Page 1 IN THE COURT OF COMMON PLEAS OF SUMMIT COUNTY, OHIO Karen Armour, : Administratrix of the Estate of M. Jean Speicher : AKA Minnie Jean Speicher, : Plaintiff, : Case No. 01 2002-07-4063 vs. : Patrick A. Rich, D.O., et al., Defendants. DEPOSITION OF THEODOR F. HERWIG, M.D. Taken at the residence of Theodor F. Herwig, M.D. 657 Bay Drive Westerville, Ohio 43082 November 20, 2003, 4:10 p.m. -----Spectrum Reporting LLC 333 East Stewart Avenue Columbus, Ohio 43206 614-444-1000 -----Spectrum Reporting, LLC Specializing in Real-Time Reporting

	Page 2		Page 4
1	A P P E A R A N C E S	1	THEODOR F. HERWIG, M.D.
	(By Telephone)	2	being first duly sworn, as hereinafter certified,
23	ON BEHALF OF PLAINTIFF:	3	testifies and says as follows:
4	Howard D. Mishkind, Esq.	4	CROSS-EXAMINATION
5	Becker & Mishkind 1660 West Second Street	5	<b></b>
	Cleveland, Ohio 44113	6	BY MR. MISHKIND:
6		7	Q. Good afternoon, Doctor.
7	ON BEHALF OF DEFENDANT PATRICK A. RICH, D.O.: Andrew D. Jamison, Esg.	8	A. Good afternoon.
	Reminger & Reminger	9 10	Q. Would you please state your name for the record?
9	101 Prospect Avenue Cleveland, Ohio 44115	10	A. Theodor, T-h-e-o-d-o-r, F.,
10		$11 \\ 12$	H-e-r-w-i-g, Herwig.
11 12	ON BEHALF OF DEFENDANT DEAN P. RICH, D.O.: Patrick J. Murphy, Esq.	13	Q. Dr. Herwig, my name is Howard Mishkind,
12	Bonezzi, Switzer, Murphy & Polito	14	and I'm going to be asking you some questions
13	526 Superior Avenue	15	concerning a letter you wrote dated July 9,
14	Cleveland, Ohio 44114	16	2003
15		17	(There was a brief interruption.)
16 17		18	Q a letter you wrote July 9, 2003, to
18		19	Mr. Murphy, and the opinions that you have in this
19 20		20	case.
20		21 22	A. I have go ahead.
22		22	Q. We're doing this deposition by phone. What I would ask is that you make sure that you
23		24	wait until I'm done entirely, even more than what
	Page 3		Page 5
1	Thursday Afternoon Session	1	you would do face to face so that we don't have
2	November 20, 2003, 4:10 p.m.	2	any words cut off during the course of the
3		3	transmission, and also so the court reporter
4	STIPULATIONS	4	doesn't have more of a difficult time than she
5	It is stipulated by and between counsel	5	otherwise might have. A. Very well.
7	for the respective parties that the deposition of	7	Q. And I will do the same with you.
8	THEODOR F. HERWIG, M.D., a witness herein, called by	8	Obviously I'll wait until you have finished your
9	the Plaintiff for cross-examination, may be taken at	9	answer before I move on to the next question,
10	this time by the notary by agreement of counsel and	10	okay?
11	without other legal formality; that said deposition	11	A. Yes.
12	may be reduced to writing in stenotypy by the notary,	12	MR. MISHKIND: And again, for the court
13	whose notes may thereafter be transcribed out of the	13	reporter's benefit, please let me know if my
14	presence of the witness; that proof of the official	14	questions or my statements are being cut off in
15 16	character and qualification of the notary is waived.	15 16	any respect, and I will pick up the phone and take it off speaker.
17	<b>•</b> • • • •	17	THE REPORTER: All right. Thank you.
18		18	Q. Doctor, to begin with, I have your
19		19	letter dated July 9, 2003. Do you have that also?
20		20	A. Yes. I'm looking at it right now.
21		21	Q. I also have your CV that was faxed to
		22	me late yesterday from Mr. Murphy's office. And
22		8	
23		23	the CV is one page in length, is that is your
		8	

	Page 6		Page 8
1	A. No. It's one page, and my current one	1	four hours for the deposition?
2	is dated January, 2003.	2	A. That's for anything up to four hours.
3	Q. Okay.	3	Q. So hypothetically, if I were to take
4	A. And I have a copy here, if you want it	4	two hours for the deposition, it's still \$1200; is
5	marked.	5	that correct?
6	MR. MISHKIND: Okay. Why don't we go	6	A. Yes, it is.
: 7	ahead, just for purposes of the record, and have	7	Q. Okay. And I presume that you had a
8	your report marked as Plaintiff's Exhibit 1 and	8	conference with Mr. Murphy before we hooked up on
9	your CV marked as Plaintiff's Exhibit 2.	9	the phone today.
10		10	A. Yes, I did.
11	Thereupon, Plaintiff's Exhibits	11	Q. And your conference with him consists
12	1 and 2 are marked for purposes of	12	of \$250 per hour?
13	identification.	13	A. That's correct.
14		14	Q. Can you explain to me why the
15	Q. Doctor, for the record, the report is	15	conference with the attorney is less than the
16	Plaintiff's Exhibit 1 and your most recent CV is	16	deposition time?
17	Plaintiff's Exhibit 2; is that correct?	17	A. That's a pretty good question. I
18	A. That's correct.	18	suppose the smart alec answer is I should raise my
19	Q. Are there any additions or deletions	19	fee to the attorney, but actually the deposition
20	that need to be made to your CV to bring it up to	20	does require more in the way of alertness and
21	November, 2003 standards?	21	caution in the way I choose my words and is a
22	A. I don't believe so.	22	considerably more demanding enterprise.
23	Q. To follow up, your professional	23	Q. Okay. I don't want to be too demanding
24	activities and your licensures and your	24	on you during the course of the deposition.
1			
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	Page 10		Page 12
1	relative to the Speicher case since you wrote your	1	is the transcription of Dr. Dean Rich's office
2	report?	$\frac{1}{2}$	note; is that correct?
$\overline{3}$	A. Yes. Mr. Murphy sent me a transcript	3	A. Yes.
4	of Dr. Dean Rich's notes this afternoon.	4	Q. Was that prepared by Mr. Murphy's
5	Q. A transcript of notes?	5	office or was it prepared by Dr. Rich's office?
6	A. Yes, a typed rendering of his less than	6	A. It appears to have been prepared by
7	completely legible progress notes for the 02-01-01	7	Dr. Rich.
8	office visit.	8	Q. Have you ever talked to either Patrick
9	Q. Were you not able to decipher his	9	Rich or Dr. Dean Rich?
10	office note based upon the written record?	10	A. I have not.
11	A. There were areas where I was less than	11	Q. Do you know either of them?
12	100 percent certain.	12	A. No.
13	Q. And in reading over Dr. Dean Rich's	13	Q. You mentioned you had the three expert
14	deposition, were you able to get a literal	14	reports. One is from Dr. Bacik. That's
15	translation of what Dr. Dean Rich wrote in his	15	B-a-c-i-k. The other is Dr. Kotomy, and then
16	office note for February 1, '01?	16	Dr. Bibler. Do you know any of those physicians?
17	A. Yes, I was. In his deposition, he read	17	A. I never have met them. I don't know
18	into the record his notes.	18	them.
