ZISKA V. JAMES HAUER, M.D.

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

DOC. 182

IN THE COURT OF COMMON PLEAS'

OTTO ZISKA, [Plaintiff,) v.) Case No. 257551 JAMES HAUER, M.D., et al.,) Defendants.)

> THE DEPOSITION OF JAMES HAUER, M.D. WEDNESDAY, JUNE 1, 1994

> > _ _ _

The deposition of JAMES HAUER, M.D., a Defendant, called for cross-examination by the Plaintiff, under the Ohio Rules of Civil Procedure, taken before me, Michele E. Eddy, Registered Professional Reporter and a Notary Public in and for the State of Ohio, pursuant to notice, at the offices of Kaiser Permanente Medical Center, 16101 Snow Road, Parma, Ohio, commencing at 10:30 a.m., the day and date above set forth.

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	SKA V. JAMES HAUER, M.D.	Multi	Y	
1	APPEARANCES:	Page 2		Pag
1 2 3 4 5 6 7 8 9 10 11 12	 APPEARANCES: On behalf of the Plaintiff: CHRISTIAN PATNO, ESQ. Landskroner & Phillips 1040 Illuminating Building Cleveland, Ohio 44113 On behalf of the Defendants: GARY GOLDWASSER, ESQ. Reminger & Reminger The 173th St. Clair Building Cleveland, Ohio 44115 		1 2 3 4 5 6 7 8 9 10 11	JAMES HAUER, M.D. a Defendant, called for cross-examination by the Plaintiff, under the Rules, having been first duly swo as hereinafter certified, deposed and said as follows: CROSS-EXAMINATION BY MR. PATNO: Q. Can you state your full name, spelling your last name, Doctor? A. James Louis Hauer, W-A-U-E-R. Q. And where do you presently reside, Doctor? A. Address? Q. Yes, address.
13 14 15 16 17 18 19 20 21 22 23 24 25			 13 14 15 16 17 18 19 20 21 22 23 24 	 A. 3901 Franklin Boulevard, Cleveland, 44113. Q. And who is your present employer? A. Ohio Permanente Medical Group. Q. Is that also known as Kaiser Permanente? MR. GOLDWASSER: That's a trade name. There's really no legal entity Kaiser Permanente. Q. But that's on the sign out front, Kaiser Permanente, correct? A. M-hm. Q. And people refer to your employer as Kaiser Permanente, correct?
			25	A. I believe so.
		Page 3		Pag
1	INDEX	C		Q. And how long have you been employed by Kaise
2	PAGES		2	Permanente?
3	CROSS-EXAMINATION BY		3	A. I will be finishing five years.
4	MR. PATNO 4			Q. So that's like around '89, '88?
5			1	A. I think that's correct, yes.
6			6	Q. And when did you graduate from medical school
7			7	Doctor?
8			1	A. December 20th, 1982.
9	PLAINTIFF'S EXHIBITS MARKED			Q. And where did you go to medical school?
10	1 5	_		A. It's called Universidad Autonoma de Guadalajara
11		•	11	That isn't a current cv. It's the only one we had.
12			12	(Thereupon, Plaintiff's Exhibit No. 1
13	OBJECTIONS BY		13	for the deposition of James L. Hauer, M.I
14	MR. GOLDWASSER 14, 28		14	marked for identification.)
110			15	BY MR. PATNO:
15				
16			16	Q. I've had this marked as Plaintiff's Exhibit 1. Is
16 17			16 17	that the CV that you brought to this deposition?
16 17 18			16 17 18	that the CV that you brought to this deposition? A. Yes.
16 17 18 19			16 17 18 19	that the CV that you brought to this deposition?A. Yes.Q. And what would need to be added to make that
16 17 18 19 20			16 17 18 19 20	that the CV that you brought to this deposition?A. Yes.Q. And what would need to be added to make that current, Doctor?
16 17 18 19 20 21			16 17 18 19	that the CV that you brought to this deposition?A. Yes.Q. And what would need to be added to make that current, Doctor?A, The address is incorrect, home phone number
16 17 18 19 20 21 22			16 17 18 19 20	that the CV that you brought to this deposition?A. Yes.Q. And what would need to be added to make that current, Doctor?A, The address is incorrect, home phone numbe incorrect.
16 17 18 19 20 21 22 23			16 17 18 19 20 21	 that the CV that you brought to this deposition? A. Yes. Q. And what would need to be added to make that current, Doctor? A, The address is incorrect, home phone number incorrect. Q. So you've moved from Lakewood to Cleveland?
16 17 18 19 20 21 22			16 17 18 19 20 21 22	that the CV that you brought to this deposition?A. Yes.Q. And what would need to be added to make that current, Doctor?A, The address is incorrect, home phone number

