient back to their family  
9 doctor to be evaluated further, or to a  
10 specialist, such as a urologist? 18:20:48

11 A. I might do that.

12 Q. Would I be correct in stating that,  
13 as a gastroenterologist, you would not take on  
14 the responsibility of treating someone with a  
15 testicular abnormality or condition? 18:21:10

16 A. You would be correct.

17 Q. The people that you would defer to  
18 treat that would be either the patient's family  
19 physician or a specialist, such as a urologist?

20 A. Anything outside of my specialty I 18:21:28  
21 would refer back to the family physician.

22 Q. And then, Doctor, Exhibit 1, I  
23 believe, is your May 30th, 1997 correspondence  
24 that was sent to Dr. Agliam; is that correct?

25 A. Yes. 18:21:44

1 Q. So we can agree that you expressly 18:21:56  
2 put Dr. Agliam on notice, per your May 30th,  
3 1997 correspondence, that your impression of  
4 Mr. Geryak was that he had a chemical  
5 dependency, especially prescription drug abuse; 18:22:17  
6 is that correct?

7 A. Yes.

8 Q. You also advised Dr. Agliam in your  
9 May 30th, 1997 correspondence that, in your  
10 professional medical opinion, in addition to 18:22:26  
11 Mr. Geryak having a chemical dependency and  
12 prescription drug abuse, that Mr. Geryak was in  
13 denial about the need he had for this  
14 medication; is that correct?

15 A. I'm not sure the way you are 18:22:44  
16 wording that. I can -- denial of what?

17 Q. Okay. In your letter you indicate,  
18 sir, he is in tremendous amount of denial about  
19 his need for medication. What did you mean by  
20 that? It's in the first paragraph, second last 18:22:56  
21 sentence. And if I'm taking it out of context,  
22 you can certainly bring that to my attention.

23 A. That he had denial about his  
24 addictive and excessive use of medication.

25 Q. Would it be a fair statement that 18:23:20

1 part of what you communicated to Dr. Agliam in 18:23:22  
2 your May 30th, 97 correspondence is that the  
3 patient was in denial about his chemical  
4 dependency illness?

5 A. Yes. 18:23:38

6 Q. And as I understand it, you further  
7 informed Dr. Agliam in your May 30th, 97  
8 correspondence that it was your professional  
9 medical opinion that Mr. Geryak be taken off of  
10 all mood-altering medications as they are 18:23:50  
11 making his condition worse; is that accurate?

12 A. Yes.

13 Q. And you specifically recommended  
14 that Tranxene, paregoric, Fioricet, Librax and  
15 Toradol should be discontinued; is that 18:24:08  
16 correct?

17 A. Yes.

18 Q. And the only medication that you  
19 indicated he should be on is Prevacid and  
20 Levbid? 18:24:18

21 A. Yes.

22 Q. What is Prevacid? Is that an  
23 antacid?

24 A. Yes, it's an inhibitor of acid  
25 production. 18:24:28

1 Q. And what is Levbid? 18:24:26

2 A. Levbid is an antispasmodic.

3 Q. And that would be spasms within the  
4 intestines?

5 A. Yes. 18:24:40

6 Q. Specifically the colon?

7 A. The small bowel and the colon.

8 Q. And it was your professional  
9 medical opinion, based upon evaluating him on  
10 May 30th of 97, that at least from a GI 18:24:47  
11 perspective he had no condition which would  
12 warrant the ongoing use of narcotics or  
13 mood-altering drugs; is that accurate?

14 A. Yes.

15 Q. Are you aware what, if any, action 18:25:04  
16 Dr. Agliam took relative to the recommendations  
17 that you outlined in your correspondence of May  
18 30th, 1997?

19 A. No.

20 Q. Do you recall having any telephone 18:25:18  
21 discussions with Dr. Agliam after the May 30th,  
22 1997 correspondence was mailed to him?