19	Q. Okay. Was this transcription, then,	19	Q. You have not seen, I take it, the
20	that was sent down to you today by Mr. Murphy then	20	deposition transcripts of the family?
21	necessary for you?	21	A. I have not.
22	A. Probably not.	$\frac{21}{22}$	Q. Do you know what the testimony has been
23	Q. Anything else that you have received	23	of, for example, Karen Armour, the daughter,
24	other than what you just stated?	24	relative to her mother's symptoms following the
	ontor and what you just stated.	21	Totative to not money symptoms following the
	Page 11		Page 13
1	Page 11 A. No.	1	Page 13 discharge from Barberton leading up to the office
12	-	1 2	-
1	A. No.	1 2 3	discharge from Barberton leading up to the office visit of February 1? A. No, I don't.
2	<ul><li>A. No.</li><li>Q. And do you have that transcription</li></ul>		discharge from Barberton leading up to the office visit of February 1?
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	Page 14		Page 16
1	Dr. Patrick Rich; is that correct?	1	MR. JAMISON: Objection.
2	A. That's correct.	2	A. I would think that it's a good point of
$\overline{3}$	Q. Have you done any literature search or	3	departure, yes.
4	research for purposes of this case?	4	Q. Doctor, there was a recent article in
5	A. No.	5	the new England Journal of Medicine in September.
6	Q. You do teaching, as I recall; is that	6	Do you get the new England Journal?
7	correct?	7	A. I do not.
8	A. Yes, I do.	8	Q. Okay. Would you agree with this
9	Q. And does any of your teaching surround	9	statement: When the diagnosis of embolism is
10	the topic of the diagnosis and treatment of DVT?	10	confirmed and effective therapy is initiated,
11	A. I've never given a specific lecture	11	recurrence of the embolism is rare and death is
12	regarding DVT, but in our rounds, clinical	12	uncommon.
13	teaching, office teaching, this is a subject which	13	A. I have to think about that a moment. I
14	comes up very frequently; and in that sense, yes,	14	think we believe that appropriate treatment of
15	I have taught regarding it.	15	thrombophlebitis and embolic disease significantly
16	Q. What about the diagnosis of pulmonary	16	reduces the risk of the patient of having further
17	embolism? Has that also been the topic of lecture	17	embolic problems. I certainly am not a person
18	to medical students on your part?	18	that can offer any numbers to support that or
19	A. Again, I've never given a lecture on	10 19	clarify it.
20	that subject; but again, it's an important and	20	Q. With regard to the specifics on
21	serious thing which we consider frequently in	20	numbers, would you defer to a pulmonary doctor as
$\frac{21}{22}$	clinical practice.	$\frac{21}{22}$	it relates to a likelihood of death from
$\frac{22}{23}$	Q. Are there any sources, Doctor, that you	23	recurrence of embolism?
24	would refer a medical student or a resident to	23	A. Yes. Either a pulmonologist or a
24	would feler a medical student of a resident to	27 	A. I Co. Entrier a pullionologist of a
	Page 15		Page 17
1	that you consider to be reasonably reliable for	1	vascular surgeon I think would speak with more
2	purposes of the topic of the evaluation of	2	authority than I.
3	suspected pulmonary embolism?	3	Q. Okay. Again, another question for you
4	A. If I had a student who or a resident	4	whether you agree with this or not: The majority
5	who asked for sources, I would probably start with	5	of preventable deaths associated with pulmonary
6	Harrison's Textbook of Medicine, the current	6	embolism can be ascribed to a missed diagnosis
7	edition, and I don't know what number that is at	7	rather than to a failure of existing therapies.
8	the present time, as general information. And I	8	A. Another time to think a little bit.
9	suspect that probably a literature search would	9	Q. Take your time.
10	show something in Medical Clinics of North America	10	A. I really don't think that I'm qualified
11	and so forth, but I don't have any other specific	11	to give an opinion on that. It's not it's not
12	favorite sources.	12	my special field, and I think others with more
13	Q. Can we agree that from a standpoint of	13	experience would probably be more reliable to
14	a reasonably reliable resource for information on	14	answer that.
15	the evaluation of suspected pulmonary embolism,	15	Q. Okay. What is your area of practice or
16	that Principles of Internal Medicine by Harrison	16	subspecialty?
17	is a good resource?	17	A. I'm a family physician. I take care of
18	A. As you know, we're very reluctant to	18	people as their primary contact physician. I work
19	label anything as completely authoritative, but	19	with my colleagues in treating patients with
20	Harrison certainly has been recognized as a good	20	established diagnoses and in confirming diagnoses,
21	general textbook of medicine for many years.	21	and I do that for people of all ages and with all
22	Q. Even though we may not use the term authoritative, would you acknowledge that it's	22 23	sorts of problems. Q. Basically from crib to grave?
23	automiative would you acknowledge that it's	トノイ	LE BASICALLY FROM CITID TO GRAVE?
24	reasonably reliable?	24	<ul><li>Q. Basically from crib to grave?</li><li>A. I say that I see people I take care</li></ul>

5 (Pages 14 to 17)

	Page 18		Page 20
1	of people from before they're thought of till	1	been consistent throughout the years?
2	after they're forgotten.	2	A. Yes, it has.
3	Q. Okay. Hopefully they're never	3	Q. You've been doing this for how many
4	forgotten.	4	years now, sir?
5	A. Hopefully. And when the patient is	5	A. Probably 10 or 12.
6	gone, the family remains, and I try to serve them.	6	Q. And are you in the active clinical
7	Q. And provide them some comfort as well	7	practice of medicine currently?
8	when they lose a loved one?	8	A. Yes, I am.
9	A. Yes, and medical care when they need it	9	Q. What percentage of your time do you
10	as well.	10	spend in the active clinical practice?
11	Q. Certainly. Dr. Patrick Rich and	11	A. 100 percent.
12	Dr. Dean Rich, what is your understanding as to	12	Q. Okay. Other than when you're called
13	their area of practice?	13	upon in this setting.
14	A. As I understand it, Drs. Rich are both	14	A. That's correct.
15	community-based family practice practitioners. I	15	Q. Can you give me an idea of how many
16	know that Dr. Dean is boarded in family practice.	16	cases you review on a yearly basis?
17	I don't know about Dr. Patrick, but I would assume	17	A. Over the years, it's been pretty
18	that they do a practice very similar to mine.	18	steadily about 10 or 12 cases a year.
19	Q. I believe one or both of the	19	Q. And how many times are you called upon
20	doctors and I say it this way because you	20	to give deposition testimony?
21	haven't read Patrick's deposition. But one or	21	A. About half the time.
22	both of the doctors indicated that from a	22	Q. So five to six depositions a year?
23	standpoint of the diagnosis and treatment of BVT	23	A. Correct.
24	or the ruling out of the existence or nonexistence	24	Q. And trial testimony where you actually
	Page 19	<u></u>	Page 21
1	of pulmonary embolism, that the standard of care	1	walk in the courtroom and give testimony?
2	is the same for an internist as it is for a family	2	A. That's, of course, much less common,
3	physician. Do you agree with that statement?	3	but I would say I average perhaps two to three a
4	A. Yes. I think the standard of care for	4	year.
5	a family physician is in almost every incidence	5	Q. And are the percentages concerning
6	the same as the standard of care of a specialist.	6	depositions and trial testimony, is it equally
7	Q. So we wouldn't have any difference in	7	balanced, fifty-fifty?
8	terms of what the standard of care is for an	8	A. Pretty much, yes.
