

1 IN THE COURT OF COMMON PLEAS
2 OF CUYAHOGA COUNTY, OHIO

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4 GERALDINE MEDLEN,
5 Plaintiff,

6 vs Case No. 425998

7 KAISER PERMANENTE MEDICAL
8 CENTER, et al.,

9 Defendants.

10 - - - - -

11 DEPOSITION OF NANCY J. HOLMES, PA-C
12 FRIDAY, OCTOBER 12, 2001

13 - - - - -

14 Deposition of NANCY J. HOLMES, PA-C, a
15 Witness herein, called by counsel on behalf of
16 the Plaintiff for examination under the statute,
17 taken before me, Vivian L. Gordon, a Registered
18 Diplomate Reporter and Notary Public in and for
19 the State of Ohio, pursuant to agreement of
20 counsel, at the offices of Kaiser Permanente
21 Medical Center, 12301 Snow Road, Parma, Ohio,
22 commencing at 10:30 o'clock a.m. on the day and
23 date above set forth.

24
25

1 APPEARANCES:

2 On behalf of the Plaintiff

3 Becker & Mishkind

4 HOWARD D. MISHKIND, ESQ.

5 660 Skylight Office Tower

6 Cleveland, Ohio 44113

7 216-241-2600

8

9 On behalf of the Defendants

10 Reminger & Reminger

11 MARILENA DiSILVIO, ESQ.

12 The 113 St. Clair Building

13 Cleveland, Ohio 44114

14 216-687-1311

15

16 ALSO PRESENT:

17 Erin Hess

18 Desiree Kies

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1 NANCY J. HOLMES, PA-C, a witness herein,
2 called for examination, as provided by the Ohio
3 Rules of Civil Procedure, being by me first duly
4 sworn, as hereinafter certified, was deposed and
5 said as follows:

6 EXAMINATION OF NANCY J. HOLMES, PA-C
7 BY MR. MISHKIND:

8 Q. Would you please state your name.

9 A. Nancy Holmes.

10 Q. May I call you Nancy?

11 A. Yes, you may.

12 Q. My name is Howard Mishkind and I
13 represent the Medlen family. I'm going to be
14 asking you some questions today concerning your
15 employment as well as your involvement in the
16 care of Mrs. Medlen. Fair enough?

17 A. Yes.

18 Q. If I ask you anything that for
19 whatever reason is unclear -- although Marilena
20 will tell you that I always ask clear
21 questions -- but in the unlikely event I ask you
22 something that is not clear, tell me, Howard, I
23 don't understand what you are asking me, and I
24 will try to rephrase it. If I can't, I will
25 have Vivian read it back to you or we will start

1 over again. Okay?

2 A. Okay.

3 Q. Contrary to popular belief, my intent
4 is not to trick you, it's to find out as much as
5 I can about your involvement in this case as we
6 are gathering facts which ultimately will be of
7 assistance to both sides at the time of trial.
8 Okay?

9 A. Yes.

10 Q. Let me give you a couple requests, as
11 well. One of them is to make sure that you
12 answer verbally so that Vivian doesn't have to
13 strain her head to see whether the uh-huh or
14 uh-ugh is a yes or no. Okay?

15 A. I understand.

16 Q. I will not cut you off if you are
17 giving an answer. I will let you finish your
18 answer.

19 I would also ask the same of you;
20 wait until I finish my question; more
21 importantly so that you understand what I'm
22 asking, okay?

23 A. Yes.

24 Q. I found so many times that people
25 will start answering because they are anxious

1 and they wind up giving an answer to something
2 that wasn't even the question. Okay?

3 A. Yes.

4 Q. Have you had your deposition taken
5 before?

6 A. No.

7 Q. I suspected that. As you were
8 listening to me, your eyes were wide open and
9 you were listening, so I suspected that you had
10 not had your deposition taken before.

11 A. No, I haven't.

12 Q. So these rules are even more
13 important for you as it relates to this matter.

14 A. Yes.

15 Q. I was provided with a document by the
16 attorneys from Kaiser that we are going to mark
17 as Plaintiff's Exhibit 1. We will go off the
18 record, put the exhibit sticker on it, and I'll
19 hand it to you.

20 - - - - -

21 (Thereupon, HOLMES Deposition
22 Exhibit 1 was marked for
23 purposes of identification.)

