

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

TRACY ANN SMITH,
ADMIN, etc.,

)

Case No. 327823

Plaintiff,

JUDGE NANCY A. FUERST

vs.

TELEPHONIC DEPOSITION

UNIVERSITY HOSPITALS
OF CLEVELAND, et al.,

OF

MARY LOUISE HLAVIN, M.D.

)

Defendants.

)

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THE TELEPHONIC DEPOSITION OF MARY

LOUISE HLAVIN, M.D., taken before Sandra K.

Glick, Certified Shorthand Reporter and Notary

Public of the State of Iowa, commencing at

11 a.m., January 5, 1999, at Suite 2100,

1351 West Central Park, Davenport, Iowa.

Reported by: Sandra K. Glick, C.S.R.

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1 MARY LOUISE HLAVIN, M D ,
2 called as a witness, having been first duly
3 sworn, testified as follows
4 MS. TOSTI' All right. Let the
5 record reflect that this is a discovery
6 deposition of Dr Mary Louise Hlavin, who is a
7 defendant in this action It's being taken by
8 telephone as a convenience to the doctor and
9 pursuant to agreement by counsel It's a
10 standard deposition in all respects, except that
11 the witness is in Iowa and she's been sworn in
12 and her deposition will be transcribed by a
13 state of Iowa court reporter that is present
14 with her Counsel for all parties participating
15 in this deposition via telephone conferencing
16 have previously identified themselves for the
17 court reporter May I have a stipulation from
18 all counsel that Ohio rules will apply and any
19 defects in notice or service are waived-
20 MR ROSMAN Yes
21 MR SIMON Yes.
22 MS CUTHBERTSON' Yes
23 MS PETRELLO No objection

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DIRECT EXAMINATION

BY MS. TOSTI:

Q. Okay, Dr. Hlavin, for the record, would you please give the court reporter your full name.

A. Mary Louise Hlavin.

Q. And what is your home address?

A. Number 2, Eagle Pointe Circle, Rapids City, Illinois 61278.

Q. And your current business address?

A. 1351 West Central Park, Suite 2100, Davenport, Iowa 52804.

Q. Are you currently employed in a professional medical group practice?

a. Yes.

Q. And what's the name of your group practice?

A. Quad City Neurosurgical Associates.

Q. I'm sorry, the beginning of that again? I didn't hear.

A. Quad City Neurosurgical Associates.

Q. And at the time that you rendered care to Patricia Smith, what was your business address?

A. University Hospitals of Cleveland.

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1 Department of Neurological Surgery, and that was
2 11100 Euclid Avenue, Cleveland, Ohio 44106.

3 Q. Now at the time that you rendered care
4 to Patricia Smith, were you an employee of a
5 professional medical group?

6 A. Yes.

7 Q. And what was the name of that medical
8 group?

9 A. University Neurosurgeons.

10 Q. Was that particular medical group
11 composed only of neurosurgeons?

12 A. Yes.

13 Q. I'm **sorry**, did you answer yes?

14 A. Yes.

15 Q. How many neurosurgeons were in that
16 group?

17 A. Four.

18 Q. It sounded like you got cut off there.
19 I don't know if you answered or not.

20 A. I'm counting. We were in flux. Seven.

21 Q. And at the time that you rendered care
22 to Patricia Smith, did you provide professional
23 services for any entities other than through
24 your professional group practice?

25 A. I'm sorry, could you repeat the

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1 question?

2 Q. At the time that you rendered care to
3 Patricia Smith, did you render professional
4 services for any other entity other than your
5 professional group practice?

6 A. Oh, no.

7 Q. And what I'm asking is if you had any
8 other employment obligations or you were doing
9 professional service for something other than
10 the group.

11 A. No.

12 Q. Have you had your deposition taken
13 before, Doctor?

14 A. Yes.

15 Q. How many times?

16 A. I don't know. Half a dozen, a dozen.

17 Q. And the times that you had your
18 deposition taken, why was it being taken? And
19 by that I mean were you a defendant, an expert
20 witness in a case?

21 A. Both.

22 Q. So you've had your deposition taken as
23 a defendant as well as a professional medical
24 expert?

25 A. Yes.

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1 Q. Have you had your deposition taken as a
2 fact witness in a case, other than the times
3 that you were rendering testimony as an expert
4 or as a defendant?

5 A. I think I've done that once too.

6 Q. Now I'm sure your attorney has gone
7 over some of the guidelines for a deposition,
8 but I'm going to repeat some of them now. This
9 is a question-and-answer session under oath, and
10 it's important that you understand the questions
11 that I'm asking you, and if you don't understand
12 them or if I've phrased them inartfully, just
13 let me know and I'll be happy to repeat the
14 question or to put it in another form that
15 hopefully you'll be able to understand.

16 Otherwise, I'm going to assume that you
17 understood my question and that you're able to
18 answer it, and you have to give all of your
19 answers verbally because our court reporter
20 can't take down any nonverbal head nods or hand
21 motions.

22 If at any time you wish to refer
23 to the medical records which I'm assuming that
24 your counsel has provided to you, please feel
25 free to do so.

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1 At some point during the
2 deposition one of the counsel that are
3 participating in this deposition may enter an
4 objection. You are still required to answer my
5 question unless your counsel tells you not to.

6 I believe that the court reporter
7 has a set of marked exhibits; is that correct?

8 A. Yes, she gave them to me.

9 Q. Okay. And those I may refer to at some
10 point in time. All of the various counsel have
11 been provided with copies of those exhibits, and
12 they've all been marked with exhibit numbers
13 just to make it a little easier to refer to the
14 **various** pages.

15 Now, Doctor, you've indicated that
16 you have been named as a defendant in previous
17 medical negligence cases; is that correct?