9	internist that's presented with signs and symptoms	9	Q. Now, you and I have never met before,
10	of a DVT or signs or symptoms of a PE as compared	10	have we?
11	to a family practice doctor in the same situation;	11	A. That's correct.
12	is that true?	12	Q. Have you worked with Mr. Murphy or any
13	A. I agree.	13	of the attorneys from Bonezzi, Switzer, Murphy &
14	Q. Okay. Doctor, I want to just ask you a	14	Polito before?
15	few questions about your medical legal experience.	15	A. Yes, I have.
16	In terms of the percentage of work that you do by	16	Q. Can you just give me an idea roughly, I
17	way of review of cases, can you tell me what	17	guess we'll start with how many cases are you
18	percentage is at the request of plaintiff's	18	currently participating as an expert for them?
19	counsel and what percentage is at the request of	19	A. I probably have two or three cases that
20	defense counsel?	20	are pending presently. As you know, there's
21	A. Interestingly, my work has been just	21	several large firms that do defense work as there
22	about evenly balanced between cases given to me by	22	are plaintiff's work, and as a result, I have a
1		102	number of aggas within the some firms. I really
23	plaintiffs and defense counsel.	23	number of cases within the same firm. I really
23 24	Q. In terms of your that's pretty much	23	don't have any numbers.

	Page 22		Page 24
1	Q. Okay. Over the years how many cases	1	Q. Can you tell me when the last time your
2	have you worked with Mr. Murphy personally as an	2	deposition was taken?
3	expert?	3	A. In any matter?
4	A. Probably four or five.	4	Q. Yes, sir.
5	Q. How about actual testimony, deposition	5	A. I think I've done a couple earlier this
- 6	or in trial?	6	year. I kind of live in the moment, and
7	A. I think I've only been deposed on his	7	Q. We all do.
8	cases, I think this is only the second one that	8	A. And I really can't tell you who it was
9	I've been deposed on. I'm not I'm not sure of	9	and when and where.
10	that, but I think this is only the second, and	10	Q. But you think it was a couple earlier
11	I've never gone to trial on his cases. Oh, wait a	11	this year?
12	minute. No. No, I have not gone to trial on any	12	A. I'm sure I have, yes.
13	of his cases.	13	Q. Do you have any depositions scheduled
14	Q. I take it you have gone to trial on	14	for the balance of this year?
15	some of the cases for the other lawyers in his	15	A. I don't believe so.
16	office.	16	Q. And this case is set for trial December
17	A. I actually I don't think so. I was	17	9th, and I know you're scheduled to testify toward
18	in trial in a case one of his partners was	18	the end of that week.
19	involved in, but I was on the other side.	19	A. Yes.
20	Q. Okay. I'm starting to show my age. I	20	Q. And I take it you're planning on
21	just lost my train of thought. It probably was	21	appearing live, in person, as opposed to video?
22	going to be a brilliant question, too.	22	A. Yes. If you haven't settled it, I
23	A. It will come.	23	expect to be there.
24	MR. JAMISON: One in a while we dodge	24	Q. Okay. Have you ever been named as a
	Page 23	-	Page 25
1	the bullet, Howard.	1	defendant in a malpractice case, sir?
2	MR. MISHKIND: Yeah, right. I knew you	2	A. Yes, I have.
3	couldn't pass that opportunity up.	3	Q. How many times?
4	MR JAMISON: I couldn't.	4	A. Three.
5	Q. Now I remember what it was. Have	5	Q. Any of those currently pending?
6	either of the cases you've worked for, either	6	
		6	A. No.
7	written reports, depositions, or at trial involved	7	<ul><li>A. No.</li><li>Q. Any of those cases involve pulmonary</li></ul>
	written reports, depositions, or at trial involved issues of the diagnosis and treatment of a patient	1	
7 8 9	written reports, depositions, or at trial involved issues of the diagnosis and treatment of a patient with a pulmonary embolism?	7 8 9	<ul><li>Q. Any of those cases involve pulmonary emboli?</li><li>A. No, they didn't.</li></ul>
7 8	<ul><li>written reports, depositions, or at trial involved issues of the diagnosis and treatment of a patient with a pulmonary embolism?</li><li>A. Yes. There have been several.</li></ul>	7 8 9 10	<ul><li>Q. Any of those cases involve pulmonary emboli?</li><li>A. No, they didn't.</li><li>Q. The outcome of those three cases, were</li></ul>
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	Page 26		Page 28
1	they?	1	stockings to reduce pooling of blood in the legs,
2	Q. No, I guess not, but I congratulate	2	and we use blood thinners. Initially ordinarily
3	you. I just want to ask you a couple basic	3	it's Heparin, and that is used until the
4	medicine questions, and then we'll move on to the	4	prothrombin time is in the desired range with the
5	specific opinions that are	5	use of Coumadin. We ordinarily continue that
6	(The phone connection was broken; short	6	treatment for at least several months,
7	recess taken.)	7	and well, that's basically the treatment.
8	MR. MISHKIND: Back on the record.	8	Q. Would you define for me what a
9	Q. I think I was indicating to you I	9	pulmonary embolism is?
10	wanted to ask you some basic medicine questions.	10	A. Pulmonary, of course, means lung.
11	A. Yes.	11	Embolism is when a foreign matter goes through the
11		12	
1	Q. And then we'll get into the opinions	•	artery and lodges in the distant tissue. So you
13	that are involved in this case.	13	can get a blood clot. You could presumably get a
14	Before I put away your CV entirely, is	14	bolus of air which formed an embolism. You could
15	there anything on your CV by way of your	15	presumably get any kinds of foreign material which
16	activities or professional associations that are	16	travel through the vessels and lodge in the lung.
17	particularly germaine to the issues involved in	17	Traditionally we talk about a clot which has come
18	this case as it relates to the suspicion of or	18	from some of the large veins in the lower body,
19	work-up of a patient for a pulmonary embolism?	19	which then travels and lodges in the pulmonary
20	A. I don't believe so.	20	artery of the lung.
21	Q. Okay. What is deep vein thrombosis?	21	Q. What are the common signs and symptoms
22	A. The deep veins ordinarily are	22	of pulmonary embolism?
23	considered to be the deep femoral veins in the	23	A. That, also, can have a variety of
24	calf and in the thigh. It's not the femoral in	24	symptoms. Cough, shortness of breath, unexplained
	Page 27		Page 29
1	the calf. That would be the deep popliteal there.	1	fever, chest pain are all possible symptoms of
2	And thrombosis is a condition where a clot forms	2	pulmonary embolism.
3	within the blood vessel.	3	Q. In a patient that does not have a
4	Q. What are the common signs and symptoms	4	history of pulmonary disease, is a pulmonary
5	of a DVT?	5	arterial pressure on an echo such as what we have
6	A. The most common sign is a painful calf,	6	in this case consistent with a patient that is
7	swelling, perhaps heat. Those are the most common	7	high probability of having a pulmonary embolism?