24 - - - - -

25 Q. I'm going to show you what has been

1 marked for identification as Plaintiff's
2 Exhibit 1. Can you tell me what that is?

3 A. My resume.

4 Q. Is it current?

5 A. Not really. I don't work at Lakewood
6 Hospital anymore. That's probably the only
7 thing that's different. And it doesn't have --
8 this was what I handed in before I started here
9 on my initial application, so Kaiser is not on
10 here.

11 Q. Fair enough. How long have you been
12 working at Kaiser?

13 A. Since April of '99.

14 Q. Prior to April of '99, you worked at
15 Lakewood Hospital?

16 A. Correct.

17 Q. Since coming over to Kaiser, has your
18 employment at Lakewood Hospital ceased?

19 A. Yes. I wasn't allowed to work
20 anywhere else when I started here.

21 Q. So if we were to update your resume
22 in the experience area above Lakewood Hospital,
23 we would add another entry; correct?

24 A. I don't understand.

25 Q. If we were to update your resume,

1 Plaintiff's Exhibit 1, one thing we would have
2 to do under the experience area is we would have
3 to put something else above Lakewood Hospital;
4 correct?

5 A. Correct.

6 Q. And who is officially your employer?
7 Who do you work for?

8 A. OPMG.

9 Q. That's Ohio Permanente Medical Group?

10 A. Yes.

11 Q. That has been your title or your
12 employment since April of 1999?

13 A. Yes.

14 Q. Full time?

15 A. Yes.

16 Q. Would there be anything else that we
17 would have to add to your resume to update it,
18 other than Ohio Permanente Medical Group, April
19 1999 to the present?

20 A. No.

21 Q. In terms of your education or your
22 professional affiliations, are they the same?

23 A. The education is the same. The AAPA
24 member, I didn't join this year, under the
25 affiliation at the bottom.

1 Q. Under the professional affiliations,
2 you had at the top, Ohio Association of
3 Physician Assistants, and what you have just
4 told me is that you did not renew your
5 membership?

6 A. For the American Academy, the second
7 one.

8 Q. Got it.

9 A. I still have the Ohio.

10 Q. You are no longer a member of the
11 AAPA?

12 A. Right.

13 Q. Why is that?

14 A. It was like \$150, so -- and they
15 don't pay that through here.

16 Q. Is that the sole reason that you did
17 not renew your membership?

18 A. You know, really it slipped my mind,
19 too, yeah, so I didn't. It didn't do anything
20 for me, necessarily.

21 Q. Is it a requirement of your
22 employment here?

23 A. No.

24 Q. Was it a requirement of your
25 employment at Lakewood Hospital?

1 A. No.

2 Q. So that the resume, to be accurate,
3 would have Ohio Permanente Medical Group and
4 would have two of the three professional
5 associations to be totally up to date; true?

6 A. No. The ACLS part is not current.
7 At the very bottom, where it says BLS, I have
8 that, I don't have the ACLS.

9 Q. How often do you have to renew your
10 ACLS criteria or ACLS standards, if you will?

11 A. Every two years.

12 Q. Every two years?

13 A. Yes.

14 Q. When were you last ACLS certified?

15 A. I was still at Lakewood Hospital,
16 because I had it through them.

17 Q. So that in August of '99, which is
18 the time period that we are concerned about with
19 the plaintiff in this case, you were not ACLS
20 certified; is that true?

21 A. I don't remember the exact date, and
22 my wallet was stolen with my card in it.

23 Q. I won't ask you questions about that.

24 A. Thank you.

25 Q. Tell me the reason that you did not

1 reobtain certification for ACLS.

2 A. It's not required for this job.

3 Q. Is that the sole reason?

4 A. Well, you have to take two days off
5 of work to do it and I just haven't taken those
6 days off to go do it.

7 Q. Is that the only reason or reasons?

8 A. Yes.

9 Q. And I'm not assuming anything. I
10 just want to find out why something is no longer
11 in existence on your resume.