18 A. Yes.

19 Q. How many times have you been named as a
20 defendant?

21 MS. PETRELLO: Jeanne, this is
22 Petrello. Just have a continuing objection
23 here, but go ahead.

24 A. I don't recall the exact number. Five
25 or **six**. Seven maybe. I don't know. I don't

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<p>1 keep track of the numbers. 2 Q. Were all of those filed in Ohio? 3 A. Yes. 4 Q. And were those filed during the time 5 that you were with University Neurosurgeons? 6 A. No. 7 Q. Some of them prior to that or after 8 that? 9 A. Prior. 10 Q. And was that when you were a resident? 11 A. Yes. 12 Q. Doctor -- 13 MS. CUTHBERTSON: Show an 14 objection for Cuthbertson on that one. Go 15 ahead, Jeanne. 16 Q. Doctor, do you recall the names of any 17 of the plaintiffs in those cases? 18 A. Not off the top of my head. 19 Q. And would you tell me what the 20 allegation of negligence was in those cases? 21 MS. CUTIBERTSON: Pardon me for 22 objecting. Just show a continuing objection for 23 University Hospitals of Cleveland to the 24 continuing line of questions. Go ahead, I won't 25 make another objection on that, Jeanne.</p>	<p>1 operated on a gentleman, and he had a 2 postoperative Brown-Sequard syndrome, and the 3 family sued several months after their father 4 subsequently died, although he went home -- went 5 to rehab, went home, and then ultimately died at 6 home, but the family sued later. That case was 7 also dropped, and then I think there's this 8 case. That's all I can remember right now. 9 Q. Thank you, Doctor. 10 Have you ever had your hospital 11 privileges called into question, suspended, or 12 revoked? 13 A. No. 14 Q. What states are you currently licensed 15 to practice medicine in? 16 A. Iowa, Illinois, and I think my Ohio 17 license is still active. 18 Q. And you were licensed in Ohio at the 19 time that you rendered care to Patricia Smith, 20 correct? 21 A. Yes. 22 Q. I'm not hearing an answer. 23 A. Yes. 24 Q. I don't know if we've been cut off or 25 not.</p>
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<p>1 A. One suit was for presumed lack of 2 informed consent, and the lady didn't like the 3 appearance of her scar from her sural nerve 4 biopsy. That case was dropped. 5 In another case a lady had a 6 stroke after a cerebral angiogram, and they sued 7 because they said the stroke was due to a 8 contrast allergy, which she indeed did not have 9 and she indeed had been given informed consent 10 for her angiogram, and that suit was ultimately 11 dropped. 12 Another suit was with regards to a 13 woman who underwent a cervical spine surgery and 14 had postoperative weakness, and the residents in 15 that case were ultimately dismissed. 16 Another case was for a patient I 17 never even took care of, but somehow my name was 18 initially put by the admitting for the -- as a 19 physician of record, and it's a guy who had 20 headaches after he had -- oh, excuse me, back 21 pain after lumbar punctures after he had a 22 subarachnoid hemorrhage, and he complained 23 because of his back pain. I was dismissed from 24 that suit. 25 There was another suit in which I</p>	<p>1 A. Yes. 2 Q. Has your medical license in Ohio or any 3 other state ever been suspended, revoked, or 4 called into question? 5 A. No. 6 Q. And you've indicated that you have 7 acted as an expert in a medicolegal proceeding; 8 is that correct? 9 A. Yes. 10 Q. Would you tell me when you acted as an 11 expert -- or how many times first, let's start 12 with that? 13 A. I actually testified in a trial in 14 Texas, and I think that may have been in, I 15 don't know, '94, maybe '95. I don't recall the 16 exact year; and I've given a deposition at least 17 in one other trial as an expert witness that I 18 can recall. 19 Q. Of those two times that you can recall, 20 were you acting as an expert for a plaintiff or 21 for the defendant? 22 A. Plaintiff. 23 Q. And can you tell me what the 24 allegations of negligence were in those cases? 25 A. Failure to diagnose and treat spinal</p>

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1 epidural abscesses.
 2 Q. Doctor, what hospitals do you currently
 3 have privileges at?
 4 A. Genesis Medical Center in Davenport,
 5 Iowa; Trinity Medical Center in Illinois. It is
 6 Rock Island, Illinois; and Illini Hospital in
 7 it's either Moline or East Moline in Illinois.
 8 Q. Doctor, I would ask that you take the
 9 packet of exhibits, and if you would please look
 10 at the exhibit that's marked Number 19, which I
 11 believe is your curriculum vitae.
 12 A. Yes.
 13 Q. Okay. I'd like you to look over that
 14 copy and just tell me if that particular copy of
 15 your curriculum vitae is up-to-date and whether
 16 there are any corrections or additions that you
 17 would like to make to it.
 18 A. No, it is not up-to-date. I am no
 19 longer married. My business address is no
 20 longer with the Department of Neurological
 21 Surgery at University Hospitals. You have the
 22 new business and residential addresses. The
 23 phone numbers are no longer correct either. I
 24 have resigned my faculty appointment at Case
 25 Western Reserve University. I have several more

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1 grants that should have been -- that were
 2 awarded since this CV. I have several more
 3 articles that have been published since this CV,
 4 and several other abstracts and lectures since
 5 this CV.
 6 Q. Doctor, do any of the grants that you
 7 were awarded deal with the subject matter of
 8 coronary artery disease or sleep apnea?
 9 A. No.
 10 Q. What about meningioma?
 11 A. No.
 12 Q. And the same question as to any of the
 13 additional articles that do not appear on your
 14 curriculum vitae, do any of the articles deal
 15 with those subjects?
 16 A. No.
 17 Q. And the abstracts, same question.
 18 A. No.
 19 Q. Do you have any administrative
 20 appointments at any of the hospitals that you
 21 currently have privileges at?
 22 A. No.
 23 Q. And do you hold any appointments at
 24 Case Western Reserve University?
 25 A. No.