8	signals that a venous thrombosis has occurred.	8	A. An elevated pulmonary pressure needs to
9	Q. How is a DVT diagnosed, Doctor?	9	1 71
	-		be explained. Pulmonary embolism is a likely
10	A. That's a difficult thing to do. We	10	possibility, yes.
1 1 1	have two aliniant tests that are considered	117	
11	have two clinical tests that are considered	11	Q. Was it reasonable in your opinion for
12	standard, the Homan's sign and a test of calf	12	Dr. Patrick Rich to admit the patient to Barberton
12 13	standard, the Homan's sign and a test of calf tenderness, but both are considered unreliable.	12 13	Dr. Patrick Rich to admit the patient to Barberton to rule out congestive heart failure and to rule
12 13 14	standard, the Homan's sign and a test of calf tenderness, but both are considered unreliable. We also do ultrasound Doppler studies of the	12 13 14	Dr. Patrick Rich to admit the patient to Barberton to rule out congestive heart failure and to rule out pulmonary embolism?
12 13 14 15	standard, the Homan's sign and a test of calf tenderness, but both are considered unreliable. We also do ultrasound Doppler studies of the veins, which is useful for detecting clots in the	12 13 14 15	<ul><li>Dr. Patrick Rich to admit the patient to Barberton to rule out congestive heart failure and to rule out pulmonary embolism?</li><li>A. Yes, I think that was a reasonable</li></ul>
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	Page 30		Page 32
1	hospital records, but my focus has really been	1	thrombosis is the most common cause of pulmonary
2	entirely on Dr. Dean Rich's work on the office	2	emboli?
3	record.	3	A. I really don't know if I have that
4	Q. When you were provided the record for	4	information. We believe that pulmonary emboli
5	Dean Rich, that obviously was contained within	5	come from the large veins of the lower body, but
6	Dr. Patrick Rich's records; is that correct?	6	there are several places that could come from.
7	A. That's true.	7	Q. Again, in terms of that question, would
8.	Q. So while you didn't read Dr. Patrick	8	you defer to a pulmonary specialist?
9	Rich's deposition, you're aware that Dr. Patrick	9	A. Yes.
10	Rich saw this patient on January 25, 2001,	10	Q. How would pulmonary emboli be diagnosed
11	correct?	11	in the clinical setting by a family practice
12	A. Yes.	12	doctor or an internist?
13	Q. And there was a history that he	13	A. We have several tests which we depend
14	obtained on the patient that caused him to admit	14 15	on. The VQ scan is probably the most universally available, but is not a specific test. It gives
16	the patient to the hospital for the rule out to rule out PE_right?	16	us degrees of probability. The spiral CT of the
17	rule out PE, right? A. Yes.	17	chest is being used more and more now and can be
18	Q. Perhaps I'm misquoting you, but what	18	very helpful, and of course the ultimate test is a
19	you're saying is that in terms of what symptoms	19	pulmonary arteriogram.
20	were appreciated on January 25th that caused him	20	Q. Would that be a pulmonary angiogram?
21	to say we need to admit her to rule out	21	A. Yes.
22	conditions, are you able to tell me from the	22	Q. Okay. And would you agree that if
23	record what it was that you believe to be	23	suspicion for pulmonary emboli exist, that a
24	reasonable on his part that he had on this patient	24	diagnostic study should be done promptly to
	Page 31		Page 33
	Page 31 that caused him to want to evaluate her for	1	Page 33
1	that caused him to want to evaluate her for	$\frac{1}{2}$	confirm or to rule out the diagnosis?
2	that caused him to want to evaluate her for pulmonary embolism?	$\begin{vmatrix} 1\\ 2\\ 3 \end{vmatrix}$	confirm or to rule out the diagnosis? MR. JAMISON: Objection.
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	Page 34		Page 36
1	MR. JAMISON: Jamison.	1	to do that.
2	THE WITNESS: Can you repeat that	2	A. If I would have been asked to review
3	question?	3	Dr. Patrick Rich's work, I believe I would be
4	MR. MISHKIND: That's why we bring the	4	qualified; but as I've not reviewed it, I feel
5	court reporter along.	5	that it's inappropriate for me to either criticize
6	THE REPORTER: (Reading) "Question:	6	or support what he did.
7	Can we agree that given the patient's history and	7	Q. All right. Doctor, if you were caring
8	her admitting diagnosis as well as the results	8	for this patient I take it you consider
1		9	
9	from the echocardiogram showing the pulmonary	•	yourself to be a reasonable and prudent family
10	arterial pressure that it would have been	10	practice doctor.
11	reasonable and prudent for Mrs. Speicher while in	11	A. Yes.
12	the hospital to undergo a VQ scan or a pulmonary	12	Q. If you had admitted this patient with a
13	angiogram to rule out or confirm the existence of	13	recent history of left leg swelling with a sudden
14	pulmonary emboli?"	14	onset of shortness of breath that had increased
15	A. I would have to say yes, it would be	15	within the last several days and you admitted the
16	reasonable to have done those tests.	16	patient to rule out CHF and rule out PE, and you
17	Q. And given the facts that you have from	17	ruled out CHF but had an echo that showed
18	the record in the hospital and the office records	18	pulmonary arterial pressures of 55 to 60 and no
19	of Dr. Patrick Rich and Dr. Dean Rich, can we	19	prior pulmonary history on the patient, what would
20	agree that from what you can see that the failure	20	you have done in order to comply with the standard
21	to rule out pulmonary embolism during that	21	of care?
22	hospitalization represents a departure from	22	MR. JAMISON: Objection.
23	accepted standards of care on the part of	23	A. I believe I would have ordered a VQ
24	Dr. Patrick Rich?	24	scan and a work-up for PE.
1			1
	Page 35		Page 37
1		1	
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2	MR. JAMISON: Objection. MR. MURPHY: Objection.	2	Q. And do you believe that that would have been in keeping with or in compliance with the
2 3	<ul><li>MR. JAMISON: Objection.</li><li>MR. MURPHY: Objection.</li><li>A. I really hate to be put in a position</li></ul>	2 3	Q. And do you believe that that would have been in keeping with or in compliance with the standard of care?
2 3 4	MR. JAMISON: Objection. MR. MURPHY: Objection. A. I really hate to be put in a position to answer that since I've not really looked at	2 3 4	Q. And do you believe that that would have been in keeping with or in compliance with the standard of care? MR. JAMISON: Objection.
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[	Page 38		Page 40
1		1	
	Q. Are there any areas of disagreement		A. Again, as a not knowing the
2	that you have a basis to state on the record as	2	relationship between hyperthyroidism and pulmonary
3	his views in this case?	3	artery pressure, I don't know. I would think PE
4	A. Let me look at it here. I believe on	4	would be more likely, however. I agree with you.
5	his opinion No. 3 concerning the thyroid function	5	Q. In terms of potential for fatal
6	studies and so forth, I think that the diagnosis	6	outcome, is a patient more likely to die of
7	of early hypothyroidism is not necessarily a	7	complications from untreated pulmonary embolism
8	misdiagnosis. I think there's no reason to	8	than untreated hyperthyroidism?
9	believe that that was not a correct diagnosis. I	9	A. Yes. Pulmonary embolism is far more
10	think that's a small point, but I do disagree with	10	lethal.
11	that.	11	Q. Let's move to Dr. Bibler. I'm sorry.
12	I think that in item No. 4, he states	12	Now you've got me and I may have said Bibler
13	that Dr. Dean Rich had opportunity to review the	13	before, too, so
14	hospital data, and I do not believe that's true.	14	If we could move to Dr. Bacik's report
15	It's my understanding that the records from the	15	for a moment, which is another report that you had
16	hospital had not reached the office by the time	16	reviewed.
17	Dr. Dean saw her.	17	A. Yes.
18	On item No. 5, I don't believe I'm	18	Q. And he has opinions expressed on page
19	qualified to have an opinion as to the	19	3. If you could just take a look at those
20	relationship of her stroke and her embolism. This	20	opinions and tell me whether you agree or
21	is something that I'm unfamiliar with and I am not	21	disagree.