12 Your home address is the same?

13 A. Yes.

14 Q. Now, under or next to your name, you
15 have PA-C. Tell me what the C stands for.

16 A. Certified.

17 Q. What does the PA stand for?

18 A. Physician assistant.

19 Q. How did you become certified as a
20 physician assistant? What did you have to
21 accomplish?

22 A. You take a board, a licensed board.

23 Q. When did you first become certified
24 as a physician assistant?

25 A. I took the test, it was April of '98.

1 Q. Was that the first time that you were
2 eligible to become certified?

3 A. Yeah, I just graduated that summer
4 before.

5 Q. So you can't take the certification
6 before you graduate; right?

7 A. You could, but you would have missed
8 class to go do that.

9 Q. Were you successful in becoming
10 certified on your first attempt?

11 A. No, my second time.

12 Q. What's involved? Again, I'm not
13 familiar with the certification process, so if I
14 ask questions that sound very naive, part is I
15 am naive, but the other part is I'm not familiar
16 with your profession, okay?

17 A. Okay.

18 Q. What's involved in the test to become
19 certified? Is it a written test, an oral test?

20 A. It's a written test.

21 Q. So the first time through, you were
22 unsuccessful; true?

23 A. Correct.

24 Q. Did you have to then go back and do
25 anything before you could sit again for the

1 certification test? In other words, any
2 additional training that you had to go through?

3 A. No.

4 Q. Any additional courses that you had
5 to take?

6 A. No.

7 Q. Was there any waiting period that you
8 had to wait for before you could take it again?

9 A. They only gave it twice a year, so
10 the next time it came up.

11 Q. So April of '98 you became certified.
12 I presume it was sometime in the fall of '97
13 that you had taken it the first time?

14 A. Yes, maybe September, October.

15 Q. Who is the governing body that
16 administers the test?

17 A. The NCCPA, National Accrediting --
18 I'm sorry, I can't even tell you. The PA part
19 is for physician assistant. It's the national
20 certifying board.

21 Q. Give me the initials again.

22 A. NCCPA.

23 Q. Was the test administered in
24 Columbus?

25 A. They have different sites throughout

1 the state.

2 Q. Did you take it up here?

3 A. The first time. The second time I
4 went to Dayton.

5 Q. I'm going to have a few more
6 questions about your background and then we will
7 move into talking about your employment and
8 experience, just so you know where I'm going.

9 A. Okay.

10 Q. Again, looking at Plaintiff's Exhibit
11 1, I note that you had attended Tri-C, which
12 included a nursing program; is that true?

13 A. Yes.

14 Q. It appears that you completed four of
15 six rotations?

16 A. Yes.

17 Q. If you had completed the additional
18 two rotations, what would you have been eligible
19 to do at that point?

20 A. For registered nursing.

21 Q. **So** in other words, you were working
22 toward an RN certification or RN degree?

23 A. Yes.

24 Q. Tell me why you stopped short of
25 completing your RN education.

1 A. Because I wanted to do physician
2 assistant. I was accepted for that year.

3 Q. So the sole reason that you stopped
4 at that point was to go into the physician
5 assistant program?

6 A. Yes.

7 Q. Was that your goal all along?

8 A. Yes.

9 Q. Was there a reason that you hadn't
10 pursued the physician assistant path initially,
11 instead having pursued the nursing path? Is my
12 question not clear?

13 A. Yeah.

14 Q. Fair enough. The look on your face
15 gave me the why indication.

16 You went to Tri-C and it looks like
17 your general education was PA/SA. What does
18 that stand **for**?

19 A. Surgeon assistant.

20 **a.** And the PA is physician assistant?

21 A. Correct.

22 Q. So you were taking certain
23 prerequisites. Was that an undergraduate degree
24 **or** a bachelor's degree?

25 A. At Tri-C?

1 Q. Yes, ma'am.

2 A. That's a two-year associate degree.

3 Q. Did you finish the general education
4 for the physician assistant and surgical
5 assistant prerequisites?

6 A. Yes.

7 Q. And from there you went in a nursing
8 program where you finished four of six
9 rotations; true?

10 A. Well, they were pretty much the same.

11 Q. What's that?

12 A. The prerequisites, they were pretty
13 much the same for both programs.

14 Q. I guess what I'm trying to
15 understand -- I'm not trying to make it
16 difficult and apparently I am. I was wondering
17 if you were moving along toward a BN to become
18 an RN. First, would that have been an
19 associate's degree or bachelor's degree?

20 A. Associate's.

21 Q. You were pursuing the associate's
22 degree in nursing, and you told me a moment ago
23 that you got accepted and pursued the physician
24 assistant certification. Why didn't you pursue
25 the physician assistant certification first?