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1 Q. Doctor, on the first page of your
 2 curriculum vitae, you have listed a fellowship
 3 training that you did, I believe a Van Wagenen
 4 Fellowship.
 5 A. Yes.
 6 Q. Was that a neurosurgical fellowship?
 7 A. Yes.
 8 Q. And you are board certified in
 9 neurosurgery; is that correct?
 10 A. Yes.
 11 Q. Did you pass the board certification on
 12 your first try?
 13 A. Yes.
 14 Q. And are you board certified in any
 15 other specialty area?
 16 A. No.
 17 Q. What is the reason that you left your
 18 practice in Ohio and moved to Iowa?
 19 A. My ex-husband and I were divorced. He
 20 was a neurologist on staff at University
 21 Hospitals, and I no longer wished to be around
 22 him.
 23 Q. When did you relocate to Iowa?
 24 A. This September. September 1998.
 25 Q. Doctor, in regard to any of the

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1 articles that appear on your curriculum vitae,
 2 do any of those articles deal with the subject
 3 matter of meningioma?
 4 A. Under book chapters, number 5, "Benign
 5 Brain Tumors and Intracranial Lesions in the
 6 Elderly." Meningioma is one of those benign
 7 brain tumors.
 8 Q. Okay. And any of the articles deal
 9 with the subject matter of sleep apnea?
 10 A. No.
 11 Q. Have you ever participated in any
 12 research that deals with the subject matter of
 13 sleep apnea?
 14 A. No.
 15 Q. And have you ever taught or given a
 16 formal lecture on the subject matter of sleep
 17 apnea?
 18 A. No.
 19 Q. Now about in regard to meningioma?
 20 MS. PETRELLO: What, participate
 21 in lectures?
 22 Q. No, given a formal presentation or
 23 taught on the subject matter of meningioma?
 24 A. I used to do a medical student clinical
 25 lecture on brain tumors, and we would have a

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1 short discussion that involved meningiomas with
2 the third-year medical students rotating on
3 their neuroscience clinical clerkship.
4 Q. And was that particular lecture or
5 presentation ever reduced to a written form or a
6 videotape?
7 A. No.
8 Q. Doctor, would you please tell me what
9 you have reviewed in preparation for this
10 deposition.
11 A. Just my old records. Hello.
12 Q. There was something additional you
13 wanted to say?
14 A. No. I just -- you were pausing so long
15 I didn't know whether you heard me.
16 Q. Okay. Have you done any research in
17 textbooks or journals?
18 A. No.
19 Q. Have you been provided with any of the
20 records of Dr. Collins?
21 A. No.
22 Q. From the sleep lab?
23 A. No.
24 Q. Have you seen the death certificate and
25 autopsy in this case?

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1 a.No.
2 Q. And in regard to the Family Practice
3 records, I believe that there were several pages
4 that were contained in your records, but other
5 than those, have you seen the complete set of
6 Family Practice records?
7 A. No.
8 Q. Have you consulted with any physicians
9 in preparation for this deposition?
10 A. No.
11 Q. And other than with counsel, have you
12 discussed this case since it was filed with
13 anyone else?
14 A. No.
15 Q. Do you have any personal notes or a
16 personal file, other than your office records,
17 on this case?
18 A. No.
19 Q. Doctor, in your clinical practice have
20 you ever treated any patients with severe
21 obstructive sleep apnea?
22 A. Do you mean for their sleep apnea or
23 for an associated neurosurgical problem?
24 Q. Well, let's take that as a two-part
25 question. Have you ever treated any patients

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1 for severe obstructive sleep apnea?
2 A. No.
3 Q. Okay. And then the second part of that
4 question, have you treated patients where severe
5 obstructive sleep apnea was an associated
6 problem?
7 A. Yes.
8 Q. And in those patients did you manage
9 any of the care for their sleep apnea or did
10 that fall to another physician?
11 A. No, I did not care for it, and yes, it
12 did fall to the other physician.
13 Q. Okay. Doctor, do you know whether
14 severe obstructive sleep apnea can cause
15 hypoxia?
16 A. Yes.
17 Q. Is that an answer, yes, it can cause
18 hypoxia? And I'm just asking for
19 clarification.
20 MR. SIMON Note my objection.
21 John Simon.
22 Q. Let me rephrase the question because
23 I'm not understanding what you're answering yes
24 to. Can severe obstructive sleep apnea cause
25 hypoxia?

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1 A. Yes.
2 Q. And does hypoxia lower the threshold
3 for seizures?
4 A. Yes.
5 Q. And can severe obstructive sleep apnea
6 cause hypoxic seizures?
7 A. I don't know.
8 Q. To your knowledge, are there any
9 life-threatening complications associated with
10 severe obstructive sleep apnea?
11 A. Yes.
12 Q. And could you tell me what those are?
13 A. Death.
14 Q. I would ask that you tell me what they
15 are.
16 A. I just did. Death.
17 MS. PETRELLO: Death.
18 Q. You're cutting in and out here. I
19 believe your answer is yes?
20 A. No, no. My answer to the question you
21 said are there -- my answer to the question was
22 death was the complication that can be
23 associated.
24 Q. I thought you said yes. You said
25 death?