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1	Page 6	1	Page
	Q. Where does it say that on there?	ŀ	future?
-	A. It doesn't. It's at the en d of my residency.	1	A. I intend to take them, they are assigned by the
3	Q. So that was current at the end of your residency?	1	Board, the dates are.
4	A. Correct		Q. That hasn't been assigned yet?
5	The Advanced Trauma Life Support is no longer	5	A. Correct.
6	current; Advanced Cardiac Life Support is no longer	6	Q. And what are you Board certified in, Doctor?
7	current; and I'm no longer a member of the AMA, the Ohio	7	MR. GOLDWASSER: He's not Board
8	Medical Association or the Cleveland Academy of Medicine.	8	
9	Q. Any specific reason those lapsed?	ļ	BY MR. PATNO:
0	A. Disinterest.	10	Q. What are you Board eligible in?
1	Q. Okay.	11	A. General surgery.
	A, I've had a number of additional educational	12	Q. And what is general surgery in layman's
3	conferences and courses that are not listed here.	13	terminology?
4	Q. Any treatment of diagnosis and treatment of	14	A. General surgery was the grandfather of all surgical
5	ulcers?	15	specialties per se and in recent years has come to
6	A. Not specifically to diagnosis and treatment of	16	signify mostly enterabdominal surgery, breast surgery,
7	ulcers.	17	some thyroid surgery, colorectal surgery.
8	Q. Anything generally with regard to ulcers?	18	Q. What did you do between '77 and '79, from college
9	A. Yes.	19	to medical school?
0	Q. And what is that?	:20	A. Did a year on a Master's Degree in Biology,
1	A. There's another postgraduate course in general	:21	
2	surgery.	:22	•
3	Q. Is that surgical repair of ulcers?	:23	What did you do from '77 to '79?
4	A. No, it has nothing to do with ulcers. It is a		A. I was in medical school.
	general course that covers that subject.		Q. Medical school shows '79 to '82.
	Page 7	+	Pag
1	Q. What subject?	1	A. Okay, the dates '73, '74, '75, '76, so oka
	A. Ulcer disease.	1	that's incorrect, I did six months of Spanish in th
3		3	fall of the Bachelor of Science Degree took for
	A. Last August. Year before that I had another review		years, so the date is incorrect, it should say Bachelor
	course in general surgery, that was October, again the	5	of Science from 9/73 to 6/77. The Master of Science
_		5	
6	5		should have said from 9/77 to 6/78. I took a Spanish
	Q. So October of '92?		course for ten weeks in the fall of 1977 I'm sorry ,
	A. '92.	8	1978, and I started medical school January of '79
	Q. Anything else?	9	6
	A. I no longer have privileges at St. Luke's.	10	
1			help with medical school?
2	A. I let them lapse because I don't practice there.	12	
3		13	
	A. Here at Parma .	14	
	Q. Are you Board certified, Doctor?	1	A. I was.
6	A. I'm board eligible.	16	Q. And how many students were in your class?
7	Q. Have you taken the written portion of the Board?	17	A. I don't know.
8	A. Ihave.	18	Q. Over a hundred?
9	Q. Anddidyoupass?	19	A. Over a hundred,
0	A. Yes.	20	Q. Okay. And you were born in Akron and you somehow
21	Q. And now you just have to take your orals?	21	
		1	A, Correct.
	Q. And you haven't taken those yet?	23	
	A. Haven't taken them .		A. Yes.
	Q. Do you intend to take them sometime in the near	1	Q. And you have an Ohio State licensure?
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1	A. I do.		Page Page
	Q. And your medical licensure?	1	Q. And what is that?
	•	1	A. I oversee the general surgical module in Parma
	A. Yes.		
	Q. And both of those are current?	_	
5	A. The New York is considered alive, so, yes.	5	
6	Q. How did you arrive at obtaining a New York	1	5 5 1
	licensure?	1	facilitate the working of the office here in Parma.
8	A. I did what's called Fifth Pathway in New York State		
9	and after taking the flexid exam, they grant a license.		A. Patient satisfaction, appointment availability,
10	Q. What's Fifth Pathway?		
11	A. Fifth Pathway is a year of clinical medicine and	1	Q. Is that for Kaiser or the hospital?
12	surgery that foreign medical graduates do before being	12	A. Just for Kaiser. It has nothing to do with the
13	able to start residency.	.13	hospital.
14	Q. Were you licensed in Mexico?	.14	Q. In a general sense it would have to do with patient
15	A. No.	.15	satisfaction, patient treatment?
16	Q. Do they have a licensure there?	16	A. On an outpatient basis, yes.
17	A. They do.	.17	Q. Okay. Do you have any positions with Kaiser other
18	Q. So you went to Mexico solely for medical school	18	than being a doctor for them and modular director?
19	with the intent to practice in the United States?	.19	A. No.
20	A. Correct,	:20	Q. Okay.
21	Q. And then you did a year of the Fifth Pathway for	:21	A. That's it.
22	them to determine that you were qualified and then you	:22	Q. And do you treat any patients other than Kaiser
23	took some type of test as well in addition to the	:23	
24	clinical and then you became licensed in New York?	:24	
25	A. Correct.	:25	Q. St. Luke's Hospital Emergency Department Physicians
	Page 11		Page
1	Q. Did you ever sit for an exam in Ohio or did you	1	Group, was that when you were working with Kaiser
2	waive?	1	
3	A. The Federal Licensing exam is a national exam which	3	
4	Ohio recognizes.		just a couple months time when I was looking for work as
5	Q. So you never sat for an exam in Ohio then?	1	a general surgeon.
	A. I never took a licensing test in Ohio.		
6	-	6	
7	Q. Okay.	7	
8	A. I take that back, I did take a licensing test. I	8	Physicians Group and then with Kaiser?
9	took the ECFMG in Ohio.	9	
.10	Q. The ECFMG?	10	
11	A. Yes, Educational Conference on Foreign Medical	11	
12	Graduates. I took it at Case. It is considered part	12	
13	of in some licensing criteria, it is considered a	1	A. Yes, there was a time that I was a resident and
.14	licensing exam.	14	
.15	Q. Okay.	15	
16	A. In Ohio it's considered a prerequisite for taking	16	
17	Fifth. Pathway or qualifying for Fifth Pathway.	17	A. Correct.
18	Q. What do they test for, your English skills?	18	³ Q. I'm just trying to get a chronology.
19	.A. At ECFMG they test English language ability. They	19	Have you ever been deposed before, Doctor?
20	also test the majority of subjects covered in medical	20	A. Yes.
21	school.	21	Q. Approximately how many times?
:22	Q. Are you on any committees at Parma Hospital?	22	
23	A. Currently I am on a committee that is a regional	23	
24	committee for infectious disease. I am also what is		-
25	called a modular director at Parma .	25	
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1	A. Yes.	1	Q. And do you know who called you?
2	Q. What was the nature of the case?	2	A. Dr. Obebee, O-B-E-B-E-E.
3	A. A vascular injury.	3	Q. That was on the 26th of November?
	Q. And were you the treating physician?	4	A. Correct.
	A. Yes.	5	Q. And what did Obebee tell you at that time?
6	Q. Were you a Defendant in a lawsuit?	6	A. That he had a patient in the emergency room that he
	A. It never went to trial. Is that considered am I	7	suspected had a bowel obstruction and that he felt the
8	considered a Defendant?	8	patient also complained of abdominal pain.
9	MR. GOLDWASSER: DO you know if	9	Q. And that's all recorded in the chart there?
.0	you were named in the lawsuit papers as a party?	10	A. This is an emergency room note. The conversation
1	THE WITNESS: Yes, I was.	11	had would not have been there's no documentation to
2	BY MR. PATNO:	12	e that.
3	Q. It never went to trial?	13	³ Q. There's no documentation about a bowel obstruction?
	A. No.	14	A. There is SBO on the bottom, Dr. Obebee's note
5	Q. Was it disposed of by settlement?	15	suggests that he thought it was a bowel obstruction
6	A. Yes.	16	5 small bowel obstruction.
17	Q. Have you ever been deposed other than that time?	17	Q. And do you recall what Dr. Obebee asked you to d
18	A. No.	18	at that time?
9	Q. Have you been narned in any other lawsuits that	19	A. He felt that Mr. Ziska possibly had a colonic
20	you're aware of other than the one we're here to discuss	20	obstruction or small bowel obstruction because of the
21	today involving Mi Ziska and the one that you were.	21	type of pain he was having and the history that I got
22	deposed in 1990?	22	suggested that it was not a complete obstruction in that
23	A. I was named in another case approximately	23	Mr. Ziska was passing gas.
24	MR. GOLDWASSER: Show an	24	Q. And where did you get that history from?
25	objection, but he can answer.	25	A. From Dr. Obebee.
-	Page 15	1	Page
1	I'm objecting for the record. I might do	1	Q. Okay. Anything else that you learned at that time?
2	that occasionally, but I'll tell you to answer.	2	A. That Dr. Obebee didn't feel that the patient wa
3	A. I think about two years ago I was named in a case.	3	acute enough to be admitted to the hospital at that point
4	MR. GOLDWASSER: Go ahead.	4	but that he felt that with an obstruction he needed to be
5	A. It was an obstetrics case.	5	evaluated that day and I agreed to see Mr. Ziska later
	Q. And why would you as a general surgery be named in	1	5 that day in the office.
	an obstetrics case?	7	Q. Did you see him on the 26th or on the 27th?
	A. The patient had post delivery bleeding and I was	8	
	called in to help in the management.	9	Q. Okay.
	Q. Was that in Cuyahoga County here in Cleveland?	10	A. I think it was later that morning, I believe,
11	A. Yes. I was dismissed from that case.	11	
12	Q. Okay. If you want to change any answers or if you	12	2 conversation?
13	don't understand any question I ask you during the	13	3 A. I don't remember. I'm going back I do remembe
	deposition, let me know, okay, and you can change	1	4 the call, \mathbf{I} do remember the complaint. Other than wha
	anything you want, even if I asked it 15 or 20 minutes	1	5 you know, I see in the chart, no.
	before, okay?	1	6 Q. Did Dr. Obebee tell you that he had done anything
	A. Okay.		7 with the patient at this time?
	Q. Do you know how Otto Ziska came to your care at	18	
	Kaiser?	19	9 remember if he had done any x-rays, although it says here
	A, I received a call from the emergency room physician	20	
21	stating that they had a patient in the emergency room	21	
	with abdominal pain.	22	
	Q. Do you know why you were called as compared to a		*
	gastroenterologist?	24	
	A. No, I don't		5 if he had peritoneal signs, if he had bowel sounds
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	Q. And what were the results of those?		A. I think he said it was normal.
2	A. He felt that he had a partial obstruction is what I		Q. Did you ever look at the hemoglobin to see any
3	have here.		variance
4	Q. Do you recall any of the results of the exam with	4	A. I
5	regard to bowel sounds, distention?	5	MR. GOLDWASSER: Let him finish
6	A. Of his exam?	6	his question before you answer.
7	Q. Yes.	7	A. I'm sorry.
8	A. He felt that there were no peritoneal signs, he	8	Q. When did you look at the hemoglobin?
9	felt that he was mildly distended, he felt that there	9	A. At the time of his consult.
10	were active bowel sounds, his vital signs were normal. I	10	Q. And did you notice any variation in the hemoglobin?
11	mean, he must have said something about	11	A. Not really.
12	MR. GOLDWASSZR: I don't want you	12	Q. Did you have the hernoglobin CBC from November 18th
13	to speculate. If you can remember.	13	A. I had the H&H from the emergency room visit from
14	BY MR. PATNO:	14	the 26th.
15	Q. I just want to know what you know.	15	Q. Did you have available to you at that time the 18t
16	What else do you remember him telling you about any] 16	CBC?
17	exams he performed on Mr. Ziska?] 17	A. It probably would have been available to me.
18	A. That's about all I remember.] 18	Q. And did you ever notice that there was a 14.8
19	Q. And then you saw Mr. Ziska?] 19	hemoglobin on the 18th of November?
20	A. I saw him later that day.	20	A. I don't know.
21	Q. And did he bring any test results with him or were	21	Q. And why don't you know?
22	any test results available to you?	22	A. I don't know that I went back and compared them.
23	A. Sure, laboratory test results from the emergency	23	The initial H&H appeared relatively normal to m
24	room were available,	24	Q. The 13.3 down on the 26th?
25	Q. Did you have his whole chart at that time when he	25	A. And the 13
	Page 19		Page
1	saw you?	1	Q. And the 39?
	A. To be honest with you, I don't know, I don't know.		A. 13.3 and the hemocratic 39.
	Q. In the normal course of how Kaiser works, if a	3	Q. Okay. And when he presented when Mr. Ziska
	patient has been seen for say a month before on a few	4	presented to you on the 26th, wouldn't the hemoglobi
5	dates, is that chart made available to you if you're		tests that were done in the past be something that you
6	reviewing it?	6	a doctor would want to look at considering the complaints
_	A. Usually, yes.	7	he had been presenting witt?
7	Q. And do you have any reason to believe that his	7	· ·
8		8	A. Not necessarily. I mean, it's part of the it's
9	previous chart was not with you when you examined him?	9	part of the general work-up of a patient with abdomina
	A. Let's see, where is the handwritten one should		pain, yes, but I was not aware, apparently was not awa that there was a previous homoslabin homotocit
11	be here too, right?	11	that there was a previous hemoglobin hematocrit.
12	MR. GOLDWASSER: Yes. Keep going,	:12	Q. Why do you say you were apparently not aware?
13	it should be right there.	.13	A. Because it's not mentioned in my note, I mean, I
14	A. Okay, the chart most likely was available to me at	14	have a result that is relatively normal with a normal
15	this point.	:15	differential and normal white count.
16	Q. And most likely you would have reviewed it prior to	:16	Q. But in order to see if something has been going or
:17	8,	17	over a period of time, wouldn't you agree with me that it
18	A. The general chart would have most appears to	.18	would be beneficial for you to have all of the tests the
19	have been available to me. However, the emergency room	19	were done within the near past?
20	sheet, I don't know if it was available to me.	:20	A. I don't know with relatively normal H&H at this
21	Q. But you could have obtained access to it if you had	:21	point that historical data on H&H would have given me any
22	wanted to?	:22	clearer insight.
23	A. Probably.	:23	Q. So if Mr. Ziska had a 14.8 hemoglobin on November
~ *	Q. Had Dr. Obebee mentioned anything about the	:24	18th and a drop down to a 13.3 on November 26th, th
24			1
	hemoglobin of Mr. Ziska at that time?	:25	would not be a sign indicative of anything to you?