23 A. No.

24 Q. Have you had any discussions with  
25 Dr. Agliam, either in person or over the phone, 18:25:32



1 relative to your care and treatment of 18:25:38  
2 Mr. Geryak other than the May -- excuse me, the  
3 November 3rd, 94 telephone discussion which may  
4 or may not have transpired pursuant to your  
5 normal course protocol at the time? 18:25:52

6 Long-winded question. Did you ever talk to him  
7 after --

8 A. No.

9 Q. -- November 3rd of 94?

10 A. No. 18:26:00

11 Q. Did you have any discussions with  
12 Dr. Agliam about this lawsuit being filed?

13 A. No.

14 Q. Dr. Gottlieb, I'm almost done here.

15 A couple of concluding questions. Clearly the 18:26:30  
16 information that you conveyed in your May 30th,  
17 1997 correspondence of Dr. Agliam about Mr.

18 Geryak being chemically dependent and abusing  
19 prescription drugs was not a conclusion that  
20 you arrived at lightly; is that correct? 18:26:48

21 A. That is correct.

22 Q. And it was your professional  
23 medical opinion that continued prescribing of  
24 Tranxene, paregoric, Fioricet, Librax and  
25 Toradol subsequent to May 30th, 1997 was not 18:27:04

1 medically warranted, given Mr. Geryak's  
2 condition, from a GI perspective?

18:27:08

3 A. As long as you limit it to from a  
4 GI perspective, I would say yes.

5 Q. Yes, sir. And from a GI  
6 perspective, continuing to prescribe Mr. Geryak  
7 with Tranxene, paregoric, Fioricet, Librax and  
8 Toradol after May 30th, 1997, in your  
9 professional opinion, would not be in his best  
10 interest?

18:27:22

18:27:46

11 A. Yes.

12 Q. And just the last question I may  
13 have, it may sound silly, but if you know your  
14 schedule in April of the year 2001, if you are  
15 going to be out of town, would you please be  
16 kind enough to contact Mr. Bonezzi's office and  
17 alert him to that fact, because it would be my  
18 plan to have you as a witness in this case, and  
19 if you are unavailable, I would then videotape  
20 you. Fair enough?

18:28:12

18:28:26

21 A. Yes.

22 MR. MARGOLIS: Okay. Nothing  
23 further.

24 MR. RISPO: Could I see that chart  
25 again?

18:28:34

1 MR. BONEZZI: Here's mine. 18:28:42

2 MR. RISPO: Thanks.

3 EXAMINATION OF GARY GOTTLIEB, M.D.

4 BY MR. RISPO:

5 Q. Doctor, we have been introduced 18:28:44  
6 earlier, I'm Ron Rispo, I represent Dr. Agliam.  
7 I have a few followup questions, if I may.

8 I was trying to look over these  
9 records and listen to the earlier questions as  
10 best I could. I may have missed a few of them, 18:29:02  
11 so if I repeat, I apologize.

12 There were two separate occasions  
13 when you saw the patient. Did you speak with  
14 Dr. Agliam on either occasion, either before or  
15 after you saw the patient, specifically do you 18:29:20  
16 have an active memory of speaking with  
17 Dr. Agliam about the patient?

18 A. No, I can't remember.

19 Q. Did you receive any information  
20 from the Bedford emergency room, either prior 18:29:34  
21 to or subsequent to your examination of the  
22 patient on either occasion?

23 A. Did I receive any information?

24 Well, I am reading from my note on May 30th,  
25 1997 where I have specific results of 18:30:00

1 laboratory tests. 18:30:04

2 Q. Okay.

3 A. So I must have --

4 Q. I refer you --

5 A. -- gotten that. 18:30:14

6 Q. -- to a note which appears to be

7 dated May 22nd --

8 A. I think I have that.

9 Q. -- of 97. Did you receive that

10 note before you saw the patient or after you 18:30:26

11 saw the patient, if you recall?

12 A. This --

13 Q. That note.

14 A. -- is a consult that I wrote on May

15 22nd of 1997, I assume that is. 18:30:38

16 Q. That's your consult?

17 A. Yes. Yes. I signed it. I wrote

18 it.

19 Q. Are we looking at the same one

20 here? Is this your signature down here? 18:30:50

21 A. Yes.

22 Q. Okay. I have a poor copy, but that

23 makes sense. Was that before or after you saw

24 the patient?