$ ^{21}_{22}$	entitled to an opinion there.	22	A. In his first paragraph on page 3,
23	As far as the life expectancy, again, I	23	Dr. Bacik says, "Had appropriate therapy been
$ ^{23}_{24}$	am not I'm not going to render an opinion	24	administered, Ms. Speicher would have survived."
27	an not Thi not going to render an opinion	24	administered, ws. spetener would have survived.
	Page 39		Page 41
1	there.	1	I think I'd qualify that a bit and say it's more
2	Those are my only objections to that	2	likely she would have survived.
3	letter.	3	Q. And you recognize, having done this
4	Q. Now, I think you were referring to	4	before, that more likely means greater than 50
5	Dr. Bibler's letter.	5	percent, correct?
6	A. Yes. Isn't that what you	1	
+ 0		6	
	· · · · · · · · · · · · · · · · · · ·	67	A. Yes.
7	Q. I'm not sure whether I	7	<ul><li>A. Yes.</li><li>Q. And you realize that in the law, the</li></ul>
78	Q.I'm not sure whether IA.Okay.	7	<ul><li>A. Yes.</li><li>Q. And you realize that in the law, the burden of proof is to prove more likely than not</li></ul>
7 8 9	<ul> <li>Q. I'm not sure whether I</li> <li>A. Okay.</li> <li>Q. I was going to actually get to</li> </ul>	7 8 9	<ul> <li>A. Yes.</li> <li>Q. And you realize that in the law, the burden of proof is to prove more likely than not as opposed to a epidemiological certainty</li> </ul>
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	Page 42		Page 44
1	the PE and the PE causing hypotension which then	1	A. I am looking through the deposition
$\begin{vmatrix} 1 \\ 2 \end{vmatrix}$	caused a stroke, you don't feel qualified to	2	right now, and I didn't flag the page, but it's my
$\begin{vmatrix} 2\\ 3 \end{vmatrix}$	comment on that.	$\frac{2}{3}$	memory that she told Dr. Dean Rich that she had
4	A. That's correct.	4	been in the hospital for her shortness of breath
5	Q. Okay. I'm looking for your report and	5	and so forth and had been diagnosed with
6	then I'm going to hopefully focus the balance of	6	hyperthyroidism and that her symptoms had cleared.
7	my questions on the opinions that you have in your	7	MR. MURPHY: You might be looking for
8	report, and then we'll be done. That's assuming I	8	page 37, Doctor. I'm not sure.
9	can find your report; if you could see what my	9	THE WITNESS: Thank you.
10	office looks like.	10	MR. MISHKIND: I knew we brought Pat
11	A. I believe an empty desk is the mark of	11	along for some reason.
12	an empty mind.	12	A. Yes. On page 38 is the information
13	Q. I still have an empty mind even with a	13	that I was remembering.
14	cluttered desk. I'm a multi-talented individual.	14	Q. Okay. Now, if the patient had
15	Okay. Now, in your report, Doctor, you	15	shortness of breath on February 1 as opposed to
16	indicate that symptoms presented by Miss Speicher	16	resolved shortness of breath, how would that
17	at that visit and we're talking about the	17	impact the opinions that you hold on Dr. Dean
18	February 1 visit, true?	18	Rich?
19	A. Correct.	19	A. Shortness of breath is not a really
20	Q. And the medical history provided and	20	typical major complaint with bronchitis, and in a
21	the physical exam were compatible with Dr. Rich's	21	patient complaining of shortness of breath, I'd
22	diagnosis of bronchitis, correct?	22	expect a more vigorous evaluation.
23	A. Yes.	23	Q. In the context of a patient that
24	Q. And based upon that, you believe that	24	Dr. Dean Rich knew had recently been admitted to
			1612-1616-1916-1916-1916-1916-1916-1916-
	Page 43		Page 45
1		1	-
12	Dr. Dean Rich complied with the standard of care	$\frac{1}{2}$	the hospital to rule out CHS and to rule out PE,
2	Dr. Dean Rich complied with the standard of care in terms of his treatment of the patient on that	2	the hospital to rule out CHS and to rule out PE, if the patient also had shortness of breath on
2 3	Dr. Dean Rich complied with the standard of care in terms of his treatment of the patient on that limited visit; is that correct?		the hospital to rule out CHS and to rule out PE, if the patient also had shortness of breath on February 1, what would that vigorous evaluation,
2 3 4	<ul><li>Dr. Dean Rich complied with the standard of care in terms of his treatment of the patient on that limited visit; is that correct?</li><li>A. That's correct.</li></ul>	2 3	the hospital to rule out CHS and to rule out PE, if the patient also had shortness of breath on February 1, what would that vigorous evaluation, in your opinion, have required?
2 3	Dr. Dean Rich complied with the standard of care in terms of his treatment of the patient on that limited visit; is that correct?	2 3 4	the hospital to rule out CHS and to rule out PE, if the patient also had shortness of breath on February 1, what would that vigorous evaluation,
2 3 4 5	<ul><li>Dr. Dean Rich complied with the standard of care in terms of his treatment of the patient on that limited visit; is that correct?</li><li>A. That's correct.</li><li>Q. Now, based upon your review, can you</li></ul>	2 3 4 5	the hospital to rule out CHS and to rule out PE, if the patient also had shortness of breath on February 1, what would that vigorous evaluation, in your opinion, have required? MR. MURPHY: Objection to that. Like I
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	Page 46		Page 48
1	MR. MISHKIND: Let me just respond to	1	with sudden onset of shortness of breath, worse
2	that. He may have said that, but certainly he	2	last several days, and then resulting in the
3	had Dr. Patrick Rich's office note there says rule	3	admissions to the hospital. If those are the
4	out CHF and rule out PE. So he can say what he	4	facts, as well as the cause that Dr. Dean Rich
5	wants to in his deposition. I think the office	5	detected, with that in mind and knowing that
6	records clearly indicate what Patrick Rich was	6	Patrick Rich had admitted the patient to rule out
7	admitting the patient for. But we can debate that	7	CHS and to rule out PE, under that set of
8	until the cows come home.	8	circumstances, what would have been a reasonable
9	Q. Doctor, now that Pat and I have had	9	and prudent course of action for Dr. Dean Rich to
10	this nice conversation, are you still with me on	10	have taken?
11	the question?	11	MR. MURPHY: Objection; Murphy.
$11 \\ 12$	A. Yes.	12	
			A. Okay. That was a pretty long question.
13	Q. Okay.	13	As I understand what you're asking me is given
14	MR. MURPHY: I'm done.	14	persistent shortness of breath, given the
15	A. I would think if the patient had told	15	knowledge that Mrs. Speicher had been admitted to
16	Dr. Dean Rich that she'd been admitted for a	16	rule out a DVT and that it had not been done in
17	possible embolism and that she continued to be	17	the hospital, the rule out had not been done, what
18	short of breath, and especially if she said that	18	should Dr. Rich have done? And of course, with
19	her leg was still swollen and so forth, that a	19	that scenario, probably she should have been
20	much more elaborate work-up would have been	20	admitted for a more vigorous work-up for a DVT.
21	necessary. I think most family physicians would	21	Q. Would that admission that's
22	have obtained an electrocardiogram in the office,	22	hypothetical have been an immediate admission or
23	possibly a chest x-ray, and if the lungs were	23	is this something that could have been done in the
24	clear and the leg was soft and nontender, that	24	next couple days?