<p style="text-align: right;">Page 22</p> <p>1 A. I said death.</p> <p>2 Q. Okay, thank you.</p> <p>3 Doctor, is there a textbook in</p> <p>4 your particular field of practice that you</p> <p>5 consider to be the best or the most reliable?</p> <p>6 A. No.</p> <p>7 Q. Are there any you refer to on a regular</p> <p>8 basis in your practice?</p> <p>9 A. Yes.</p> <p>10 Q. Would you tell me what textbook or</p> <p>11 textbooks those are?</p> <p>12 A. Youmans Textbook of Neurological</p> <p>13 Surgery. That's Y-o-u-m-a-n-s. Wilkins and</p> <p>14 Rengachary Neurosurgery. There are many others.</p> <p>15 Q. Do you consider either of those</p> <p>16 authoritative?</p> <p>17 A. Yes.</p> <p>18 Q. Doctor, what is a grand mal seizure?</p> <p>19 A. It refers to a seizure in which a</p> <p>20 patient loses consciousness and has tonic-clonic</p> <p>21 activity of the extremities and is often</p> <p>22 associated with tongue biting and incontinence.</p> <p>23 Q. And is a term used to refer to grand</p> <p>24 mal seizures, is the term "generalized seizure,"</p> <p>25 is that synonymous?</p>	<p style="text-align: right;">Page 24</p> <p>1 meningioma have any implications for the</p> <p>2 patient?</p> <p>3 A. Yes.</p> <p>4 Q. And what about the location?</p> <p>5 A. Yes.</p> <p>6 Q. And if a calcified meningioma is going</p> <p>7 to cause problems for the patient, what type of</p> <p>8 signs or symptoms might you see?</p> <p>9 A. Patient might have headaches, they</p> <p>10 might have seizures, they might have a</p> <p>11 neurologic deficit. That is to say they might</p> <p>12 have some weakness, they might have some</p> <p>13 numbness and tingling, they might have visual</p> <p>14 loss, they might have unsteadiness. It all</p> <p>15 depends upon where the tumor is located and what</p> <p>16 structures it's pressing on.</p> <p>17 Q. And when a calcified meningioma causes</p> <p>18 symptoms, all of the ones you just mentioned,</p> <p>19 are seizures one of the frequent things that you</p> <p>20 see occurring?</p> <p>21 A. Common.</p> <p>22 Q. And what is the treatment, if treatment</p> <p>23 is in order, for a patient with a calcified</p> <p>24 meningioma?</p> <p>25 A. Well, that all goes back to the size,</p>
<p style="text-align: right;">Page 23</p> <p>1 A. No.</p> <p>2 Q. Is there a difference between those two</p> <p>3 terms that you can describe for me?</p> <p>4 A. A generalized seizure would refer to</p> <p>5 one that involves the whole brain, but it might</p> <p>6 not necessarily involve tonic-clonic activity of</p> <p>7 the extremities.</p> <p>8 Q. What is a calcified meningioma?</p> <p>9 A. Well, a meningioma is a tumor of the</p> <p>10 sac that covers the brain, the meninges, and a</p> <p>11 calcified meningioma is one that has calcium</p> <p>12 deposits in it.</p> <p>13 Q. And in regard to a patient's state of</p> <p>14 health, what's the significance of a calcified</p> <p>15 meningioma?</p> <p>16 A. Could you clarify that question a</p> <p>17 little bit more?</p> <p>18 Q. Does a calcified meningioma have any</p> <p>19 clinical significance to the patient?</p> <p>20 A. Not necessarily. It depends upon the</p> <p>21 tumor.</p> <p>22 Q. So some may have and some may not,</p> <p>23 would that be correct?</p> <p>24 A. That is correct.</p> <p>25 Q. Okay. Does the size of a calcified</p>	<p style="text-align: right;">Page 25</p> <p>1 the location, the patient's age, the patient's</p> <p>2 medical condition, and their symptoms. In some</p> <p>3 patients you might not do anything, in some</p> <p>4 patients -- except observe it. In other</p> <p>5 patients they might require surgery. Other</p> <p>6 patients might get treated with specialized</p> <p>7 forms of radiation. So it varies from person to</p> <p>8 person.</p> <p>9 Q. Doctor, would you agree that in order</p> <p>10 to treat somebody with seizures effectively,</p> <p>11 it's important to know what's causing the</p> <p>12 seizures?</p> <p>13 MS. PETRELLO: Petrello.</p> <p>14 Objection.</p> <p>15 MR. SIMON Objection for Simon.</p> <p>16 A. Not necessarily.</p> <p>17 Q. So you don't believe it's important to</p> <p>18 know what causes the seizures when you are</p> <p>19 treating a patient?</p> <p>20 A. I don't think that was the question you</p> <p>21 asked.</p> <p>22 Q. Well, I'll repeat my question. Would</p> <p>23 you agree that in order to treat seizures</p> <p>24 effectively it's important to know what's</p> <p>25 causing the seizures.</p>