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1	A. Hemoglobin is not the most accurate of the two	1	what is going on in this patient. There are various
2	values. The hematocrit is considered the more accurate	1	reasons for drops in hemoglobin, bleeding is one of them,
3	value.		certainly not the only one.
4	Q. Okay. My specific question, Doctor, was if the	4	Q. What else would be going on in a patient that's
5	hemoglobin was 14.8 on 11/18 of '91 and dropped down to	5	
6	13.3 on November 26th of '91, that would not be a sign	6	has?
7	indicative of anything to you?	7	A. Well, I wasn't aware that Mr. Ziska had presented
8	A. Not necessarily.		over and over. There are other things that can drop
9	Q. Is it possible that that could be a sign of	1	hematocrits and hemoglobin.
10	something going on?	.10	He apparently also said that he had cold symptoms
11	A. This we are using the value these two are	11	in the past, infection
12	used in conjunction, hematocrit and the hemoglobin, and	12	Q. so you're saying
13	of the two, the most indicative is the hematocrit, not		A. Blood dyscrasia.
14	the hernoglobin. So the hemoglobin per se is not as	.14	Q. Anything else?
15	accurate of a measure of a change in the patient's	15	A. A primary marrow problem, nutrional, lack of iron,
16	condition as the hematocrit, so the one can change more	.16	recent surgeries, heart surgery, vascular placement,
17	than the other and not suggest a drop.	.17	colonic problem, specifically a right colon lesion or
18	Q. Okay. We're going to go around and around in a	.18	colonic obstructive process such as a carcinoma colon,
19	circle on this one. I just want an answer to my question	19	extended period of illness, flu symptoms, chronic
20	that I've asked you twice here.	20	illness, an acute bleed, an injury.
21	A. Okay.	21	Q. And you're saying all of these things could have
22	Q. Is that drop from a 14.8 to a 13.3 in a patient who	22	been going on with Mr. Ziska to cause the hemoglobin to
23	presented with the complaints that Mr. Ziska had at that	23	drop when he presented to you?
24	time indicative that there may be something going on?	24	A. Yes.
25	A. I'll buy the word may.	25	Q. Okay. Did you ever have an index of suspicion
	Page 23		Page 25
1	Q. What may be going on?		Page 25 where you had a preliminary diagnosis of things you
1 2	-		-
	Q. What may be going on?	1	where you had a preliminary diagnosis of things you
2	Q. What may be going on? MR. GOLDWASSER: concerning the	1	where you had a preliminary diagnosis of things you wanted to rule out?
2 3	Q. What may be going on? MR. GOLDWASSER: concerning the clinical complaints in the history?	1 2 3 4	where you had a preliminary diagnosis of things you wanted to rule out?A. Definitely.
2 3 4	Q. What may be going on? MR. GOLDWASSER: concerning the clinical complaints in the history? MR. PATNO: And the	1 2 3 4	where you had a preliminary diagnosis of things you wanted to rule out?A. Definitely.Q. And what was at the top of your index of suspicion
2 3 4 5	 Q. What may be going on? MR. GOLDWASSER: concerning the clinical complaints in the history? MR. PATNO: And the hemoglobin. 	1 2 3 4	where you had a preliminary diagnosis of things you wanted to rule out?A. Definitely.Q. And what was at the top of your index of suspicion that you wanted to rule out?
2 3 4 5 6	 Q. What may be going on? MR. GOLDWASSER: concerning the clinical complaints in the history? MR. PATNO: And the hemoglobin. MR. GOLDWASSER: Based on anything 	1 2 3 4 5 6	 where you had a preliminary diagnosis of things you wanted to rule out? A. Definitely. Q. And what was at the top of your index of suspicion that you wanted to rule out? A. In a patient of this age with a slight drop in the
2 3 4 5 6 7	 Q. What may be going on? MR. GOLDWASSER: concerning the clinical complaints in the history? MR. PATNO: And the hemoglobin. MR. GOLDWASSER: Based on anything that you knew of the patient at that time, go 	1 2 3 4 5 6 7	 where you had a preliminary diagnosis of things you wanted to rule out? A. Definitely. Q. And what was at the top of your index of suspicion that you wanted to rule out? A. In a patient of this age with a slight drop in the hematocrit and hemoglobin and the complaints of gaseous
2 3 4 5 6 7 8	 Q. What may be going on? MR. GOLDWASSER: concerning the clinical complaints in the history? MR. PATNO: And the hemoglobin. MR. GOLDWASSER: Based on anything that you knew of the patient at that time, go ahead, you may answer. 	1 2 3 4 5 6 7 8	 where you had a preliminary diagnosis of things you wanted to rule out? A. Definitely. Q. And what was at the top of your index of suspicion that you wanted to rule out? A. In a patient of this age with a slight drop in the hematocrit and hemoglobin and the complaints of gaseous distention and as we got into the history a little bit more from him, a crampy abdominal type pain without
2 3 4 5 6 7 8 9	 Q. What may be going on? MR. GOLDWASSER: concerning the clinical complaints in the history? MR. PATNO: And the hemoglobin. MR. GOLDWASSER: Based on anything that you knew of the patient at that time, go ahead, you may answer. A. There's various reasons for a hemoglobin to drop. 	1 2 3 4 5 6 7 8 9	 where you had a preliminary diagnosis of things you wanted to rule out? A. Definitely. Q. And what was at the top of your index of suspicion that you wanted to rule out? A. In a patient of this age with a slight drop in the hematocrit and hemoglobin and the complaints of gaseous distention and as we got into the history a little bit more from him, a crampy abdominal type pain without
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2 3 4 5 6 7 8 9 10 111 112 13 14 15 16 .17 .18 19 20 21 22 23 24	 Q. What may be going on? MR. GOLDWASSER: concerning the clinical complaints in the history? MR. PATNO: And the hemoglobin. MR. GOLDWASSER: Based on anything that you knew of the patient at that time, go ahead, you may answer. A. There's various reasons for a hemoglobin to drop. Q. I'm talking with regard to the complaints that this patient has presented with. MR. GOLDWASSER: He's not speaking generally now. He's speaking about this particular patient. BY MR. PATNO: Q. Let me help you out. Is gastrointestinal bleeding one of them? A. Yes. Q. And as we sit here today, if Mr. Ziska came in with a drop of a 14.8 to a 13.3 hemoglobin presenting with the complaints he did, is gastrointestinal bleeding something that you would want to rule out at that point in time? 	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	 where you had a preliminary diagnosis of things you wanted to rule out? A. Definitely. Q. And what was at the top of your index of suspicion that you wanted to rule out? A. In a patient of this age with a slight drop in the hematocrit and hemoglobin and the complaints of gaseous distention and as we got into the history a little bit more from him, a crampy abdominal type pain without nausea or vomiting, diarrhea, decrease in stool caliber, the first thing on my list was a colonic, either a polyp or a carcinoma colon. Q. So the drop in the hemoglobin did have some weight with regard to your preliminary diagnosis? A, Yes. Q. And it was one of the factors you considered in making your preliminary diagnosis? A. Yes. Q. Did you ever do a stool specimen sample of Mr. Ziska? A, Mr. Ziska told me MR. GOLDWASSER: The question