1 Why spend this much time going through nursing
2 is what I am trying to get at? Is that clear?

3 A. I think.

4 Q. If not, we will come back at it
5 again.

6 A. It's difficult to get in that
7 program. It's tough to get into that program,
8 the physician assistant program. It took three
9 years to get in. So in the meantime then I went
10 to the nursing program and wanted to do both.

11 Q. Did you ever complete your nursing
12 rotations after getting into the physician
13 assistant program?

14 A. No.

15 Q. Do you have any intention of going
16 back to complete your nursing?

17 A. No.

18 Q. Under your clinical rotations at
19 Kaiser, it says P-A-T under preoperative history
20 and physical. Do you see that?

21 A. Yes.

22 Q. What is P-A-T?

23 A. Preadmission testing.

24 Q. When did you work at Kaiser doing
25 preadmission testing?

1 A. That would have been, let's see, in
2 '96, in the fall.

3 Q. And Meridia Hillcrest Hospital, when
4 would you have worked there?

5 A. The rotations are five weeks long, so
6 every five weeks we would switch to the next, so
7 that would have been in the fall, probably,
8 also.

9 Q. Is it fair -- I'm sorry, go ahead.

10 A. It would go from the fall of '96, all
11 of these, to I want to say June of '97. This is
12 the order.

13 Q. Is it fair to say that these, all
14 these clinical rotations were part of your
15 training to become a physician assistant?

16 A. Yes.

17 Q. And then after June of '97, you
18 finished your training, you would have finished
19 all of your clinical by June of '97?

20 A. Yes.

21 Q. And then what did you do between June
22 of '97 and -- I'm sorry, I see the answer. You
23 worked in the doctor's office, Dr. Paras?

24 A. Yes.

25 Q. And then it looks like you took time

1 off after leaving Dr. Paras' office to take your
2 certification?

3 A. Yes.

4 Q. Did you leave Dr. Paras' office
5 voluntarily?

6 A. It was a mutual agreement.

7 Q. What do you mean by that? What were
8 the circumstances of your leaving Dr. Paras?

9 MS. DiSILVIO: Objection. You may
10 answer.

11 A. I'm sorry, what was the question?

12 Q. That's okay, not a problem. I asked
13 you the reason why you left Dr. Paras' office,
14 and I think you said it was a mutual
15 understanding. I am trying to understand, what
16 were the circumstances that caused you to leave?

17 A. We weren't busy enough to support two
18 of us.

19 Q. Did you resign from the position or
20 were you terminated?

21 A. I resigned.

22 Q. Is that all that there is to it?

23 MS. DiSILVIO: Objection. You may
24 answer.

25 Q. Were there any other circumstances

1 behind your leaving?

2 A. No.

3 Q. Did you leave under good terms with
4 Dr. Paras?

5 A. Yes.

6 MS. DiSILVIO: Nancy, you are doing a
7 great job, but if you would let Mr. Mishkind
8 finish his question and then answer, even though
9 you can anticipate what it is, it is better if
10 you just let him finish, okay?

11 THE WITNESS: Okay.

12 MR. MISHKIND: She is right.

13 Q. You left under good circumstances
14 with Dr. Paras; true?

15 A. Yes.

16 Q. Just not enough work to keep the two
17 of you busy?

18 A. Yes.

19 Q. And that's all that there is to it?

20 A. Yes.

21 Q. Nothing else?

22 MS. DiSILVIO: Other than what she
23 said, taking time to study for the
24 certification.

25 Q. You were studying to take the

1 certification and there wasn't enough work to
2 keep two of you busy?

3 A. Yes.

4 Q. And there is nothing else that's
5 built into the reason for you leaving?

6 A. No.

7 Q. Fair enough. You left Lakewood in
8 April of '99. Did you leave Lakewood on your
9 own? In other words, did you resign from the
10 Lakewood position?

11 A. Yes.

12 a. You weren't terminated from the
13 position?

14 A. No.

15 Q. Did you immediately then start at
16 Kaiser with Ohio Permanente Medical Group?

17 A. Yes.

18 Q. Is there a licensure that you have as
19 a physician assistant? Is there some type of
20 licensing?

21 A. Yes.

22 Q. Becoming certified as a physician
23 assistant, does that provide you with any
24 further licensure?

25 A. I'm not sure what you mean.

1 Q. Once you became certified, did you
2 obtain any other type of license that enabled
3 you to do something different than what you
4 could do as a physician assistant?