<p style="text-align: right;">Page 26</p> <p>1 MS. PETRELLO. Objection. 2 Petrello. 3 A. You can treat seizures and cure 4 seizures without ever knowing what caused them. 5 However, I would say that it is very important 6 to try and find an etiology for the seizures, 7 but they can be treated, and in fact cured, 8 without ever knowing what caused it. 9 Q. Do you have an independent recollection 10 of Patricia Smith as you sit here today, aside 11 from what you have reviewed in the medical 12 records? 13 A. Yes. 14 Q. When is the first time that you 15 rendered care to Patricia Smith? 16 A. It looks like December 7th, 1995. 17 Q. And how many times did you see her? 18 A. I believe two. 19 Q. How is it that she came under your 20 care? 21 A. She was referred to me by her 22 physician. 23 Q. And who made that referral? 24 A. I believe it was Dr. Rowane, or someone 25 from Dr. Rowane's office.</p>	<p style="text-align: right;">Page 28</p> <p>1 visit? 2 A. Well, it looks like -- she had a what 3 was -- that she possibly had actually several 4 seizures, one on October 5th in which she had 5 spasms of her body, and then it looks like one 6 month earlier she had an episode after drinking 7 some champale and then took some cough medicine, 8 and her daughter went to wake her up and she had 9 trouble waking up, and she, I believe -- I can't 10 recall whether she went to an emergency room at 11 that time and had a CAT scan, but then was 12 subsequently treated, seen and treated by 13 Dr. Rowane and Dr. Collins, and was therefore 14 referred to me for evaluation of a possible 15 lesion seen on her CAT scan. 16 Q. So the patient or her family described 17 to you two episodes; is that correct? 18 A. I believe so. 19 Q. And, Doctor, I'd like you to look at 20 Plaintiff's Exhibit Number 1, which I believe is 21 the first page of your office notes. 22 A. Yes. 23 Q. You have on about the third line down, 24 I believe it says, "4 or 5 a.m." Do you see 25 that?</p>
<p style="text-align: right;">Page 27</p> <p>1 Q. When the referral was made, did you 2 receive any information about Patricia Smith? 3 A. I don't know the answer to that 4 question. 5 Q. Did you talk to Dr. Rowane any time 6 prior to the time that you saw Patricia Smith? 7 A. I don't think so. 8 Q. And do you recall talking to anyone 9 from the Family Practice Center prior to the 10 visit with Patricia Smith? 11 A. I don't recall that. 12 Q. Did you speak to Dr. Collins at all 13 before you saw Patricia Smith? 14 A. I don't recall doing that. 15 Q. Did anyone accompany Patricia Smith to 16 her office visit with you on December 7th of 17 1995? 18 A. She was accompanied, and I think it's 19 both times, by family members, and I can't 20 recall whether it was sisters or her mother, but 21 she had family members with her. 22 Q. And in regard to the information that 23 you had about her, what information were you 24 provided either by the patient or other sources 25 about the episodes that she had for that first</p>	<p style="text-align: right;">Page 29</p> <p>1 A. Yes. 2 Q. Is that referring to the episode that 3 occurred on October 5th, or is that the previous 4 episode one month earlier? 5 A. No, I think that's referring to -- the 6 way I interpret my notes is that was the episode 7 one month earlier, but I don't recall. 8 Q. Okay. Doctor, were you told that each 9 of these episodes occurred when Patricia Smith 10 was lying down sleeping or napping? 11 A. I don't recall. 12 Q. And the notation that you have, "spasms 13 of the body," what does that refer to? 14 A. Their description -- the family's 15 description of the seizure or the episode. 16 Q. Did they give you any additional 17 information as to exactly what those spasms 18 looked like? 19 A. Don't recall. 20 Q. Wow, at the time that you saw Patricia 21 Smith on December 7th, did you have the results 22 from any diagnostic tests to use in your 23 evaluation? 24 A. I don't know whether I got this 25 information before or after I had actually seen</p>

<p style="text-align: right;">Page 30</p> <p>1 and evaluated the patient. It's very well 2 possible that when I saw her the group had -- 3 the Family Practice group had not sent me the 4 information and therefore after I saw her I 5 requested information, or had my secretary 6 request information from them. 7 Q. Okay. Doctor, I'd like you to take a 8 look at Plaintiff's Exhibit number 6. 9 A. Okay. 10 Q. And if you could just identify that 11 document for me, what it is. 12 A. It looks like a letter summarizing my 13 office visit with Patricia to Dr. Rowane. 14 Q. And the date on that letter? 15 A. December 7th. 16 Q. And that would have been written on the 17 same day that you saw Patricia Smith, correct? 18 A. Usually I do it the same day. 19 Q. Now, in that particular letter, if you 20 would like to just scan through it because I 21 believe you refer to some diagnostic tests 22 there, and I'd just like you to refresh your 23 memory by reading over what you wrote. 24 A. All right. 25 Q. Now, at the time that you saw Patricia</p>	<p style="text-align: right;">Page 32</p> <p>1 did you find? 2 A. The scan did not appear to be normal, 3 but I was not sure whether it represented a 4 small meningioma, calcified meningioma, or 5 whether it represented some hyperostosis or some 6 thickening of the skull, some focal thickening 7 of the skull, and I suggested that the patient 8 undergo an MRI scan of the brain and take things 9 from there. 10 Q. Her electroencephalogram, the EEG, was 11 normal based upon the report; is that correct? 12 A. That's what the report said, I believe. 13 Q. Doctor, in your letter to Dr. Rowane of 14 December 7th, which is Plaintiff's Exhibit 15 Number 6, you indicate that review of the 16 patient's EEG revealed a normal EEG, correct? 17 A. Yes. 18 Q. And in regard to your neurological exam 19 that you did on her, that also was normal; is 20 that correct? 21 A. Yes. 22 Q. At the time that you saw her on 23 December 7th, did you Rave an opinion as to what 24 was causing her seizures? 25 A. I don't recall.</p>
<p style="text-align: right;">Page 31</p> <p>1 Smith, did you have either -- close to the time 2 of the office visit or immediately after, did 3 you have any diagnostic test results to help you 4 in your evaluation? 5 A. Well, at the time I wrote the letter, 6 which may have been at the end of the day, I 7 probably did have the information from 8 Dr. Rowane's office because I refer to the 9 results from the EEG, which I would not have 10 personally read or interpreted. And as far as 11 the CAT scan goes, I can't recall -- usually my 12 secretary -- usually I would have looked at the 13 scans myself because they are available through 14 the radiology department. So I would not 15 necessarily have relied on the report from the 16 radiologist. 17 Q. And once you had completed your 18 evaluation of Patricia Smith and had an 19 opportunity to look at diagnostic studies, what 20 were your clinical findings? 21 A. What do you mean by that? What did 22 I -- 23 Q. What was your evaluation after you got 24 done looking at the diagnostic studies, as well 25 as your own examination of Patricia Smith? What</p>	<p style="text-align: right;">Page 33</p> <p>1 Q. What was within your differential 2 diagnosis on December 7th? 3 A. I don't recall. 4 Q. Doctor, based on the information that 5 you had available on December 7th of 1995, would 6 it be fair to say that you were unable to rule 7 out that what was seen on the CT and MRI may 8 merely be due to skull bone growth rather than 9 tumor? Would that be a fair statement? 10 A. Yes. 11 Q. Doctor, if the area on the imaging 12 studies was due to focal thickening of the 13 skull, would that be considered a normal 14 variation? 15 A. Yes. 16 Q. And if this was just focal thickening 17 of the skull, it would not likely be a cause of 18 seizures, correct? 19 A. Correct. 20 Q. Now you indicated that your plan of 21 care was to have her undergo a contrasted MRI, 22 correct? 23 A. Yes. 24 Q. And you then arranged for her to 25 undergo a contrasted MRI; is that correct?</p>