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1	THE NOTARY: Question:	1	A. Yes, I've done these.
2	"Did you ever do a stool specimen sample of	2	Q. Okay. And is a record marked for Kaiser when these
3	Mi. Ziska?"	3	are done?
4	A. I didnot.		A. No.
5	Q. Okay. Would there be any reason to do a stool	- -	Q. So a physician can do it and then throw away the
	specimen sample considering the history that you had	5	sample and the results and never chart it?
6			A. True.
7			
8	history that you had obtained from this patient?		Q. And is that something that's allowed to be done
9	A. Yes.		here at Kaiser, to your knowledge?
	Q. And for what purpose would you want to do a stool	10	MR. GOLDWASSER: object.
	sample?	.11	You may answer.
	A. To check for blood in the stool.	12	A. I don't <i>think</i> there is a hard and fast rule here of
	Q. And why would you want to check for blood in the	13	anywhere that the I <i>think</i> the results are usually
14	stool?	14	documented in a chart. I don't thirk that they are not
5	A. To see if he had lost blood through his GI tract.	15	recorded elsewhere, They are not sent to a lab to be
16	Q. And what could cause a loss of blood in the GI	16	done. This is such an inaccurate test that it becomes
17	tract?	17	sometimes a moot point. If it is positive, it is
8	A. A variety of pathologies can cause loss of blood in	18	important. If it is negative, it's not necessarily
19	the GI tract.	19	important.
10	Q. An ulcer can cause a loss of blood, true?	20	Q. But the results are usually documented in the chart
11	A. Yes.	21	by the doctor?
	Q. Cancer can cause loss of blood?	22	A. True.
	A. True.	23	Q. And why didn't you do getting back to your
	Q. That's the extent of my knowledge.	24	answer earlier, why didn't you do a guaiac test on
	A. Eating red meat can cause positive guaiac test,		Mr. Ziska?
	Page 27		Page 2
	eating red meets, anything containing iron can cause it. Gastritis can cause it.		A, Mr. Ziska told me that he had had a blood test or a
2		1	rectal in the emergency room and that they had told him
3	Q. Sure. But by looking at the stool, sometimes you		there was no blood present. He told me there was no
4	j		masses in his rectum.
2	there, can't you?	1	Q. And how do you recall that?
6	5 8 5		A. How do I recall it? It's in my progress note.
7	there's a large volume of blood.		Q. Where specifically in your progress note?
8	Q. And that was never done with regard to Mr. Ziska by	8	A. It's at the bottom of the second paragraph.
9	5	9	Q. The portion that's highlighted there?
10	A. I did not do a rectal exam.	10	A. Yes.
11	Q. Did you ever see any test results of any rectal	11	Q. And what does that say?
12	exam that was done on Mr. Ziska?	12	A. Rectal exam performed in the emergency room El
13	A. No.	1	excuse me, demonstrated guaiac negative stool and no
14		1	masses per patient's history.
15	is obtained to check for blood in the GI tract, that's		Q. Rectal exam performed in ER says what?
16		1	A. Performed in ER, demonstrated guaiac negative stoo
10		1	and no masses per patient's history.
		17	In other words, Mi. Ziska told me that he had a
18		1	
19 20			rectal <i>exam</i> in the emergency room and they told him there
20	,	20	was no blood in his stool.
21		21	Q. So he told you that he had a guaiac negative stool?
22	5 1	22	MR. GOLDWASSER: No, he didn't say
	stool is placed on a cart and a developer solution is	23	that.
23		1 ~ 4	A. He didn't say that. That's not what I'm saying
23 24		24	
23 24 25		1	He told me he had an exam in the emergency room, the

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ZIS	SKA V. JAMES HAUER, M.D. Multi	-Pa	JAMES HAUER, M.D., 6-01-94
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1	told him there was no blood in his stool.	1	Q. You don't go golfing or hiking or climbing with
2	Q. But that's not what you wrote down in your chart,	2	Dr. Obebee?
3	is it?	3	A. No.
4	A. I could not use Mr. Ziska's own words to describe	4	Q. He's someone you know through work?
5	this in medical terms.	5	A. Correct.
6	Q. So did you call Dr. Coebee to confirm this and to	6	Q. And have you ever found out why Dr. Coebee referred
7	make sure what Mr. Ziska	7	a person With, and let me know if I'm wrong here, a GI
8	A. I	8	problem to you, a surgeon?
9	MR. GOLDWASSER: Allow him to	9	A. I don't know why specifically, However, a bowel
10	finish. Mr. Ziska	10	obstruction, which is what Dr. Chebee thought Mr. Ziska
11	MR. PATNO: Let me rephrase	11	was presenting with, is usually considered a surgical
12	that.	12	problem and not a gastroenterology problem . So on those
13	MR. GOLDWASSER: I'm sorry.	13	grounds, I would assume that's why.
14	BY MR. PATNO:	14	Q. When you received Mr. Ziska in your care, had any
15	Q. Did you ever call Dr. Obebee to confirm that you	15	KUB or other films been done showing a bowel obstruction?
16	were getting a proper history from this patient with	16	A, Yes.
17	regard to this test?	17	Q. And they showed that there was a bowel obstruction?
	A. No, I did not.	18	A. I have to look.
	Q. And how do you know Mr. Ziska knew what a guaiac	1 9	Yes, I was aware it showed no obstruction.
	negative stool test was?	20	Q. So the films didn't show any obstruction, correct?
21	A. I don't think Mr. Ziska did know.	21	A. Correct.
22	Q. Did anything prevent you from placing a call to	22	Q. Isn't this a patient who would be better treated by
23	Dr. Chebee to check to <i>see</i> what type of stool test was	23	a gastroenterologist at this point in time than a
24	done?	24	surgeon?
25	A. Logistics.	25	A. Not necessarily, because a general surgeon will
	Page 31		Page 33
1	Q. And what were the logistics?	1	deal with abdominal pains when this is a gray area,
2	A. Dr. Chebee most likely would have been gone at that	2	and very often surgeons will deal with this kind of
3	point, he worked the emergency room at night and this	3	situation, and very often gastroenterologists will also
4	would have been later in the morning,		deal with a work-up of this type of patient.
5	Q. Could you have left a message for him to call you		Q. Did you ever consult with a gastroenterologist
6	the next day about that?		about Mr. Ziska?
7	A. Icouldhave.	7	A. Not at this point.
8	Q. Did you ever review the chart and see that	8	Q. At any time prior to Mr. Ziska perforating did you
9	Dr. Chebee had not made any mention of a rectal exam?	9	consult with a gastroenterologist about this case?
:10	6	10	A. A gastroenterologist was called by the internist
11	Q. So you've reviewed the chart this morning since		when he came back into the hospital prior to my
12	this lawsuit has been filed, correct?		involvement with him again.
	A. M-hm.	1	Q. Was that before or after he perforated?
	Q. Have you reviewed the chart at any time since this		A. Idon'tknow.
	lawsuit has been filed?	1	Q. What was that guy's name, the gastroenterologist?
.16	A. When I received notice initially, I did.	1	A. Dr. Lane, Gerry Lane with a G.
.17		1	Q. Who's in a better
.18	Dr. Chebee had not noted a rectal exam?		A. I'm not sure
19	A. No, I did not.	19	Q position to diagnose a duodenal ulcer, a surgeon
20		20	or a gastroenterologist?
21	been filed?	1	A. I don't have an opinion on that, I don't think
100	A Vag	22	it's I don't think it's relative relevant. I think
:22		1	
.22 :23	Q. Did you <i>speak</i> to Dr. Chebee about Otto Ziska since	:23	either
:23 :24	Q. Did you <i>speak</i> to Dr. Chebee about Otto Ziska since	1	