<u> </u>			<b>D</b> 40
	Page 47		Page 49
1	might be all they would do at that time.	1	A. No. If she was short of breath,
2	Q. Would it be reasonable for Dr. Dean	2	increasingly short of breath, I think it would be
3	Rich to have called over to the hospital to get	3	an immediate admission.
4	the results of any tests that had been ordered or	4	Q. How would the patient have known
5	performed during that recent hospitalization?	5	typically whether she was or was not given a clean
6	MR. MURPHY: Are we still on the same	6	bill of health with regard to the existence of
7	hypothetical here or not, or	7	pulmonary embolism?
8	MR. MISHKIND: Yes.	8	A. Not too many patients know what
9	Q. Let me redefine it, Doctor, so we're on	9	pulmonary embolism is, and I would think that most
10	the same page. Assume that the patient came to	10	likely, this is pure conjecture, that the
11	doctor just one second. That's my cell phone.	11	physician would say we have things cleared up and
12	Let me turn it off. I had every other phone	12	it's okay. Everything's okay and you can go home.
13	protected, but now if I can only figure out how	13	Q. If there's questions on the part of
14	to turn it off.	.14	Dr. Dean Rich, again following my hypothetical
15	In my hypothetical I was asking you to	15	persistent shortness of breath in the context of
16	assume that the patient had shortness of breath on	16	the recent hospitalization knowing what his father
17	February 1 rather than shortness of breath that	17	had marked down on January 25th in terms of ruling
18	had resolved, okay?	18	out CFH and ruling out PE, if Dr. Dean Rich had
19	A. Okay.	19	any questions, would it have been reasonable and
20	Q. I didn't ask you necessarily to assume	20	prudent for him to have called over to the
21	that there was swelling in the leg at the time of	21	hospital results of any of the tests that had been
22	that visit, but a history that within the previous	22	done?
23	office notes that the patient had left leg	23	MR. MURPHY: Objection; Murphy.
24	swelling earlier the week prior to January 25th,	24	A. I think if he suspected a condition
	· · · ·	1	

1		3	
	Page 50		Page 52
1	which was related to the prior hospitalization, he	1	it have been reasonable and prudent for him to
2	certainly could have could have called to	2	have called the hospital to get that information?"
3	obtain information. I don't know what day of the	3	A. I think if Dr. Dean Rich suspected
4	week it was that he saw Mrs. Speicher and whether	4	thromboembolic disease, it certainly would have
5	the record room would have been may have made	5	been reasonable to do that; however, there's
1	•		
6	things available to him, but that's another	6	nothing in the patient's presentation as listed in
7	question.	7	Dr. Dean Rich's note to indicate that is a
8	Q. Assuming that the records were	8	concern.
9	available and it wasn't a Sunday or a Saturday	9	Q. And I appreciate that looking at his
10	whereas the records might be otherwise less	10	note, and that's in large part the reason that you
11	available, would it be reasonable and prudent for	11	have said that you have no criticism of Dr. Dean
12	a family practice doctor where there was a	12	Rich, correct?
13	question as to the results of any test in a	13	A. Yes. This is the information I have to
14	patient that had persistent shortness of breath to	14	work with.
15	call over, try to get that information?	15	Q. Sure. Now, where the medical assistant
16	A. This sort of thing certainly can be	16	marks down "shortness of breath" as the chief
17	done, but we ordinarily don't do it unless there's	17	complaint, normally when a patient comes to a
18	a reason.	18	doctor's office and they mark down "chief
19	Q. Sure. Absolutely. And I take it you	19	complaint," what does that represent in lay terms?
20	have on occasion, where you're perhaps seeing	20	A. This is supposed to be the very words
21	someone on a coverage basis for someone in your	21	the patient speaks as to why they're there.
$21 \\ 22$		$\frac{21}{22}$	
	office and there's a history given about a recent		Q. Okay. And based upon everything that
23	hospitalization, whether it's a lab result or a	23	you've reviewed, are you able to balance the note
24	x-ray, you have a question as to what the results	24	of "Chief complaint, shortness of breath," against
	Page 51		
	*		Page 53
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2	were, you have on occasion called over to the hospital to get that information, correct?	1 2 3	Dr. Dean Rich's note that the shortness of breath had resolved?
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	Page 54		Page 56
1	I can respond to that is that the medical	1	origin, if you had given the type of treatment
2	assistant put down a very quick, short note. When	2	that you talked about a moment ago, including
3	Dr. Rich took the history, he got a more	3	stopping this Tenormin or giving some other
4	elaborate, more detailed, and somewhat different	4	treatment, if this was related to ongoing
5	history. And this is not uncommon.	5	pulmonary emboli, would that treatment in the
6	Q. So you're giving the benefit of the	6	office have been successful?
7	doubt to Dr. Dean Rich's note as opposed to what	7	A. It may have afforded some temporary
8	the medical assistant marked down as the chief	8	relief of symptoms, but would probably not have
9	complaint	9	altered the ultimate outcome.
10	MR. JAMISON: Objection.	10	Q. Do you have an opinion on February 1,
11	Q is that correct?	11	2001 if the patient had been admitted to the
12	À. Yes, I am.	12	hospital for further work-up to in fact rule out
13	Q. Okay. Doctor, in the context of my	13	PE whether or not a VQ scan would have been high
14	hypothetical with the patient truly having a	14	probability for PE?
15	continued shortness of breath on February 1 with	15	A. I think that very likely over 51
16	the history of rule out CHF and rule out PE, with	16	percent of VQ scan or a PE work up would have been
17	the patient also presenting with clots, how would	17	positive.
18	you have handled the patient on February 1, again	18	Q. And the Heparin would have been the
19	assuming that the shortness of breath wasn't a	19	standard treatment of choice?
20	matter of history, but it was a matter of	20	A. Yes.
21	continued presence?	21	Q. Okay. And if that had been the case,
22	MR. MURPHY: Objection; Murphy.	22	why in fact the patient was admitted with a
23	Hypothetical; I think you just asked that.	23	diagnosis of PE, do you have an opinion to a
24	MR. JAMISON: Objection.	24	reasonable degree of medical probability as to
	Page 55		Page 57
1	Q. I conceivably could have.	1	whether the patient would have survived the
2	A. I think that for a person complaining	2	effects of the pulmonary emboli?
$\overline{3}$	of shortness of breath, a simple difference in	3	MR. JAMISON: Objection; Jamison.
4	treatment would have been to use a medication to	4	A. I really am not expert enough in this
5	relieve bronchospasms, such as Albuterol, Med Neb,	5	sort of determination to have an opinion.
6	perhaps. I might have stopped the Tenormin, which	6	Q. Fair enough. Doctor, let me just check
7	is known to cause shortness of breath in some	7	my notes for a moment to see. I may be done.
8	people. There are a lot of possible approaches to	8	Before I actually try to find my notes
9	the patient with a cough and shortness of breath.	9	again, from the standpoint of why you are not
10	Q. Would PE have been within your	10	critical of Dr. Dean Rich, have we covered all the
11	differential given the history on January 25 that	11	bases upon which you are relying, to be more
12	was contained in Dr. Dean Rich's father's record?	12	specific, the office record of Dr. Patrick Rich
13	A. Knowing that the patient had been very	13	and Dr. Dean Rich and Dr. Dean Rich's deposition
14	recently in the hospital and worked up and	14	testimony?