<p style="text-align: right;">Page 34</p> <p>1 A. Yes.</p> <p>2 Q. Okay. Once that particular diagnostic</p> <p>3 study was done, did you look at the actual films</p> <p>4 yourself?</p> <p>5 A. I believe I did.</p> <p>6 Q. And what results did you find on the</p> <p>7 contrasted MRI?</p> <p>8 A. There was no enhancement of the lesion</p> <p>9 which weighed against the meningioma, or should</p> <p>10 I say weighed against it being a meningioma.</p> <p>11 However, I believe it looked distinct from the</p> <p>12 normal skull, and therefore I thought that it</p> <p>13 most likely was a meningioma, but I still could</p> <p>14 not rule out the possibility that it was</p> <p>15 hyperostosis of the inner table of the skull.</p> <p>16 Q. Okay. After you saw Patricia Smith on</p> <p>17 December 7th, you then saw her once again; is</p> <p>18 that correct?</p> <p>19 A. Yes.</p> <p>20 Q. And that was on I believe January 5th</p> <p>21 of 1996?</p> <p>22 A. Yes.</p> <p>23 Q. And what was the reason that you saw</p> <p>24 her on that particular visit?</p> <p>25 A. To review her MRI scan with her.</p>	<p style="text-align: right;">Page 36</p> <p>1 Q. Which was January 5th of 1996, correct?</p> <p>2 A. 5th, yes.</p> <p>3 Q. In your letter to Dr. Rowane, about the</p> <p>4 third line from the bottom, I believe it says,</p> <p>5 "I am concerned the patient may be suffering</p> <p>6 from sleep apnea." Do you see that reference?</p> <p>7 A. Yes.</p> <p>8 Q. Why were you concerned for this</p> <p>9 patient?</p> <p>10 A. Because she was having all these</p> <p>11 symptoms that she was suffering from and that I</p> <p>12 didn't think were related to either her brain</p> <p>13 tumor or the seizures, and I thought that she</p> <p>14 had a treatable disorder that could help her for</p> <p>15 her symptoms.</p> <p>16 Q. If she had sleep apnea, would that</p> <p>17 place her at increased risk for seizures?</p> <p>18 MS. PETRELLO: Objection.</p> <p>19 Petrello.</p> <p>20 A. I will defer to an expert in sleep</p> <p>21 apnea on that. I don't know the answer to that</p> <p>22 question.</p> <p>23 Q. Doctor, if Patricia Smith was having</p> <p>24 oxygen desaturations down to 60 percent from</p> <p>25 sleep apnea, could that trigger seizure</p>
<p style="text-align: right;">Page 35</p> <p>1 Q. And at that visit did you obtain any</p> <p>2 additional clinical information from the</p> <p>3 patient?</p> <p>4 A. She stated that she was feeling tired,</p> <p>5 sleeping while on the phone, snoring at night.</p> <p>6 She had had no further frank seizure episodes.</p> <p>7 Q. And did you make any type of a</p> <p>8 differential diagnosis at that visit?</p> <p>9 A. Well, as I said, I thought that she</p> <p>10 could very well still have a meningioma, and it</p> <p>11 may have been producing a seizure disorder in</p> <p>12 her, but it sounded as though she was having</p> <p>13 additional symptoms which I thought might</p> <p>14 represent sleep apnea, and apparently she had</p> <p>15 already been scheduled for a sleep study by</p> <p>16 Dr. Rowane, and therefore I deferred treatment</p> <p>17 of that to him and management of the seizures to</p> <p>18 Dr. Collins.</p> <p>19 Q. Okay. I would like you to refer to</p> <p>20 Plaintiff's Exhibit Number 7.</p> <p>21 A. Yes.</p> <p>22 Q. And if you would please identify what</p> <p>23 Plaintiff's Exhibit Number 7 is.</p> <p>24 A. It's a letter to Dr. Rowane detailing</p> <p>25 my office visit with Patricia Smith on that day.</p>	<p style="text-align: right;">Page 37</p> <p>1 activity?</p> <p>2 MS PETRELLO: Objection.</p> <p>3 Petrello.</p> <p>4 MR. SIMON: Objection. Simon.</p> <p>5 A. I don't know.</p> <p>6 Q. Did you discuss sleep apnea with</p> <p>7 Patricia Smith at all when she visited you on</p> <p>8 January 5th?</p> <p>9 A. Obviously I must have since I</p> <p>10 encouraged her to proceed with the sleep study,</p> <p>11 but I have no other recollection beyond that.</p> <p>12 Q. Do you know how it is that you became</p> <p>13 aware that she was scheduled for a sleep study?</p> <p>14 A. I assume through my patient, the</p> <p>15 conversation with the patient and her mother.</p> <p>16 Q. Did you have any responsibility for</p> <p>17 following up on the results of that sleep study?</p> <p>18 A. No.</p> <p>19 Q. And do you know who was responsible for</p> <p>20 following up on the sleep study results?</p> <p>21 A. No.</p> <p>22 MR. ROSMAN: Objection. Rosman.</p> <p>23 A. No.</p> <p>24 Q. Did you ever review the report from</p> <p>25 Patricia Smith's sleep study?</p>