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	KA V. JAMES HAUER, M.D. Multi Page 34		
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	diagnose a duodenal ulcer as a gastroenterologist who's	1	impressions.
	Board certified in that specialty?	2	BY MR. PATNO:
	A. On clinical grounds the decision to perform an	3	Q. Whatever it says there, it says giant duodenal
	endoscopy is often made by a gastroenterologistor a	4	ulcer, black olive imbedded in base. Do you know what
	surgeon.	5	thatmeans?
	O. And you never ordered an endoscopy for Mr. Ziska,	6	MR. GOLDWASSER: I don't want you
	correct?	7	to speculate.
	A. I didnot.	8	A. I don't know what Dr. Lane has I mean, two
	Q. How many duodenal ulcers have you treated during	9	thoughts come to mind.
10	your years of practice?	10	MR. GOLDWASSER: Wait, Doctor, I'm
1	A I don't know	11	going to allow you to answer the question if you
12	Q. Would it be fair to say you haven't been the	12	know, but I don't want you to read another
13	attending primary physician who has treated duodenal	13	physician's mind. Now, with that admonition, you
4	ulcers?	14	can respond if you can.
15	A. That would be unfair. Ihave.	15	A. I don't how specifically what she means by black
16	Q. Approximately how many?	16	olive.
17	A. Treated or involved in their care?	17	Q. Who is Dr. Blain?
18	Q. Primarily treated as the primary physician.	18	A. Lane.
19	A. I don't know, probably	19	MR. GOLDWASSER: Lane.
20	MR. GOLDWASSER: You're guessing.	20	A. He's a gastroenterologist.
21	A. I'm guessing, I don't know.	21	Q. How do you spell that, B-L?
22	MR. GOLDWASSER: okay, that's your	22	A. No, L-A-N-E.
23	answer.	23	Q. L-A-N-E. Okay.
24	A. More than a few, I mean, many possibly.	24	And who requested Dr. Lane to come into the case
25	Q. As of November 1991 in your position as a surgeon		Dr. Ahmad?
	Page 35		Page
1	for Kaiser, solely during that period of time as a		A. I think it's you have the hospital chart.
2	surgeon for Kaiser, how many duodenal ulcers had you	2	Q. It says refeming physician, Dr. Ahmad.
	treated in that capacity?		A. Ahmad, A-H-M-A-D.
	A. Again, a few.	4	Q. Do you know what Dr. Ahmad's specialty is?
4 5	Q. Would it be fair to say that if you recognized a		A. Internal medicine, I believe.
5		5	
6	duodenal ulcer, that would be something you would likely	0	Q. Did you ever refer Mr. Ziska to Dr. Ahmad?
7	refer to a gastroenterologist?		A. No.
8	A. I would get a gastroenterologist involved in the	8	Q. Did you ever find out that Mr. Ziska presented and
9	care, but I would initiate treatment myself.	1	was seen by Dr. Ahmad in this matter?
10	Q. And what type of treatment can you render for this		A. No.
11	type of ulcer?		Q. And other than the endoscopy that was done on 2/
12	A. Treatment is, without perforation, is primarily H-2	12	of '92, you're not aware of any other endoscopies bein
13	blockers or a hydrogen pump blocker.	13	done on Mr. Ziska in this matter?
14	Q. So you would agree then that you can treat these	14	MR. GOLDWASSER: Before his
15	ulcers to prevent them from perforating if diagnosed in a	15	admission to the hospital on February 11th?
16	timely fashion?	16	MR. PATNO: Right.
17	A. Yes.	17	A. I am not.
18	<i>Q</i> . Your attorney has provided me with a copy of an	18	Q. Okay. And could you have ordered an endoscopy
19	endoscopy that is dated 2/11 of '92. Have you reviewed	19	have been performed on Mr. Ziska?
20	that endoscopy?	20	A. Sure.
21	A, Yes.	21	Q. You said earlier that in your index of suspicion
22	Q. And at the bottom, it's cut off here, but I think	22	your primary diagnosis that was possible as a result of
23	it says addendum, addendum or something.	23	the information you had obtained was colon carcinon
2 4	MR. GOLDWASSER: where is that?	24	
25	MR. PATNO; Right above		A. Yes.

 $\left(\begin{array}{c} 1 & \frac{1}{2} & \frac{1}{2} & \frac{1}{2} & \frac{1}{2} & \frac{1}{2} \\ 1 & \frac{1}{2} & \frac{1}{2} & \frac{1}{2} & \frac{1}{2} \end{array} \right)$