25 A. This indicates -- 18:31:08

1 MR. MARGOLIS: I apologize to 18:31:12  
2 interrupt. Just for the record, can I give you  
3 an Exhibit 4 and, Ron, as opposed to him saying  
4 this on a consult, can we mark it so that it's  
5 clear? 18:31:20

6 MR. RISPO: Sure.

7 THE WITNESS: This is Exhibit 3.

8 MR. MARGOLIS: Exhibit 3.

9 MR. BONEZZI: You already had  
10 marked it. 18:31:28

11 MR. MARGOLIS: Fine.

12 THE WITNESS: He's showing me  
13 another copy of Exhibit 3.

14 MR. MARGOLIS: Thank you.

15 A. And this is a consult which I wrote 18:31:36  
16 when the patient was admitted to Bedford  
17 Hospital. And I was consulted.

18 Q. Were you -- did you see him at the  
19 hospital?

20 A. I saw him in his room. At the 18:31:44  
21 hospital.

22 Q. The note in your chart indicates an  
23 office visit on May 3rd, at least that's the  
24 way I interpreted it. Did you see him both  
25 occasions? 18:31:58

1 A. Uh-huh.

18:32:00

2 MR. BONEZZI: You have to say yes.

3 A. Yes.

4 Q. So then you have seen him a total  
5 of three times?

18:32:04

6 A. Yes.

7 Q. During the course of the visit at  
8 Bedford Hospital, what was the presenting  
9 history given to you at that time?

10 A. He complained of abdominal pain and  
11 he denied vomiting, rectal bleeding or black  
12 stools. And he admitted to having irregular  
13 bowel movements.

18:32:58

14 Q. What examination did you perform?  
15 If any.

18:33:18

16 A. I don't recall examining him at  
17 that time.

18 Q. If I read this correctly, you wrote  
19 in your consult note that you had an impression  
20 of abdominal pain, rule out gallstones,  
21 pancreatitis and gastritis?

18:33:34

22 A. Uh-huh.

23 Q. What was the reason you include  
24 gallstones in the differential?

25 A. It's one of the possible causes for

18:33:50

1 abdominal pain.

18:33:52

2 Q. Did he complain at all about pain  
3 radiating to the testicular region or into the  
4 lower abdomen or lower back?

5 A. No.

18:34:02

6 Q. Why is it that he followed up with  
7 you in your office on the 30th? Did you invite  
8 him or did he make an appointment on his own?

9 A. I don't know. I don't remember  
10 specifically what happened.

18:34:26

11 Q. Could you read to us starting with  
12 the plan?

13 A. On which date?

14 Q. On your consult of May 23rd.

15 A. May 22nd. Plan, check stat amylase  
16 lipase. Get ultrasound, upper GI series,  
17 prevacid and Levbid. Watch stools. Get  
18 chemical dependency assessment.

18:34:40

19 Q. What was the purpose for the  
20 ultrasound?

18:35:04

21 A. The purpose for the ultrasound was  
22 to rule out gallstones.

23 Q. To your knowledge, was the  
24 ultrasound done?

25 A. Yes, it was done.

18:35:26

1 Q. The ultrasound's report is normal, 18:35:30  
2 according to your note?

3 A. Yes.

4 Q. And yet he still complained of  
5 lower right abdominal pain? 18:35:38

6 A. Yes.

7 Q. Did you consider any other  
8 diagnosis in your differential?

9 A. As of May 22nd, I considered the  
10 ones that I read. 18:36:00

11 Q. Just that?

12 A. (Nodding affirmatively.)

13 Q. Did you change your --

14 MR. BONEZZI: You have to say yes.

15 A. Yes. 18:36:12

16 Q. Did you change your differential on  
17 May 30th, or add any other possibilities?

18 A. Well, by that time I had ruled out  
19 gallstones and his upper GI was normal, so I  
20 was back to my original impression of irritable 18:36:30  
21 bowel syndrome, functional abdominal pain and  
22 chemical dependency.

23 Q. By the time you had seen him on May  
24 30th, did you have any information from any  
25 source, including the patient, that he had ever 18:36:40



1 complained of testicular pain or swelling at 18:36:44  
2 any time prior to or through May 30th of 1997?

3 A. No.

4 Q. Did you ever see the patient after  
5 May 30th of 97? 18:36:54

6 A. No.

7 Q. Doctor, in your practice of  
8 gastroenterology, have you ever had a patient  
9 with seminoma cancer?

10 A. I honestly can't recall. 18:37:24

11 Q. Are you aware or do you agree that  
12 a small percentage of seminoma cancers have  
13 their primary site in the abdomen?