5 A. No.

6 Q. I presume that there are certain laws
7 that you have to comply with in terms of what
8 you can and cannot do as a physician assistant?

9 A. Yes.

10 Q. And certainly, in going through the
11 program, I presume you learned what aspects of
12 patient care you can provide, either supervised
13 or unsupervised, what the limits are of your
14 role in this medical team; true?

15 A. Yes.

16 Q. Can you tell me, generally speaking,
17 what a physician assistant is permitted to do?
18 What is your job description, if you will?

19 A. Could you say that again?

20 Q. You are not a medical doctor; true?

21 A. Correct.

22 Q. You are not licensed as a physician?

23 A. True.

24 Q. You are not registered or licensed as
25 a nurse?

1 A. True.

2 Q. What can you do as a physician
3 assistant in terms of providing patient care
4 that you can't do -- what can't you do that you
5 could do if you were a nurse or a physician?
6 Maybe we will start in that way, if that helps.

7 MS. DiSILVIO: Objection. If you can
8 answer that question --

9 A. It's too big.

10 Q. Let me try to break it down a little
11 bit. Do you have any specialization within the
12 area of physician assistant? Do you specialize
13 in any type of patient care?

14 A. Can you restate that, please?

15 Q. What part of my question don't you
16 understand?

17 A. I wouldn't consider occupational
18 medicine just a specialty, but do you?

19 Q. Well, that's a start. You work in
20 occupational medicine?

21 A. Yes.

22 Q. Have you always, since being at
23 Kaiser, worked in occupational medicine?

24 A. No.

25 Q. How long have you been working in

1 occupational medicine?

2 A. Since January of this year.

3 Q. What is within your job description?

4 What do you do as a physician assistant in the
5 area of occupational medicine?

6 A. I see follow-up patients from work
7 injuries. It's the Workers' Comp area, under
8 the supervision of a physician.

9 Q. Can you **do** everything that a
10 physician can do as long as you are being
11 supervised?

12 MS. DiSILVIO: Objection.

13 Q. Or are there limitations to what you
14 can **do**, even under supervision?

15 MS. DiSILVIO: You mean examining,
16 orders?

17 Q. Any aspect of patient care history
18 taking, physical exam, medical treatment,
19 prescribing of treatment, are there any
20 limitations to what you can do, even under
21 supervision of a physician?

22 A. Well, yes. Everything **I** do is under
23 the supervision of a doctor.

24 Q. Can you administer medication?

25 A. No.

1 Q. Can you prescribe any medication?

2 A. No.

3 Q. **So** even though you are under the
4 supervision of a physician, those aspects are
5 outside of your jurisdiction?

6 A. Yes.

7 Q. That's what I'm trying to understand
8 in terms of where the line is drawn in terms of
9 what you can do under supervision.

10 Can you do a physical exam?

11 A. Yes.

12 Q. And does it have to be with the
13 physician present or do you just have to have
14 supervision?

15 A. What do you mean by that?

16 Q. Well, what do you understand to mean
17 to be the term that you can do these certain
18 things under supervision? What does it mean to
19 you as a physician assistant? Does a physician
20 have to be present? Does a physician have to be
21 in the building? Tell me.

22 MS. DiSILVIO: For the physical exam?

23 MR. MISHKIND: Right.

24 A. They need to at least be available,
25 somewhere not far away, within a certain range

1 at all times, when you are seeing a patient.

2 Q. Before January of this year, you were
3 working, I take it, in a different department?

4 A. Yes.

5 Q. What department were you working in?

6 A. Internal medicine.

7 Q. How long did you work in internal
8 medicine?

9 A. From April of '99 to January, when I
10 started in occupational.

11 Q. Why did you switch to occupational
12 medicine?

13 A. Because the position opening was an
14 interest of mine.

15 Q. So when you saw Mrs. Medlen, it would
16 have been in internal medicine?

17 A. Yes.

18 Q. Just so I'm clear, you saw her one
19 time; true?

20 A. Correct.

21 Q. No occasion before August of '99?

22 A. No.

23 Q. What type of training did you have in
24 internal medicine as a physician assistant?

25 MS. DiSILVIO: Prior to April '99?

1 MR. MISHKIND: Yes.

2 A. School.

3 Q. What about after starting here at
4 Ohio Permanente Medical Group, did you have
5 certain in-house training or requirements in
6 terms of keeping up with various areas of
7 internal medicine?