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1	Page 3{	1	Page 40
	Q. And what did you do?A. I did a barjum enema.		crampy abdominal pain. Q. Is that what they refer to as a spastic colon?
		2	•
	Q. On what day?	د ا	A. A spastic colon is probably a predisposing syndrome to diverticulitis or diverticulosis.
	A. It appears it was done on 11/29. Let me check the	4	
5		5	Q. And did you do anything for the diverticulitis that
6 7	MR. GOLDWASSER: Here.	0	may have been present at this time?A. Barium enema demonstrated that.
/	A. Barium enema done 11/27/91.		
8	Q. And was that done by you?	8	Q. So the diverticulitis and the colon carcinoma would
	A. No, it was done by Dr. Tizdale, T-I-Z-D-A-L-E.	9	have been ruled out when the barium enema was done?
10	Q. Who is Dr. Tizdale?	LO	A. Yes.
	A. One of our radiologists.		Q. Anything else that you diagnosed with Mr. Ziska
	Q. And were you able to confirm at that time that	12	done at that time on the 26th?
	Mr. Ziska did not have colon carcinoma?	13	MR. GOLDWASSER: I think he said
	A. Yes.	14	differential diagnosis.
	Q. You ruled that out?	15	MR. PATNO: Right,
	A. Yes.	16	differential diagnosis.
17	Q. What else did you preliminarily diagnose Mr. Ziska	17	A. I think we ruled out an obstruction.
	with?	18	Q. Based on the x-rays?
19	A. I thought additionally that he might have had some	19	A. Based on the x-rays and the physical exam that I
20	type of viral syndrome due to the history of having the	20	performed on Mr. Ziska on the 26th of November. I think
21	flu-like symptoms, chest cold symptoms.	21	I ruled out a bacteria gastroenteritis.
22	Q. So you thought he had a virus?	22	Q. How did you do that?
23	A. I thought he possibly had a viral syndrome, too,	23	A. By having a normal differential on the blood test,
24	Q. Is that a virus in layman's terminology?	24	the white count that was done.
25	A. Yes.	25	Q. Okay. And what else did you do?
	Page 35		Page 4
1	Q. Everything's a syndrome these days, I thirk.	1	A. I think also I ruled out appendicitis by physical
2	A. A chest virus that went on into the intestine,	2	exam, barium enema and the low white counts.
3	that's what I thought.	3	Q. Did you rule anything else out or have a
4	Q. And what made you believe that?	4	differential diagnosis of anything else?
5	A. The history.	5	A. On clinical grounds I did not feel things were
6	Q. And what about the history?	6	biliary, gallbladder. As far as gastric, I felt that the
7	A. Well, he said that his history was that three weeks	7	symptoms didn't suggest a gastric or upper GI process b
8	ago he had a bout of the flu and that he said that he had	8	the lack of nausea or vomiting,
9	chest cold symptoms with Severe coughing and he took a	9	Q. And is a duodenal ulcer an upper GI process?
10	cough medicine which improved his cough and added to the	10	A. Yes.
11	gassy, crampy kind of pain that he described at the time	11	Q. So since there was no nausea or vomiting, you rule
12	of my consultation, a normal white count and the x-ray	12	out any upper GI problems at that time?
13	patterns, I thought that possibly this was an intestinal	13	A. I would say that that suggests that there wasn't an
14	flu.	14	upper GI process. It doesn't rule it out.
15	Q. And did you prescribe medication at this time for	15	Q. So you didn't rule out an upper GI problem?
16	the flu?	16	A. Correct.
17	A. Generally there's no medicine for it, it is just	17	Q. You just didn't consider it at that time because
18	clear liquids and rest, and I did prescribe that.	18	there had been no nausea or vomiting?
19	Q. Did you have any other preliminary diagnosis at	19	A. There were no suggested symptoms, yes, I agree.
20	that time, colon carcinoma, viral syndrome?	20	Q. Anything else?
21	A. Diverticulitis.	21	A. I think we ruled out that he did not have an atonic
22	Q. What is diverticulitis?	22	colon, a non functional colon based on pneumonia or other
22	A. It is an inflammation of the diverticula which	23	chest process or urinary process.
23 24	arises most commonly in the sigmoid colon, however it can	23	There are a lot of things we can go through her
2 4 25		24	and just say they are not suggestive by history or lab
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ZIS	SKA V. JAMES HAUER, M.D Mult	· · · · · · · · · · · · · · · · · · ·	age [™] JAMES HAUER, M.D., 6-01-94
	Page 42	1	Page 44
	tests.	1	A. Would that be a half dollar? I guess so, yes,
2	Q. Sure, I understand that, but I want to know what	2	approximately.
3	you considered and ruled out. Have we pretty much	3	Q. And there was a bleed, and would that be at the
	covered all that, you know, some things are just not		
5	attributable		A. It was in the base, the bottom.
	A. Off the wall.	6	Q. The bottom portion?
	Q. Off the wall.		A. Correct.
8	I'm asking you about what you considered and ruled	8	
9	out on that day.	9	determine how long that ulcer had been there?
	A. Okay.		A. No.
	Q. Anything else?	1	Q. Do you believe that ulcer was not there when you
	A. No, I don't think so.	1	were treating Mr. Ziska on the 26th?
13	Q. Okay. What are the clinical signs of a duodenal	.13	A. That's a difficult question to answer. I don't
14	ulcer?	.14	believe that that was the reason for Mr. Ziska's
115	A. Clinical signs of duodenal ulcer are usually upper	15	presentation on the 26th.
16	abdominal pain. Pain is described generally as a burning	16	Q. Do you believe he had the ulcer on the 26th, even
17	pain, a relationship to eating has been mentioned in the	17	if it wasn't at this stage?
18	histories.	.18	A. No, I'm not convinced that he had the ulcer at that
19	Some patients say that the pain typically will get	1	point.
20	better with food with gastric ulcers, will get worse soon	20	Q. So you don't believe he had the ulcer on the 26th?
21	after with duodenal. Sometimes the pain radiates through	21	
22	to the upper back. It sometimes radiates more to the	22	convinced, I do not believe he had the ulcer on the 26th.
	right than to the left in the duodenal process, where in	23	Q. And what makes you not believe that he had the
24	the gastric it's just the opposite, to the left and	24	ulcer on the 26th?
25	upper. Pain is typically also in the middle of the	25	A. The symptomatology with which he presented,
	Page 43		Page 45
1	night, wakes patients up in the middle of the night with	1	complaints he had.
2	a burning pain, nawing pain that doesn't go away.		Q. Did he complain of pain radiating to his back?
	Q. Anything else?	2	
3	A. With an extensive bleed, black stools, black tarish	Ĭ	
		4	Where is the consultation $again$, the description he
5	stools, mushy stools. It is rare to see bright red blood	5	gave me?
6	in the stool, but it is possible.	6	He complained of crampy abdominal pain for two to
7	Q. Are you aware of how large the ulcer was on	7	three days of duration, diffuse, all over, mostly around
8	Mr. Ziska when it perforated?	8	the umbilicus but also in the right and left upper
9	A. I'm not sure that this ulcer perforated.	1	quadrants of the abdomen.
.10	MR. GOLDWASSER: what do you need,	1	Q. So couldn't this ulcer have been there causing
11	Doctor?		radiating pain?
12	THE WITNESS: The op sheet.	1	A, This would be very unusual for it to present with
.13	MR. GOLDWASSER: The operational?	13	this kind of pain.
14	THE WITNESS: Yes.	14	Q. Okay. On an index of suspicion, is an ulcer an
15	A. I'm not aware that it perforated. You mentioned	1 15	important thing to rule out due to the potential of it
16	that a couple times, This ulcer did not perforate.	16	perforating?
17	Q. It was pretty large, though, wasn't it?	17	A. Yes.
	A. It's a bleeding ulcer. I estimated it I think at	18	Q. Because if it perforates, it can cause peritonitis
	two to three centimeters, roughly an inch in size, three	1	and can kill someone, can't it?
20	centimeters in diameter with a bleeding vessel at its		
21	base.	21	Q. Did you ever speak to the treating doctor who
22	Q. So it was about an inch in diameter?	22	followed Mr. Ziska at Kaiser during your care of him?
23	A. About an inch and a quarter.	23	MR. GOLDWASSER: At what point in
23 24	Q. So it would be like the size of a half dollar	23	time are you talking about, Chns?
	maybe?		MR. PATNO: During the 26th
43	mayou:	25	IVIR. FATINO. Dutilig uie 2001

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Page 46 Page 48 1 or between the 26th and when he presented in 1 obstruction or constipation syndromes because he said 2 February. 2 when he had a bowel movement, he said it was like a 3 A. I wasn't aware that he had one 3 firecracker going off in the toilet. We **discussed** -- he 4 Q. Is it usual for a patient to have a treating doctor 4 told me he also had small caliber stools and that be was 5 that they regularly gc to here at Kaiser? 5 having infrequent bowel movements, so I was making 6 A. Probably the majority of the time, yes, but it is suggestions on how to keep the stools soft for him. 6 7 not unusual to have a patient come in that doesn't have a Q. Can an ulcer be causing these type of problems? 7 8 **Primary** doctor, too. A. No. 8 9 Q. But if they presented more than a few times in the 9 When I answered that, we were talking the most 0 past, isn't it likely that they would have a primary recent symptoms, not -- I'm not sure how broad you meant 10 1 treating doctor? can an ulcer cause these -- are you talking about the 11 most recent things? We went through --2 A. Yes. 12 Q. And did you ever ask Mr. Ziska who his primary Q. I'm talking about the problems with the stools he 3 13 4 treating doctor was? was having. 14 5 A. I don't recall. 15 A. No, that's what I wanted to clarify. 16 Q. All right. And would it be fair to say that you 6 Q. And did you do anything else for Mr. Ziska on the 17 never as part of a differential diagnosis made the 7 26th other than what we've described? 8 A. I did a physical exam, listened to his chest, I differential diagnosis of possible ulcer on the 26th? 18 A. I can say that it would have been in my 9 examined his abdomen, he was not distended, there was no 19 differiental, but low on my list. clinical evidence of peritonitis, there's no evidence of 20 20 obstruction on his clinical exam, there was no tenderness Q. Below the things that we've already talked about? 21 21 22 A. Yes. !2 when I felt his abdomen, his bowel sounds were normal, Q. And after scheduling the barium enema for there were no high pitched bowel sounds to suggest 23 13 24 Mi-. Ziska, what did you tell him to do after that, and !4 obstruction, I noted his upper scar, external scar from 15 his heart surgery, I found no hernias, there were no the diet, did you tell him to come back? 25 Page 49 Page 47 1 A. I told him to follow up in the office after the 1 abdominal masses. 2 Q. Was there anytfung about his past history that 2 barium enema and that he can slowly add solid foods to would indicate that he would be an individual predisposed 3 his diet over the next 24, **48** hours. 3 4 to ulcers? 4 Q. Did you say who to follow up with? 5 A. I don't remember. Usually in a situation, in this 5 A. Not that I was aware of. I didn't delve into 6 situation, I would have a patient follow up with me family history or --6 7 because I ordered the tests and I would follow through 7 MR. GOLDWASSER: Doctor, I think with having the test results. 8 you've answered the question. 8 9 Q. But you don't specifically recall with this 9 THE WITNESS: Okay. patient? BY MR. PATNO; 10 0 1 Q. Why didn't you delve into family history? 11 A. I don't recall whether I told him specifically. 2 A. Because I felt that this was an acute event, 12 Q. All right. And did Mr. Ziska follow up with you 3 something that he came in with and -after this? 13 Q. By acute you mean recent? 4 14 MR. GOLDWASSER: What do you need, 15 A. Recent, had recently occurred and that I was 15 Doctor? All the outpatient records are right here. 16 treating this acutely. 16 THE WITNESS: The outpatient 17 Q. So other than putting him on the diet that you told 17 record. 18 us about and other than setting up the barium enema exam, 18 A. I know there were some telephone calls. 19 did you do anything else for Mr. Ziska that day other 19 MR. GOLDWASSER: This is the next 20 than the exam you performed? time the gentleman appeared after the barium enema. 20 21 A. Clear liquids and the barium enema. We discussed a 21 December 8th. THE WITNESS: ,22 stool softener, Colace. 22 He's asking about MR. GOLDWASSER: 23 Q. Why did you discuss that? 23 what you did, if you had any -- you can just go 24 A. Because the symptoms Mr. Ziska was complaining 24 through there if you want.