14 MR. MARGOLIS: Objection.

15 A. I don't know. 18:37:40

16 Q. Have you ever ordered a CT of the  
17 abdomen as opposed to an ultrasound?

18 MR. BONEZZI: Objection to the  
19 form. Go ahead and answer.

20 THE WITNESS: Should I answer? 18:38:00

21 MR. BONEZZI: Yes.

22 A. I have ordered a CT scan of the  
23 abdomen, yes.

24 Q. Under what circumstances would you  
25 order a CT rather than an ultrasound? 18:38:04

1           A.       That's complicated. I don't know           18:38:14  
2       whether I can just summarize it.

3           Q.       Whatever is -- fair.

4           A.       Whatever, I order tests in order to  
5       rule in or out diagnoses on my differential.           18:38:24

6           Q.       Is there more specificity available  
7       through the CT scan than there is in the  
8       ultrasound?

9           MR. BONEZZI: Objection.

10          A.       No.           18:38:38

11          Q.       When would you order a CT scan in  
12       preference to an ultrasound? Or vice versa.

13          MR. BONEZZI: For the abdomen you  
14       are talking about?

15          MR. RISPO: For the abdomen.           18:38:50

16          A.       Yes, how much time do you have?

17                When I order it, there are certain  
18       conditions that are better diagnosed on CT  
19       scan, there are certain conditions which are  
20       better diagnosed on ultrasound. Sometimes I           18:39:04  
21       get both.

22          Q.       What's the difference between those  
23       conditions and why are they better visualized  
24       on a CT scan?

25          MR. MARGOLIS: Objection as to what           18:39:16

1 conditions. 18:39:16

2 Q. Certain conditions, whichever ones  
3 you are referring to.

4 A. There are conditions of the  
5 pancreas, for example, that are better seen on 18:39:26  
6 a CT scan. There are conditions of the  
7 gallbladder or liver that are better seen on  
8 ultrasound. So it's a very general question  
9 and I mean I could go on for several hours  
10 explaining the difference. 18:39:48

11 Q. Well, in this case you ordered an  
12 ultrasound of the abdomen.

13 A. Yes.

14 Q. Is that right? And could you  
15 explain to us why it is you selected ultrasound 18:39:54  
16 rather than a CT scan?

17 MR. BONEZZI: Objection. He just  
18 told you. He just told you that the  
19 ultrasound --

20 THE WITNESS: Yeah. 18:40:02

21 MR. RISPO: -- is more specific for  
22 gallbladder or liver disease. He just said  
23 that to you just two --

24 MR. MARGOLIS: Yes, I just want to  
25 make sure that's the only reason. 18:40:10

1           A.       Specifically thinking gallstones  
2       for a possible cause of his abdominal pain that  
3       I needed to rule in or out and I thought the  
4       ultrasound was the best test for that.

18:40:12

5           Q.       What conditions would you consider  
6       the CT scan better suited for?

18:40:26

7           A.       A partial list would be a  
8       pancreatic mass, chronic pancreatitis, enlarged  
9       lymph nodes in the abdomen. That's all I can  
10      think of right now.

18:41:02

11          Q.       Were any of those conditions in  
12      your differential as of the 22nd of May when  
13      you saw him in the hospital?

14          A.       No.

15          Q.       What is the best way to diagnose  
16      seminoma cancer if it appears in the abdomen?

18:41:20

17                   MR. BONEZZI: Objection.

18          A.       I don't know.

19          Q.       Would you expect a CT scan to be  
20      more specific --

18:41:32

21                   MR. BONEZZI: Objection.

22          Q.       -- for seminoma cancer?

23                   MR. BONEZZI: Where in the abdomen?

24      Don't answer that. Where in the abdomen?

25      Seminoma --

18:41:38

1 MR. RISPO: Anywhere. Anywhere.

18:41:40

2 MR. BONEZZI: -- cancer, first of  
3 all, that's not the proper terminology, but  
4 putting that aside, where in the abdomen?