15	admitted for PE, if I knew that, I think PE would	15	A. Yes, I think we have.
16	be rather low on my list of possibilities a week	16	Q. And again, depending upon whether my
17	later.	17	hypothetical relative to shortness of breath
18	Q. Again, you're assuming that the care	18	continuing is or is not factually accurate, that
19	provided in the hospital had been to rule out PE	19	may change your opinion in terms of what Dr. Dean
20	as opposed to overlooking the ruling on it, PE?	20	Rich should have done under the circumstances,
21	A. I suppose so, yes.	21	correct?
22	Q. Do you have an opinion, Doctor, in the	22	A. I would think that at any time my
23	fact there had been at least an index of suspicion	23	opinion could be changed by new information.
24	that that patient's symptoms were peaking in	24	Q. And again, if that new information that
		1	

1			
	Page 58		Page 60
1	I'm suggesting in the shape of a hypothetical	1	anyhow, and that had been a consideration a week
2	fashion to you is in fact what the evidence is at	2	earlier. Obviously pulmonary embolism is a
3	trial, can we agree that shortness of breath on a	3	possibility, but there are, you know a
4	continuing basis would be a factor that you would	4	collapsed lung could conceivably be, a
5	have to take into account in terms of having to	5	pneumothorax. There are several, several
6	modify your opinions?	6	possibilities when you consider shortness of
7	A. Yes. I would have to have to think	7	breath.
8	it over again. There would be many possible	8	Q. If we took two that you put at the very
9	responses to shortness of breath. Revisiting the	9	beginning of the differential, congestive heart
10	possibility of embolism was only one.	10	failure or PE, would it have been incumbent on the
11	Q. Okay. What else would it be that you	11	part of Dr. Rich, Dean Rich, in order to comply
12	would revisit?	12	with accepted standards of care to have had the
13	A. I think the cardiac status should	13	patient re-admitted to the hospital for further
14	always be an issue, and the question of	14	work-up for either or both of those conditions?
15	inflammatory lung disease, bronchitis, atypical	15	MR. MURPHY: That's your hypo, again,
16	pneumonia, and so forth, bronchiospasm certainly	16	right, Howard?
17	would need to be considered, and acute bronchitis,	17	MR. MISHKIND: Yes.
18	which is what Dr. Rich made his diagnosis.	18	MR. MURPHY: Okay.
19	Certainly it's still a possibility.	19	A. Recognizing your hypothetical
20	Q. But again, you recognize that you deal	20	situation, yes, I would.
21	with a differential in terms of those kind of	21	Q. And failing to do that, indicating my
22	things that are potentially life-threatening in	22	hypothetical, would be a deviation from accepted
23	the near term versus something that is less lethal	23	standards of practice
24	to the patient in the nearer term, correct?	24	A. Yes.
	· · · · · · · · · · · · · · · · · · ·		
1			
	Page 59		Page 61
1		1	
1	A. I'm not quite sure what you mean there.	1	Q true? Now let me take a look at my
2	<ul><li>A. I'm not quite sure what you mean there.</li><li>Q. If you have a number of explanations</li></ul>	2	Q true? Now let me take a look at my notes and I may be done, Doctor.
23	<ul><li>A. I'm not quite sure what you mean there.</li><li>Q. If you have a number of explanations for the shortness of breath, you want to look at</li></ul>	23	<ul><li>Q true? Now let me take a look at my notes and I may be done, Doctor.</li><li>A. Okay.</li></ul>
2 3 4	<ul><li>A. I'm not quite sure what you mean there.</li><li>Q. If you have a number of explanations for the shortness of breath, you want to look at the totality of those explanations and determine</li></ul>	23	<ul> <li>Q true? Now let me take a look at my notes and I may be done, Doctor.</li> <li>A. Okay.</li> <li>Q. Just a couple finishing questions. As</li> </ul>
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2 3 4 5 6	A. I'm not quite sure what you mean there. Q. If you have a number of explanations for the shortness of breath, you want to look at the totality of those explanations and determine on your differential which possible explanation is the most likely to kill the patient and which is	2 3 4 5 6	<ul> <li>Q true? Now let me take a look at my notes and I may be done, Doctor.</li> <li>A. Okay.</li> <li>Q. Just a couple finishing questions. As it relates to the care at Akron General Hospital when she presented on February the 5th, do you</li> </ul>
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1       advise Mr. Murphy before you take the stand in         2       December?         3       A. Certainly.         4       MR. MISHKIND: Okay. I think, with         5       that, I have no further questions. Thank you.         7       THE WITNESS: Thank you.         8       Reva Chafin Mundy, a Notary Public in and         9       questions.         10       MR. MUSHKIND: Obstor.         11       guestions.         12       MR. MUSHKIND: Doctor, with regard to         13       signature, do you want to read the depo?         14       THE WITNESS: Please.         15       MR. MISHKIND: All right.         16          17       Thereupon, the foregoing         18       proceedings conclude at 5:40 p.m.         19          20          21       WITNESS SIGNATURE PAGE         2       WITNESS SIGNATURE PAGE         3       I and eride and adfixed my seal of ofice at clumbus,         21       IN D E X         2       VITNESS SIGNATURE PAGE         3       I and eride of the original         4       I and adfixed my seal of ofice at clumbus,         3		Page 62		Page 64
2       December?       A. Certainly.       I. Reva Chafin Mundy, a Notary Public in and         3       A. Certainly.       I. Reva Chafin Mundy, a Notary Public in and         4       MR. MISHKIND: Okay. I think, with       first duly swort to testify to the whole truth in         7       THE WITNESS: Thank you.       first duly swort to testify to the whole truth in         9       questions.       mR. MISHKIND: Doctor, with regard to         10       MR. MISHKIND: Doctor, with regard to       signature, do you want to read the depo?         14       THE WITNESS: IPlase.       II         15       MR. MISHKIND: Doctor, with regard to       signature, do you want to read the depo?         16       Thereupon, the foregoing       at the time and place as specified on the title         17       Thereupon, the foregoing       ratiomacy of any of the parties hereto,         18       proceedings conclude at 5:40 p.m.       I         19        I         21       WITNESS SIGNATURE PAGE       IN D E X         22       In ave read the entire transcript of my       feast of Medor F. Hervig, M.D.         3       feast of Medor F. Hervig, M.D.       I         4       I have read sheet to the original       II         5       cheposition taken on November 20, 2003. The	1		1	
3       A. Certainly.       I. Reva Chafin Mundy, a Notary Public in and         4       MR. MISHKDD: Okay. I think, with       that, have no further questions. Thank you.       for the State of Ohio, do hereby certify the         6       Doctor.       for the WITNESS: Thank you.       for the State of Ohio, do hereby certify the         8       MR. JAMISON: I don't have any       me reduced to stenotypy in the whole truth in         9       questions, either.       for the State of Ohio, and Public in and the depo?         11       questions, either.       in the time and place as specified on the tile         13       signature, do you want to read the depo?       its time and place as specified on the tile         14       Thereupon, the foregoing       its time and place as specified on the tile         15       MR. MISHKIND: All right.       its for the cartify it ann tot a relative or employee of any attrice or opported any state.         16        its for the cartify its its interve or employee of any attrice of Ohio         17       Thereupon, the foregoing       its interve or office at Columbus,         18       proceedings conclude at 5:40 p.m.       its interve or office at Columbus,         19        its interve or onseries of the cartify its and and affixed my seal of office at Columbus,         22       WITNESS SIGNATURE PAGE       its Report of T	E.		2	