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25 about suggested to me that he was having colonic

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25 A. I didn't have any contact --

	Page 50		Page 5
1	Q. Did you see him on that day, December 8th?	1	correct?
	A. No.	2	A. Correct.
3	Q. Who saw him December 8th?	3	Q. And would it be fair to say that not always do you
4	A. Dr. Fernando.	4	interpret exactly what is trying to be conveyed to you by
5	Q. Who's Dr. Fernando?	5	the patient.
	A, She's an emergency room physician here at Kaiser.	6	A. I'm sorry, can you repeat that?
7	Q. And do you know why Mr. Ziska	7	MR. GOLDWASSER: I'm not sure I
8	A. He went back into the emergency room complaining of	8	understand that.
	something else.	9	BY MR. PATNO:
10	Q. And do you know why Mr. Ziska would have ended up	10	Q. As a treating physician, not always do you
	With an ER doctor and he wasn't complaining about <i>the</i>	11	interpret correctly what the patient is trying to convey
12	same problems as he had been complaining about before?	12	to you, sometimes there's problems in communicatio
13	MR. GOLDWASSER: Maybe I can help	13	A. True,
14	you.	114	Q. And you as a physician are trained to try to get
	A. Well, he said he was in with hip pain again on	15	the best and most accurate history as you can?
16	11/18 as the description of the current injury or	1	A. True.
17	illness.	10	Q. And would it be fair to say that since you didn't
18	MR. GOLDWASSER: This is the 18th.	18	see Mr . Ziska on November 18th and you didn't see him o
	A. Although on the 18th he was complaining of chest	1	December 8th, you don't know if he was coming in a
119	and rib pain, <i>so</i> the history that he gave as he walked	19	complaining of the same type problems or not?
20		20	
21	into the emergency room is not consistent with the history be gave on the 18th of November, he was	:21	A. To be honest with you, I was not aware of the
22	history he gave on the 18th of November, he was	:22	other things going on.
23	complaining of hip and excuse me, rib and chest pain	:23	MR. GOLDWASSER: Doctor, I want
24	and flu symptoms. So what he describes when he walked in	:24	you to listen to the question before it's answered.
25	on the 8th is that he was having hip pain, he was seen	:25	Read the question back.
	Page 51		Page
	for the same thing on the 18th of November, which		Twite concentrate
1		1	Try to concentrate.
1 2	apparently he mentioned it that day also, yes.	1 2	THE NOTARY: Question:
3	Q. He mentioned what?		THE NOTARY: Question: "And would it be fair to say that since you
3 4	Q. He mentioned what?A. That he had hip pain,	2	THE NOTARY: Question: "And would it be fair to say that since you didn't see Mr. Ziska on November 18th and you
3 4	Q. He mentioned what?A. That he had hip pain,Q. So he had pain radiating all over when he presented	2 3	THE NOTARY: Question: "And would it be fair to say that since you didn't see Mr. Ziska on November 18th and you didn't see him on December 8th, you don't know
3 4 5 6	Q. He mentioned what?A. That he had hip pain,Q. So he had pain radiating all over when he presented on November 18th?	2 3 4	THE NOTARY: Question: "And would it be fair to say that since you didn't see Mr. Ziska on November 18th and you didn't see him on December 8th, you don't know he was coming in and complaining of these same type
3 4 5 6	Q. He mentioned what?A. That he had hip pain,Q. So he had pain radiating all over when he presented on November 18th?	2 3 4 5	THE NOTARY: Question: "And would it be fair to say that since you didn't see Mr. Ziska on November 18th and you didn't see him on December 8th, you don't know he was coming in and complaining of these same type problems or not?"
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		Page 54		Page 56
	1	on the 26th, would that have altered your care and		A. So that's how he clued me into who Mr. Ziska was
		differential diagnosis with regard to Mr. Ziska?		and the memory all came back,
t. I.		A. I think it would have made me feel even stronger	1	Q. And did you do the surgical procedure on Mr. Ziska
		that this was a viral syndrome. Would it have altered my	1	after the ulcer was diagnosed?
		care, no.		A. I did.
		Q. So would it be fair to say that you were treating	ł	
		Mr. Ziska for a gastrointestinal problem when you got	1	Q. And did you diagnose the ulcer or did someone else?
			1 -	A. Dr. Lane diagnosed the ulcer.
1		done examining him on the 26th?	1	Q. That was on February 11th of '92 when he presented?
1.		A. Yes.	9	A. That's the date?
		Q. Other than reviewing the medical chart, have you	10	MR. GOLDWASSER: Yes, that's the
1.		reviewed any other documents for this deposition?	11	date.
		A. Can be more specific?		A. Yes.
1		Q. Did you review films, did you review the endoscopy	1	Q. Did you maintain any other notes with regard to
1		pictures?	1	Mr. Ziska that weren't prepared for your attorney and
1		A. Since the case has come	1	aren't set forth in the medical chart?
1		Q. Been filed, yes.	1	A. No, I have not.
1		A. No, I have not.	17	Q. Did you ever refer or strike that.
1		Q. Okay. Have you spoken to any of the people that	18	Has anything in the medical chart of Mr. Ziska been
1	19	have been involved in the care of Mr. Ziska since the	19	removed that you're aware of?
2	20	suit has been filed?	20	A. No.
2	21	A. I have spoken to Dr. Lane.	21	Q. Has anything been altered that you're aware of?
2	22	MR. GOLDWASSER: He's obviously	22	A. No.
2	23	talking about this case.	23	Q. After you got done treating Mr. Ziska on the 26th,
2	24	A. I have not specifically discussed this case with	24	what did you do with his medical chart?
12	25	Dr. Lane.	25	A. That would have been November 26th?
Γ		Page 55	i i	Page 57
	1	Q. Have you generally discussed this with him?	1	Q. November 26th, yes.
	2	MR. GOLDWASSER: Her.	1	A. I dictated my office note, it would have come back
		A. Her.		to me within a couple days, I would have reviewed it and
	<u>л</u>	Q. I'm sorry, her.	1	signed it and then included it in his outpatient chart.
	- 5	A. No.	1	Q. And then what do you do with the chart?
		Q. Anybody else that you may have discussed this case		A. It goes into our medical record system.
		with that you recall?	1	Q. Do you have an out box and an in box on charts that
		A. I did discuss it with Dr. Knack before he died.	1	you put it in and someone will take it back to the filing
		Q. Who's Dr. Knack?	1	system?
				5
		A. Dr. Knack's one of our internists.	1	A. We have a pile basically that we put our loose-leaf
- 1	11	Q. And why would you discuss it with Dr. Knack?	1	in.
A		A. Basically when I got the notice from your office, I	1	Q. And that's the whole chart?
1		called Dr. Knack to ask him what he membered about	1	A. That would have been his outpatient chart.
		Mr. Ziska and if Mr. Ziska was okay at this point is what	1	Q. Did you ever speak to Dr. Fernando with regard to
	15	I called to find out,		Mr. Ziska?
	16	And at that time Dr. Knack didn't recall much	1	A. Not that I recall.
	17	about other than the fact that he had been involved in		Q. Do you have an opinion as to whether or not
	18	his postoperative care, And we discussed a little bit	18	Flexeril exacerbated the ulcer condition that Mr. Ziska
	19	about he basically said oh, he's the guy with the	19	had?
	20	sleep apnea that we treated postoperatively.	20	A. I'm not aware of it exacerbating the condition.
ŀ	21	Q. He had sleep apnea?	21	Q. Is that something that you're aware of that can
ľ	22	A. Sleep apnea.	22	exacerbate an ulcer condition, that medication?
	23	MR. PATNO: Ringing bells,	23	A. No.
1	24	Gary?	24	
	25	MR. GOLDWASSER: It's familiar.		A. Yes.
- F.	-		1	