5 MR. RISPO: Anywhere in the  
6 abdomen.

18:41:46

7 MR. BONEZZI: No, don't answer the  
8 question unless you become specific. Where in  
9 the abdomen?

10 MR. RISPO: I'm entitled to the  
11 answer to that question.

18:41:50

12 MR. BONEZZI: No, you're not going  
13 to get an answer unless you are going to be  
14 specific. We're not going to do general here,  
15 we are going to be specific. If you want to  
16 ask questions, ask him specifically, then he'll  
17 answer them, otherwise I'm not going to let him  
18 answer.

18:41:56

19 Q. Okay. Then I'll ask, upper, lower,  
20 left and right, okay?

18:42:06

21 MR. BONEZZI: That doesn't make any  
22 sense. Do you have an organ that you'd like to  
23 find out about? Or do you just want to go  
24 ahead and talk about the quadrants of the  
25 abdominal cavity?

18:42:14

1 Q. In or outside of an organ, Doctor. 18:42:16

2 A. State your question again.

3 Q. Would seminoma cancer in or outside  
4 any organ in the abdomen be better diagnosed  
5 through a CT scan? 18:42:26

6 MR. BONEZZI: Metastatic or  
7 primary?

8 MR. RISPO: Primary.

9 A. Well, I am not -- I don't feel  
10 myself an expert on seminoma cancer. 18:42:42

11 Q. I appreciate that.

12 A. So I would be guessing, and that's  
13 why I would defer, so I don't know, I don't  
14 know the answer to your question.

15 Q. Would there be any circumstances 18:42:54  
16 when you would do a testicular exam on any of  
17 your patients?

18 A. Yes. Somebody complained of pain  
19 in the testicles.

20 Q. Do I take it, then, if this 18:43:10  
21 patient, Mr. Geryak, had complained of pain in  
22 his testicles, you would do an exam?

23 MR. MARGOLIS: Objection. You mean  
24 on the two dates that he saw him?

25 MR. RISPO: Yes. 18:43:18

1           A.     Yes, I think I would have done a  
2     testicular exam had he complained of pain in  
3     the testicles.

18:43:22

4           Q.     If he had complained and you found  
5     a mass, you would certainly have reported that  
6     to Dr. Agliam or referred him on to someone  
7     else, would you?

18:43:32

8           MR. BONEZZI:   Well, mass where?

9           A.     If --

10          MR. BONEZZI:   Wait.   A mass located  
11     where?

18:43:42

12          MR. RISPO:    Testicular area.

13          MR. BONEZZI:   That's presuming that  
14     he did the exam and that in the examination he  
15     found a mass?

18:43:50

16          MR. RISPO:    Yes.

17          MR. BONEZZI:   This is hypothetical,  
18     Doctor.

19          A.     Yeah, that is very hypothetical.

20          Q.     Okay.

18:43:58

21          A.     If I examined him, and if I found  
22     an abnormality --

23          Q.     Right.

24          A.     -- I would report it.

25          Q.     Okay.   It's our understanding the

18:44:04

1 patient reported to the emergency room six days 18:44:06  
2 later, on June 6th of 97, complaining of  
3 testicular pain or pain radiating into or out  
4 of the testicular region. Were you on duty, by  
5 any chance, on those occasions or did it ever 18:44:24  
6 come to your attention?

7 A. It did not come to my attention.

8 Q. And you had no further exams or  
9 consults after May 30th?

10 A. Right. 18:44:34

11 Q. Did you ever have any reason  
12 whatsoever, based on what you were provided in  
13 the way of history, findings, to consider  
14 testicular cancer in the patient, Michael  
15 Geryak? 18:45:14

16 A. No.

17 Q. You certainly didn't advise  
18 Dr. Agliam that he should consider that as a  
19 possible diagnosis for this patient?

20 A. Could you restate it in a question? 18:45:36

21 Q. Sure. You wouldn't have put --  
22 would you have had occasion to tell Dr. Agliam  
23 to consider the possibility of testicular  
24 cancer at any time?

25 A. No. 18:45:48



1 Q. Did you advise the patient to  
2 consider examination by a urologist?

18:46:06

3 MR. BONEZZI: Objection.

4 A. No.

5 Q. I didn't hear the answer?

18:46:24

6 MR. BONEZZI: He said no.

7 A. No.

8 MR. RISPO: Okay. I have no  
9 further questions. Thank you.

10 EXAMINATION OF GARY GOTTLIEB, M.D.

18:46:26

11 BY MR. MARGOLIS:

12 Q. Doctor, just a couple of brief  
13 followups. I should have asked you about  
14 Exhibit 3 and I neglected to do so.