4       MR, MISHKIND: Okay. I think, with       4       for the State of Ohio, do horeby certify the         5       that, I have no further questions. Thank you,       5       within named THEODOR F. HERWIG, M.D. was by no to testify to the whole truth in         7       THE WITNESS: Thank you.       6       first duly swon to testify to the whole truth in         9       questions.       7       the cause aforesaid; testimony then given was by         9       questions, either.       10       MR. MISHKIND: Dotor, with regard to         12       MR. MISHKIND: Dotor, with regard to       12       at the time and place as specified on the tille         13       signature, do you want to read the depo?       14       I do further orecrity I am not a relative,         14       Thereupon, the foregoing       17       Thereupon, the foregoing       17         16        16       attorner yor counsel employed by the parties       17         17       Thereupon, the foregoing       18       hereto, or financially interested in the action.       19         10        10       IN DE X       200       200         21       21       IN D E X       21       22       223       22       22         23       WITNESS SIGNATURE PAGE       1       Rep	ŧ		3	-
5       that, I have no further questions. Thank you,       5       within named THEDODR F, HERWIG, M.D. was by r         6       Doctor.       6       first duly swom to testify to the whole much in         7       THE WITNESS: Thank you.       7       first duly swom to testify to the whole much in         8       MR. JAMISON: I don't have any       9       me reduced to stenotypy in the given was by         9       questions.       first duly swom to testify to the whole much in         10       MR. MISHKIND: Doctor, with regard to       interes, afferwards transcript of the         11       questions, either.       10       forgoing is a true and correct transcript of the         12       at the itines and place as specified on the title       page.         13       signature, do you want to read the depo?       14       I do further certify I am not a relative,         15       MR. MISHKIND: All right.       16       informed and affaced my seal of office at Columbus,         16        16       and further lam not a relative,       16         17       Thereupon, the foregoing       proceedings conclude at 5:40 p.m.       17       3       17         20        10       In Mark and affaced my seal of office at Columbus,       21         21		•	4	
6       Doctor.       6       first duly sworn to testify to the whole truth in         7       THE WITNESS: Thank you.       6       first duly sworn to testify to the whole truth in         8       MR, JAMISON: I don't have any       9       questions.       9         9       questions.       9       witness, afterwards transcripted by me; the         10       MR, MURPHY: I don't have any       10       foregoing is a true and correct transcript of the         11       testimony so given; and this deposition was taken       12       at the time and place as specified on the title         13       signature, do you want to read the depo?       14       I do further certify I am not a relative,         14       THE WITNESS: Please.       14       I do further annot a relative or employee of any         16        16       aftorte I an not a relative,       12         16        16       attorney or cousel employed by the parties         18       proceedings conclude at 5:40 p.m.       19       I WITNESS WHEREOF, I have hereunto set my         20        20       10       Not employee of any         21        21       I IN D E X       22         22       WITNESS SIGNATURE PAGE       1       I NT D E X <td>1</td> <td></td> <td>5</td> <td>within named THEODOR F. HERWIG, M.D. was by me</td>	1		5	within named THEODOR F. HERWIG, M.D. was by me
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12       MR. MISHKIND: Doctor, with regard to signature, do you want to read the depo?       12       at the time and place as specified on the title         13       signature, do you want to read the depo?       14       THE WITNESS: Please.       15         14       THE WITNESS: Please.       16        16       and further 1 am not a relative, or output of any of the parties hereto, attorney or counsel employed by the parties         16        16       and further 1 am not a relative, or output of any of the parties         17       Thereupon, the foregoing       18       hereto, or financially interested in the action.         19        10       attorney or counsel employed by the parties         20        10       IN WITNESS WHEREOF, I have hereunto set my         21       21       21       21       Ohio, on November 25, 2003.         22       23       22       23       Reva Chafin Mundy, Notary Public - State of Ohio         24       1       I N D E X       2       Examination By       Page No.         3       I have read the entire transcript of my       5       Plaintiff's Exhibit No.       Page No.         6       changes and/or corrections, if any, which I desire       7       9       4 - Letter from Dr. Dean Rich to Mr. Murphy       1	10	MR. MURPHY: I don't have any	10	foregoing is a true and correct transcript of the
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14       THE WITNESS: Please.       14       I do further certify I am not a relative,         15       MR. MISHKIND: All right.       15       employee or atroney of any of the parties hereto,         16        16       and further I am not a relative,         17       Thercupon, the foregoing       17       atformey or counsel employee by the parties         18       proceedings conclude at 5:40 p.m.       18       hereto, or financially interested in the action.         19        10       IN WITNESS WHEREOF, I have hereunto set my         20       22       20       21         23       22       22       22         24       21       No on November 25, 2003.       22         24       21       Nex Chafin Mundy, Notary Public - State of Ohio       24         24       21       I N D E X       2       Examination By       Page No.         3       I have read the entire transcript of my       4       4       10       11       I N D E X         2       WITNESS SIGNATURE PAGE       2       Examination By       Page No.       6       1 - Report of Theodor F. Herwig, M.D. 6       6       1 - Report of Theodor F. Herwig, M.D. 6       7 - Curriculum vitae of Theodor F. Herwig, M.D. 6       7 - Curriculum vitae of	12	MR. MISHKIND: Doctor, with regard to	12	at the time and place as specified on the title
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16        16       and further I am not a relative or employee of any attorney or counsel employed by the parties         18       proceedings conclude at 5:40 p.m.       17       attorney or counsel employed by the parties         19        18       hereto, or financially interested in the action.         20        19       IN WITNESS WHEREOF, I have hereunto set my         21        20          22        21          23        Ohio, on November 25, 2003.         24        23         25       WITNESS SIGNATURE PAGE       1         3       I have read the entire transcript of my       5         5       deposition taken on November 20, 2003. The       6         6       to make to my testimony have been noted on a       3         8       separate errata sheet. I request that those       6         9       changes, if any, be entered into the record by       1         10       attaching the errata sheet to the original       11         11       12       13         14        14         15       THEODOR F. HERWIG, M.D.       16         16	14	THE WITNESS: Please.	14	
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Spectrum Reporting, LLC		
333 East Stewart Avenue, Columbus, Ohio 43206 P - 614-444-1000 F - 614-444-3340		
November 25, 2003		
Theodor F. Herwig, M.D. 657 Bay Drive Westerville, Ohio 43082		
Re: Karen Armour, et al., vs. Patrick A. Rich, D.O., et al.,		
Dear Dr. Herwig:		
Enclosed you will find the transcript of your deposition taken on November 20, 2003 in the above-captioned case, which is being sent to you for the purpose of reading and signing.		
Please do not mark on the transcript. Any corrections or changes you wish to make in your testimony should be typewritten or printed on the attached errata sheet, indicating the page number, line number and desired correction or change. After you have read the transcript, sign your name where indicated at the close of the testimony.		
The Rules of Civil Procedure allow seven days after you receive this letter for you to read and sign your deposition. Please return the original signed transcript and errata sheet(s) to Spectrum Reporting, LLC within that time.		
Your prompt attention to this matter is greatly appreciated.		
Sincerely,		
Christy Heancy		
Production Manager		
ce: Howard D. Mishkind, Esq. Andrew D. Jamison, Esq. Patrick J. Murphy, Esq.		
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