8 A. Yes. I worked with internists, the
9 physicians in my area. There is four of them.

10 Q. What about lectures or courses that
11 you had to take to keep up on the advances in
12 internal medicine? Did you have any
13 requirements for continuing education?

14 A. Absolutely.

15 Q. What were those requirements?

16 A. Well, by law, it has to be 100 CME's
17 every two years.

18 Q. Did Ohio Permanente Medical Group
19 have any additional requirements that they
20 imposed on you as an employee concerning keeping
21 up with internal medicine issues?

22 MS. DiSILVIO: Other than her work
23 with the internists?

24 MR. MISHKIND: Right.

25 MS. DiSILVIO: You may answer.

1 A. You mean like going to our -- I'm not
2 sure what you are asking.

3 Q. Going to other courses, taking any
4 other training besides the 100 CME's every two
5 years.

6 A. For internal medicine?

7 Q. That's my question, yes.

8 A. No, they don't require above and
9 beyond.

10 Q. Did you have in-service training on
11 areas of internal medicine?

12 A. No.

13 Q. Did you have any special training,
14 either in your course work or here at Kaiser, in
15 the area of diabetic medicine or management of
16 diabetic patients?

17 (Record read.)

18 MS. DiSILVIO: You are including
19 school, not the CME's?

20 MR. MISHKIND: Yes.

21 A. You are asking when I was going to
22 school or after?

23 Q. Let me try to break it down, because
24 obviously you are having a difficult time with
25 some of my questions.

1 A. I'm sorry.

2 Q. You don't have to apologize. I told
3 you before if you didn't understand something, I
4 would do my best to make it intelligible.

5 We will start with your training at
6 Tri-C. Did you have course work in the area of
7 management of diabetic patients?

8 A. Yes. We get that presented in
9 school.

10 Q. Do you have a specific text or
11 journal that you used for purposes of education
12 and training in diabetes?

13 A. We had multiple books and journals
14 and sources and computer lectures.

15 Q. And I'm specifically talking about
16 the area of diabetes. You had multiple
17 textbooks in diabetes that you used or did you
18 have specific --

19 A. We used many. We had a lot of
20 resources.

21 Q. If I were to go to Tri-C and look at
22 the curriculum which is maintained at Tri-C and
23 I wanted to look at what your course of study
24 was during the period '95 through '97, would
25 there be specific course titles in the area of

1 internal medicine that dealt with diabetes that
2 you took?

3 A. You mean like what the teachers would
4 present?

5 Q. Yes.

6 A. Yes, we had multiple places to go.
7 We were instructed to go to many areas.

8 Q. Did you have a particular semester or
9 quarter that you took internal medicine as a
10 course?

11 A. It was all mixed together.

12 Q. Mixed together with what else?

13 A. Well, all of our courses, whether it
14 would be anatomies, we had many things, but we
15 would have actually more than one quarter. We
16 have lectures, different lectures.

17 Q. And again, I'm just trying to
18 understand how your education was delivered to
19 you, since I have never gone through physician
20 assistant courses.

21 A. All day and evening.

22 Q. Did you have different lecturers,
23 different teachers?

24 A. Yes.

25 Q. Did you have certain teachers that

1 would deliver information to you on internal
2 medicine issues?

3 A. Yes.

4 Q. Certain issues of, perhaps,
5 orthopedics?

6 A. Yes.

7 Q. And was Dr. Leslie Sheeler one of the
8 lecturers or one of the instructors?

9 A. He was a proctor. You would go and
10 do a rotation.

11 Q. You did a rotation under Dr. Sheeler,
12 I see?

13 A. Correct.

14 Q. Did he do any of the lectures or the
15 teaching at Tri-C?

16 A. No.

17 **a.** Who was the primary lecturer or
18 teacher in the area of internal medicine that
19 you had at Tri-C?