15 Could you please be kind enough  
16 just to read into the record the totality of  
17 your 5-22 consult?

18:46:34

18 MR. BONEZZI: Which one do you  
19 want?

20 A. I'd like to read it from this copy.  
21 It's a better copy.

18:46:42

22 Q. That's fine. I just have a little  
23 tough time with the writing.

24 MR. BONEZZI: I just want to make  
25 sure I get that back. That's okay.

18:46:48

1           A.     36-year-old white male admitted 18:46:50  
2     today from Dr. Agliam's office due to abdominal  
3     pain. Was seen in office November 24th  
4     complaining of abdominal pain and anxiety. Had  
5     high usage of mood altering drugs, parenthesis, 18:47:02  
6     Tranxene, seven to eight per day, paregoric,  
7     Fioricet, Librax, Toradol, close parenthesis.  
8     Had normal upper GI series and colonoscopy  
9     April 1994 and EGD showed gastritis,  
10    duodenitis. I felt he had irritable bowel 18:47:24  
11    syndrome, functional abdominal pain and  
12    prescription drug dependence. He is a poor  
13    historian. Was seen in emergency room May 9th,  
14    1997 for abdominal pain, had chest x-ray, acute  
15    abdominal series, received demerol. He denies 18:47:42  
16    vomiting or rectal bleeding or melena.  
17           Q.     What is melena?  
18           A.     Black stools indicating bleeding  
19    from the upper GI tract.  
20           Q.     Thank you. 18:47:54  
21           A.     Continuing. Does have irregular  
22    bowel movements. Labs from May 9th, 1997,  
23    white blood count 13.3, hemoglobin 15,  
24    hematocrit 44, platelets 242. Liver function  
25    test normal, amylase 32. Urinalysis negative. 18:48:12

1 Labs today. White blood count 13.1, hemoglobin  
2 14, hematocrit 39, platelets 274, amylase and  
3 lipase pending. Impression, abdominal pain,  
4 rule out gallstones, pancreatitis, gastritis,  
5 chemical dependency. Plan, check stat amylase  
6 lipase. Get ultrasound, upper GI series.  
7 Prescribe Prevacid, Levbid, watch stools, get  
8 chemical dependency assessment. Thanks. And  
9 the date, May 22nd, 1997.

18:48:18

18:48:40

10 Q. Okay. Had this man complained to  
11 you on either of the two visits of testicular  
12 pain or discomfort, you would have performed a  
13 testicular exam; is that accurate?

18:49:02

14 A. Yes.

15 Q. My last question is, Doctor, I want  
16 to hone in specifically on what communication  
17 you think is more probable than not you had  
18 with Dr. Agliam relative to your conclusions of  
19 the November 3rd, 94 office visit, and as I  
20 understand your testimony, you don't have  
21 specific recollection of speaking with  
22 Dr. Agliam and conveying to him your impression  
23 of Mr. Geryak per your November 3rd, 94 visit;  
24 is that accurate?

18:49:18

18:49:42

25 A. Yes.

18:50:00

1 Q. Okay. But looking at the way that 18:50:00  
2 you practiced medicine back in November of 94,  
3 if a family physician refers you a patient for  
4 purposes of a GI consult, it is more probable  
5 than not that you would have communicated to 18:50:12  
6 him what your impression was of the patient's  
7 condition after that consult; is that accurate?

8 A. I don't know. I really don't know  
9 what's probable.

10 Q. Okay. 18:50:28

11 A. I don't know. It's a long time  
12 ago.

13 Q. Okay. Let me see if I can -- I  
14 understand, and I guess what I'm trying to get  
15 to, Dr. Gottlieb, is not -- I understand, sir, 18:50:34  
16 that you don't have specific memory of  
17 contacting Dr. Agliam and communicating to him  
18 your conclusions of Mr. Geryak's November 3rd,  
19 94 visit, what I am asking is, when I use the  
20 word "more probable than not," I mean, you 18:50:54  
21 know, 51 percent likely, given the way that you  
22 practice medicine, wouldn't you --

23 A. The most probable thing is that I  
24 dictated a letter. Because that's what I  
25 normally do. 18:51:10

1 Q. Okay. And that would have been 18:51:10  
2 after the November 3rd, 94 visit?

3 A. Yes.

4 Q. So, and this is my concluding  
5 question, then I think I'm done, on November 18:51:22  
6 3rd of 94 it would have been your practice to  
7 convey information to the referring physician  
8 of your GI consult on the patient that was  
9 referred?