<p style="text-align: right;">Page 38</p> <p>1 A. No.</p> <p>2 Q. And did Dr. Rowane or Dr. Collins or</p> <p>3 Dr. Brooks ever discuss the results of Patricia</p> <p>4 Smith's sleep study with you?</p> <p>5 A. No.</p> <p>6 Q. Did you ever talk to Dr. Rowane or</p> <p>7 Dr. Collins about the fact that you were</p> <p>8 concerned that she was having problems with</p> <p>9 sleep apnea? And I'm referring to a</p> <p>10 discussion rather than a letter that you sent to</p> <p>11 Dr. Rowane.</p> <p>12 A I don't recall.</p> <p>13 Q. Did you discuss it with him or with</p> <p>14 Dr. Collins?</p> <p>15 A. Don't recall.</p> <p>16 Q. Okay. If Patricia Smith had a</p> <p>17 calcified meningioma, what would be indicators</p> <p>18 that she would need surgery?</p> <p>19 A. If she was suffering a neurologic</p> <p>20 deficit from it, if it was rapidly growing and</p> <p>21 could potentially cause her problems in the</p> <p>22 future.</p> <p>23 Q. Okay. Doctor, are you aware that no</p> <p>24 tumor or calcified meningioma was found on</p> <p>25 autopsy of Patricia Smith's brain by the</p>	<p style="text-align: right;">Page 40</p> <p>1 MR. ROSMAN: Rosman. Objection.</p> <p>2 MR. SIMON Simon also objection.</p> <p>3 A. No opinion.</p> <p>4 Q. Doctor, you did a Dilantin level on</p> <p>5 Patricia Smith when she visited you on January</p> <p>6 5th of 1996; is that correct?</p> <p>7 A. Yes.</p> <p>8 Q. And do you have the results of that</p> <p>9 particular Dilantin level in your records?</p> <p>10 A. Yes.</p> <p>11 Q. Was her Dilantin level at a therapeutic</p> <p>12 Bevel when you saw her?</p> <p>13 A. No.</p> <p>14 Q. Okay. If her Dilantin level was not</p> <p>15 within the therapeutic range, would it be likely</p> <p>16 to control seizures?</p> <p>17 MS. PETRELLO: Objection.</p> <p>18 Petrello.</p> <p>19 MS. CUTHBERTSON Object to form.</p> <p>20 Cuthbertson.</p> <p>21 A. Less likely, but not necessarily</p> <p>22 nontherapeutic.</p> <p>23 Q. I'm sorry, I didn't hear the beginning</p> <p>24 part of your answer.</p> <p>25 A. Yes, it would be less likely to control</p>
<p style="text-align: right;">Page 39</p> <p>1 Cuyahoga County coroner?</p> <p>2 A. Yes.</p> <p>3 Q. And how did you become aware of that</p> <p>4 fact?</p> <p>5 A. I heard about it about five minutes</p> <p>6 before the deposition through the counsel.</p> <p>7 Q. Okay. You do not have to testify as to</p> <p>8 any conversations that you had with counsel.</p> <p>9 A. Oh, okay.</p> <p>10 Q. Doctor, I'd like you to assume that the</p> <p>11 autopsy of the brain performed by the Cuyahoga</p> <p>12 County coroner found no tumor or evidence of</p> <p>13 calcified meningioma and that Patricia Smith's</p> <p>14 sleep study showed her to be having severe</p> <p>15 obstructive sleep apnea with oxygen</p> <p>16 desaturations falling to 60 percent during</p> <p>17 sleep, and that the two seizure episodes that</p> <p>18 she had occurred while she was lying down</p> <p>19 sleeping or napping, and assuming those facts to</p> <p>20 be true, do you have an opinion as to whether</p> <p>21 her seizures were likely due to sleep apnea?</p> <p>22 MS. PETRELLO: Petrello.</p> <p>23 Objection.</p> <p>24 MS. CUTHBERTSON: Object to form.</p> <p>25 Cuthbertson.</p>	<p style="text-align: right;">Page 41</p> <p>1 seizures than if it were in a higher range.</p> <p>2 Q. And when you found that her Dilantin</p> <p>3 was not within a therapeutic level, did you take</p> <p>4 any action?</p> <p>5 MS. PETRELLO: Objection. Just</p> <p>6 she's already testified she wasn't following her</p> <p>7 for the seizures. This is Petrello. Go ahead,</p> <p>8 Doctor.</p> <p>9 A. What I generally -- I don't have</p> <p>10 specific recollection of this, but what I</p> <p>11 generally would have done in situations like</p> <p>12 this is to notify the treating physician, i.e.,</p> <p>13 Dr. Collins.</p> <p>14 Q. To your knowledge, was Dr. Collins the</p> <p>15 one that would be managing her from a medical</p> <p>16 perspective in regard to the seizures?</p> <p>17 A. Yes.</p> <p>18 Q. And why is it then that you did the</p> <p>19 therapeutic levels on the Dilantin rather than</p> <p>20 just allowing Dr. Collins to take care of that?</p> <p>21 A. Don't recall.</p> <p>22 Q. After you saw her on January 5th of</p> <p>23 1996, did you do any further follow-up with her?</p> <p>24 A. No.</p> <p>25 Q. And in regard to what you thought was a</p>

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1 calcified meningioma, what was the plan of care
2 in regard to that?
3 MS. PETRELLO: Jeanne, that wasn't
4 her testimony. This is Petrello. I don't think
5 she ever said for sure whether or not she had a
6 calcified meningioma.
7 Q. Well, let me rephrase my question
8 then.
9 After you saw her on January 5th
10 of 1996, what was your plan of care for her?
11 A. The plan was to observe the cranial
12 lesion with serial head CT scans.
13 Q. And how often would those be done?
14 A. At a six-month period of time for the
15 initial year.
16 Q. And how is it that you learned of
17 Patricia Smith's death?
18 A. I can't remember.
19 Q. Did you learn of her death before this
20 case was filed?
21 A. I don't remember.
22 Q. After Patricia Smith died, did you
23 speak to any of the family members?
24 A. I don't remember. I don't think so.
25 Q. Did you have any conversations with

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1 Dr. Rowane, Dr. Collins, or Dr. Brooks after
2 Patricia Smith's death in regard to her care?
3 A. No.
4 Q. Do you have an opinion as to what
5 caused Patricia Smith's death?
6 A. No.
7 Q. Let me just look over my notes here for
8 a second.
9 Do you have an opinion as to
10 whether Patricia Smith received appropriate
11 follow-up for obstructive sleep apnea?
12 MS. CUTHBERTSON Object.
13 Cuthbertson.
14 MR. ROSMAN: Objection. Rosman.
15 MS. PETRELLO: Petrello too.
16 MR. SIMON: Simon also.
17 A. No.
18 Q. I'm just looking over my notes so give
19 me a second. We're almost done here as far as
20 the questions that I have.
21 Do you have an opinion if Patricia
22 Smith had received successful treatment for
23 coronary artery occlusion and obstructive sleep
24 apnea as to her reasonable life expectancy?
25 MS CUTHBERTSON. Object.