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	i-Page[™] JAMES HAUER , M.D., 6-01
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1 Q. Does that exacerbate an ulcer?	1 Q. You didn't transfer any of these charts over to an
2 A. Yes, Clinoril does.	2 primary care physician?
3 Q. What does it do to cause an exacerbation that	3 A. I didnot.
4 you're aware of?	4 Q. Do you know how many doctors approximately cared
5 A. Basically all non-steroidal anti-inflammatories	5 for Mi. Ziska between November and March of '92 a
6 affect the prostaglandins. Prostaglandins are chemicals	6 Kaiser?
7 within the body that have recently been found to be	7 A. From my consult on?
8 involved with a lot of our GI functions, protective	8 Q. From November. You've got Fernando in November a
9 functions, mucus secretions.	9 then Obebee in November, correct?
0 Q. In layman's terminology, how does it affect an	10 MR. GOLDWASSER: Do you want us to
1 ulcer?	go through the chart and count with you, Chris?
2 A. Basically it prevents or slows down the mucus cells	12 MR. PATNO: No, we can count
3 that normally secrete this secretion that protect the GI	13 later.
4 tract.	14 BY MR. PATNO:
5 Q. It inhibits the protective coating that's on the GI	15 Q. Doctor, upon your review of the chart and other
6 tract?	16 than what we've discussed here today, do you believe
7 A. Correct.	17 there to be any information that we haven't discussed
8 Q. And did Dr. Lane ever call you before prescribing	is that is relevant to the treatment of Mr. Ziska's ulcer?
9 Clinoril to Mr. Ziska?	19 A. Yes.
0 A. Did not.	2) Q. What information is that?
1 Q. Were you aware that Mr. Ziska had returned to	21 A. I think that during my first consultation after the
2 Kaiser following the November 26th care that you rendered	22 endoscopy, Mr. Ziska was self'treating himself with a
to him?	23 additional non-steroidal anti-inflammatory that I was
4 A. Not until the morning of the endoscopy, I was not.	24 aware of at any point after that consultation.
5 Q. February 11th of '92?	25 Q. Did you chart that?
	· · ·
Page 59 1 A. I believe that's the date, yes.	Page 1 A. Yes, it's in the hospital initial consultation.
2 Q. I'm giving you that as the date.	_
	2 Q. And can you locate that?
5	3 A. sure.
4 Q. When you asked Mr. Ziska to follow up with you,	4 Q. And that like the Clinoril you believe would have
5 when did you expect he would follow up with you?	5 been exacerbating his condition with the ulcer?
6 A. After the barium enema.	6 A. Yes, $2/12/92$, my first consult with him in the
7 Q. And did you tell-him that?	7 hospital, he was complaining now of burning pain in
8 A. To be honest, I can't recall. I told him to follow	8 epigastrium for the last ten days to twelve weeks. He
9 up, but I didn't I don't know if I told him	9 had self treated with Ab-Seltzer, He was on Flexer
• specifically to follow up with me . Usually I do.	10 and Clinoril for musculoskeletal pain.
1 Q. But you don't recall when you told him to follow	11 Q. So is the Aka-Seltzer what you're refemng to?
2 up, either?	12 A. Yes.
3 A. It would have been at the consultation time.	13 Q. And do you know how much Alka-Seltzer he was
Q. But at the consultation time, you don't recall when	14 taking?
5 you told him to return?	15 A. I didn't document how much he was taking, so, no
16 A. Oh, it would have been after the barium enema	16 do not.
17 instead of before.	17 Q. Do not?
18 Q. But you didn't give him a specific date, did you?	18 A. Do not.
19 A. Not that I'm aware of.	19 Q. Do you know how long he had been taking it?
20 Q. And you didn't send him out to make a specific date	
· 1	21 that he had been taking it for a while.
1 to come back and see you?	-
5	22 Q. That's as you sit here today what you recall?
2 A. No, I did not. Actually I had asked him to follow	
 A. No, I did not. Actually I had asked him to follow up with his primary care physician. 	23 A. Yes.
2 A. No, I did not. Actually I had asked him to follow	

 $\left(\begin{matrix} \mathbf{x}_{1} & \mathbf{y}_{1} \\ \mathbf{x}_{2} & \mathbf{y}_{2} \end{matrix} \right) \mathbf{x}_{1} \mathbf{x}_{2} \mathbf{x}_{3} \mathbf{x}_{4} \mathbf{x}_{5} \mathbf{x$

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		-ra	IAMES HAUER, M.D., 6-01-
1	Page 62		Page (
	Q. what's your recollection?		point. In other words, the anatomic location was such
	A. A couple weeks.	2	that it would have had to have grown larger to perforate
3	Q. But you didn't chart that, correct?	3	Q. But you'd agree with me that it was a rather large
4	A. I didn't chart that.	4	ulcer?
5	Q. And did you ever tell him not to take Alka-Seltzer?	5	A. A large ulcer.
6	A. No.	6	Q. And you believe the endoscopy report described it
7	Q. And you'd find it surprising that a patient would	7	as a giant duodenal ulcer, correct?
8	take Alka-Seltzer if they had a burning feeling?	8	A. Yes.
9	A. I do.	9	Q. Anything else that you believe to be important that
0	Q. why is that?	10	we haven't discussed?
1	A. It says right on <i>the</i> box not to use it if you have	11	A. Just that this was an extremely difficult ulcer
2	any type of history of ulcer, if you're taking other	12	manage surgically, and I think that my feeling was, and
3	types of medicines that might contain a non-steroidal, so	13	discussed management of this type of case with other
4	I was surprised of him using that medicine,	14	surgeons, that this was definitely the treatment
5	Q. How would he know he had a history of ulcer?		necessary to treat it.
6	A. He didn't, I mean, neither did I.	16	Q. What treatment are you refemng to?
7	Q. How did he know that he would be taking a		A. The treatment he had, oversewing the ulcer,
8	non-steroidal?	18	patching it and doing Billroth's anastomosis to constru
9	A. He wouldn't know that he would be taking a	19	it.
20	non-steroidal.	20	Q. You're talking about the surgical intervention and
21	Q. You can't read his mind, Doctor, you don't know	.20 :21	repair following February the 11th of '90?
22	what he knows, he may not or may have known. Did you	21	A. Yes.
2	tell him?		MR. GOLDWASSER: I think the
-	A. No.	23	
		24	diagnosis, the question went to the diagnosis. We
25	Q. Did you tell him he was taking a non-steroidal?	25	could talk about this case for days.
	· Page 63	1	A. Nothing else in the diagnosis that I can -
1	A. Yes.		Q. Or the treatment?
2	Q. That was on the consultation on that day on the		A. Or the treatment up until this point.
3	12th?	4	MR. PATNO: All right, that's
4	A. Yes, yes.	4	fii.
5	Q. But you don't have any information that he was	د ر	
6	aware prior to the 12th he was taking a non-steroidal?	6	Thank you , Doctor.
7	A. No, I do not.	7	I have nothing further.
8	Q. Okay. Anything else that you believe to be	8	MR. GOLDWASSER: We do not waive
9	important to the ulcer condition in the treatment or	9	signature.
10	diagnosis of him?	10	
11	A. I think that through my reading and research that I	11	(DEPOSITION CONCLUDED.)
12	have not been able to fird an opinion as to how much or	12	
12	—	13	
13	how long a non-steroidal has to be taken before an ulcer	14	
14	develops. I have in speaking to a gastroenterologist	15	James Hauer, M.D. Date
15	comrade been informed that the non-steroidal could cause	16	
	an ulcer within just a couple days.	17	
17	Q. A non-steroidal by itself can cause an ulcer within	18	
18	a couple days?	19	
19	A. Yes.	20	
20	Q. Even to the degree that Mr. Ziska had?	21	
21	A. Yes.	22	
22	Q. How close to perforating was that ulcer when you	23	
23	operated on Mr. Ziska?	24	
	A. This wasn't on the free edge, it was into the	24	
24		40	
24 25	pancreatic head, so it wouldn't have perforated at that		

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Multi-Page[™] JAMES HAUER, M.D., 6-01-94 ZISKA V. JAMES HAUER, M.D. Page 66 CERTIFICATE 1 State of Ohio, SS: 2 county of Cuyahoga.) 3 I, Michele E. Eddy, a Registered Professional 6.20 4 Reporter and Notary Public within and for the State 5 of Chio, duly commissioned and qualified, do hereby 6 certify that the within-named witness, JAMES HAUER, 7 M.D., was by me first duly sworn to tell the 8 truth, the whole truth and nothing but the truth in the 9 cause aforesaid; that the testimony then given by him 13 was reduced to stenotypy in the presence of said 11 witness, and afterwards transcribed by me through the 12 process of computer-aided transcription and that the 13 foregoing is a true and correct transcript of the 14 testimony so given by him as aforesaid. 15 I do further certify this deposition was taken at 16 the time and place in the foregoing caption specified. 1.7 I do further certify that I am not a relative, 18 employee or attorney of either party, or otherwise 19 interested in the event of this action. 20 IN WITNESS WHEREOF, I have hereunto set my hand 21 and affixed my seal of office at Cleveland, Ohio, on 22 this 3rd day of October, 1994. 23 Michele E Eddy, RPR and Notary Public 24 in and for the State of Ohio. My commission expires 5-22-95 25

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1:9:1			1:35:19 1:37:1	11	acute[4]	
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