10 A. That's my practice. 18:51:34

11 Q. Okay. And that would have been  
12 your practice back then, November of 94?

13 A. Yes.

14 MR. MARGOLIS: Thank you, sir.

15 EXAMINATION OF GARY GOTTLIEB, M.D. 18:51:40

16 BY MR. RISPO:

17 Q. I have just one question, Doctor.  
18 Could you help me to define and distinguish the  
19 areas of specialty of gastroenterology versus  
20 urology, how do they compare to each other or 18:51:50  
21 contrast?

22 A. They don't compare at all.

23 Q. How do they contrast?

24 A. Gastroenterology considers the GI  
25 tract starting from the esophagus, stomach, 18:52:06

1 duodenum, the rest of the small intestine, the 18:52:10  
2 colon. It also includes the liver, the  
3 gallbladder, the biliary tract and the pancreas.

4 Q. Okay.

5 A. Urology, as far as I understand, is 18:52:22  
6 involved with the kidneys, the ureters, and the  
7 reproductive organs.

8 Q. Thank you. How about the  
9 testicular region, would that be in the  
10 urologist's domain? 18:52:40

11 A. That would be in the urologist's  
12 domain.

13 MR. RISPO: Okay. Thank you,  
14 Doctor.

15 MR. MARGOLIS: Nothing further. 18:52:46

16 MR. BONEZZI: Okay. You have a  
17 right to review this transcript, if it's  
18 ordered, or you have a right to waive the  
19 review and reading the transcript. That's your  
20 choice. 18:52:58

21 THE WITNESS: I waive it.

22

23 (Deposition concluded at 6:53 p.m.)

24 ~ ~ ~ ~ ~

25

## CERTIFICATE

The State of Ohio, )

SS:

County of Cuyahoga. )

I, Denise M. Munguia, a Notary Public within and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within named witness, GARY GOTTLIEB, M.D., was by me first duly sworn to testify the truth, the whole truth and nothing but the truth in the cause aforesaid; that the testimony then given by the above-referenced witness was by me reduced to stenotypy in the presence of said witness; afterwards transcribed, and that the foregoing is a true and correct transcription of the testimony so given by the above-referenced witness.

I do further certify that this deposition was taken at the time and place in the foregoing caption specified and was completed without adjournment.

1 I do further certify that I am not  
2 a relative, counsel or attorney for either  
3 party, or otherwise interested in the event of  
4 this action.

5 IN WITNESS WHEREOF, I have hereunto  
6 set my hand and affixed my seal of office at  
7 Cleveland, Ohio, on this 19<sup>th</sup> day of  
8 December, 2000.

9  
10  
11  
12  
13 Denise M. Munguia

14 Denise M. Munguia, Notary Public  
15 within and for the State of Ohio

16  
17 My commission expires May 23, 2005.  
18  
19  
20  
21  
22  
23  
24  
25



## I N D E X

EXAMINATION OF GARY GOTTLIEB, M.D.

BY MR. MARGOLIS..... 4:6

EXAMINATION OF GARY GOTTLIEB, M.D.

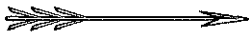
BY MR. RISPO..... 26:3

EXAMINATION OF GARY GOTTLIEB, M.D.

BY MR. MARGOLIS..... 40:10

EXAMINATION OF GARY GOTTLIEB, M.D.

BY MR. RISPO..... 44:15



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SIGNATURE OF WITNESS

The Deposition of GARY GOTTLIEB, MD,  
taken in the matter, on the date, and at the  
time and place set out on the title page  
hereof.

It was requested that the deposition be  
taken by the reporter and that same be reduced  
to typewritten form.

It was agreed by and between counsel and  
the parties that the reading and signing of the  
transcript of said deposition, be and the same  
is hereby waived.

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