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1 Cuthbertson.
2 MS. PETRELLO: Petrello too.
3 MR. ROSMAN: Objection Rosman.
4 MR SIMON Simon also.
5 A. No.
6 Q. Do you blame Patricia Smith in any way
7 for her own death?
8 A. Yes.
9 Q. And what is the basis of your opinion?
10 A. She was morbidly obese.
11 Q. Okay. Doctor, I believe you just
12 testified that you had no opinion as to her
13 cause of death. So I will ask --
14 A. I don't know what caused her death, but
15 certainly morbid obesity puts people at risk for
16 a shorter lifespan.
17 Q. Okay. And is it your opinion then that
18 her morbid obesity was a contributor to her
19 death?
20 A. Possibly.
21 Q. And I'm going to ask my question again
22 then. Do you have an opinion as to her cause of
23 death?
24 A. No. I don't know what caused her
25 death, but her morbid obesity may have

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1 contributed to a number of the factors that
2 could have caused her death.
3 Q. Are you critical of the care rendered
4 to Patricia Smith by any healthcare providers?
5 A. I have no opinion on that.
6 Q. Okay. Doctor, have we discussed all
7 the opinions that you presently have relative to
8 this case that you feel are pertinent?
9 MR. ROSMAN: Objection. Rosman.
10 MS. PETRELLO: I'll object to that
11 too. This is Petrello. It's not a very clear
12 question, but go ahead.
13 A. I think I've said everything I want to
14 say.
15 Q. Okay. Doctor, if there's any new
16 opinions that you have between now and trial
17 that are pertinent to this case, I would ask
18 that you inform your counsel so that she could
19 let me know about it, and I would reserve the
20 right to continue your deposition relative to
21 anything new that you should wish to express an
22 opinion on. Otherwise, I have no further
23 questions. However, some of the other defense
24 counsel may have questions for you, and I'll
25 turn that over to whoever would like to

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1 proceed.

2 MR. ROSMAN: Yes, this is Warren
3 Rosman. Miss Tosti, I'm going to object to your
4 last comment. Dr. Hlavin is not testifying as
5 an expert. Whether she gains some opinion
6 between now and whenever is of no matter to you,
7 me, or whomever. She is a defendant here and is
8 basically a fact witness. She is not an expert
9 witness and doesn't have to tell her expert
10 opinions unless specifically asked, and you've
11 just had your opportunity to ask her, and she
12 told you she had no expert opinions.

13 MS. PETRELLO: And this is
14 Petrello. I will vehemently agree with that.
15 Whether she has opinions, she is not an expert,
16 she is a defendant in this matter, and whatever
17 she may think relative to her care is her --
18 what's the word I want -- well, whatever.
19 Bottom line is she's not an expert and by expert
20 reports that's going to criticize her care, I'm
21 sure she will very much have opinions, and to
22 the extent that you want to ask her any
23 questions, this is your opportunity to do so.

24 MS. TOSTI: And again I would on
25 the record reserve my right if the Doctor does

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1 intend to express medical opinions that go
2 beyond the care that she rendered, then I would
3 expressly request that counsel inform me, and I
4 reserve the right to continue her deposition to
5 any new opinions that she has relative to things
6 outside of the care that she rendered. And with
7 that, I will turn this over to whoever wishes to
8 continue the deposition.

9 MR. ROSMAN: This is Warren
10 Rosman. I have no questions.

11 MS. CUTHBERTSON. Cuthbertson. No
12 questions.

13 CROSS-EXAMINATION
14 BY MR. SIMON:

15 Q. Dr. Hlavin, this is John Simon. As I
16 indicated before, I represent Dr. Rowane. I
17 just have one or two questions for you.

18 In listening to your testimony
19 here today, is it fair to say that you don't
20 consider yourself an expert in the field of
21 sleep apnea?

22 A. That's very fair to say.

23 Q. In addition to that, would you defer to
24 an expert on sleep apnea with respect to some of
25 those questions that plaintiff's counsel has

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1 asked you during the course of this deposition?

2 A. Yes.

3 MR. SIMON: Thank you, Doctor. I
4 have nothing further.

5 MS. TOSTI: I have no further
6 questions. This is Jeanne Tosti.

7 MS. PETRELLO: Okay. This is
8 Petrello. Doctor, you have the right to read
9 this. I'm going to suggest to you that we get
10 this written up and you read it, and, Jeanne, if
11 you'll waive the seven days.

12 MS. TOSTI: Yes.

13 MS. PETRELLO: Okay. If there's
14 nothing else, then, Doctor, we'll hang up, and
15 I'll call you back in about 30 seconds.

16 THE WITNESS: Okay.

17 (Deposition concluded at 12:10p.m.)

18

19 The deposition of Mary Louise
Hlavin, M.D., is now complete. When
transcribed, the original of the deposition
shall be given to Ms. Jeanne M. Tosti. The
original exhibits shall be distributed as
follows. Originals of Exhibits 1 through 19,
inclusive, were attached to the original
deposition which was given to Ms. Tosti.

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(UNLESS OTHERWISE DIRECTED BY
1 COUNSEL OR THE PARTIES HERETO, THE STENOGRAPHIC
NOTES FOR THE FOREGOING DEPOSITION SHALL BE
2 DESTROYED AFTER A PERIOD OF 3 YEARS FROM THE
3 DATE OF TAKING OF SAID DEPOSITION.)

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