20 A. Nancy -- I'm drawing a blank. If it
21 comes to me --

22 Q. If it comes to you, fine. Don't
23 concentrate to the extent that you don't listen
24 to any of my other well-worded questions. **On**
25 the other hand, if you think of it during the

1 deposition, feel free to blurt it out, or if you
2 think of the doctor's name after the deposition,
3 let Marilena know and I'm sure she will favor me
4 with the name.

5 A. Okay.

6 Q. Thanks. What textbook did you use as
7 a resource in your PA training in the area of
8 internal medicine?

9 MS. DiSILVIO: Objection. If there
10 was just one. You may answer.

11 A. I had a lot of books and journals.

12 a. I'm not talking about journals. I'm
13 talking about, what textbooks?

14 A. I used numerous.

15 Q. Tell me which ones you used.

16 A. Oh, my gosh.

17 MS. DiSILVIO: Nancy, if you can't
18 recall, you can tell Mr. Mishkind you don't
19 recall.

20 MR. MISHKIND: She is thinking right
21 now, Marilena. Give her a chance to think
22 before she tells me she doesn't recall.

23 MS. DiSILVIO: I don't want her to
24 feel she can't tell you.

25 Q. Any question that I ask you that you

1 don't recall, you can tell me that. If there is
2 anything through the end of the deposition --
3 you can tell me you can't recall, but think
4 about textbooks that you used in the area of
5 internal medicine.

6 A. You know, I can't think of any at the
7 moment.

8 Q. Harrison's Principles of Internal
9 Medicine, does that stand out in your mind as
10 one of the textbooks that you used?

11 A. I know that's one of the books.

12 Can we take a quick break?

13 Q. Sure.

14 A. I need to rest for a second.

15 (Recess had.)

16 (Record read.)

17 Q. While we were off the record, I had
18 Vivian read back the question for my benefit and
19 for yours so you know we were talking about
20 Harrison's.

21 I had asked you whether that was one
22 of the textbooks that you used for the physician
23 assistant course as it relates to internal
24 medicine issues and that's when you wanted to
25 take a break.

1 Do you remember using Harrison's?

2 A. Yes, one of many.

3 Q. Do you remember what other internal
4 medicine books you used aside from Harrison's?

5 A. We had many books in the library at
6 our disposal.

7 Q. That's not my question.

8 A. No, I don't remember the names of all
9 those books.

10 Q. What journals did you regularly read
11 while you were going through your physician
12 assistant training?

13 A. Whatever the library had. I can't
14 remember the names.

15 Q. Are you able to remember any of the
16 journals that you read on a regular basis while
17 you were going through your physician assistant
18 training?

19 A. I read nothing on a regular basis. I
20 read everything that was pertinent to whatever
21 we were working on.

22 Q. But you are not able to tell me any
23 of the titles of any of the journals or any of
24 the textbooks that you read while you were going
25 through your training at physician assistant

1 school?

2 MS. DiSILVIO: Other than Harrison's.

3 MR. MISHKIND: Other than Harrison's.

4 Q. Is that true? Or if you recall
5 something, please tell me.

6 A. There are so many.

7 Q. Understand, I'm not asking you to
8 tell me all of them, but if you are able, since
9 there were so many, and you are able to tell me
10 more than just Harrison's, I would like to
11 somehow bridge the gap of it.

12 A. New England Journal of Medicine,
13 JAMA. Gosh. There were just so many books.

14 Q. You just referred to journals.

15 A. That's what you just asked me;
16 correct? There are so many journals available
17 from all the libraries.

18 Q. Is it fair to say that as you sit
19 here right now, you aren't able to tell me which
20 internal medicine books you used in school other
21 than Harrison's Principles of Internal Medicine?
22 Is that a fair statement?

23 A. I used many books.

24 Q. I understand that. But I'm trying to
25 get you to say something more than many. I'm

1 trying to find out from you whether or not you
2 are able to tell me the name of any of the
3 others besides Harrison's Principles of Internal
4 Medicine. Is it fair to say you just simply
5 can't do that?

6 A. I'm sorry, I don't remember.

7 Q. That's all I need to know.

8 What journals in your profession do
9 you subscribe to currently?

10 A. Subscribe to? None.

11 Q. What journals do you read on a
12 regular basis in your profession currently?

13 A. There are some that come to my house.
14 What are they? I get a couple that come in.

15 Q. I can't answer that. I haven't been
16 to your house.

17 A. I know. I'm sorry.

18 MS. DiSILVIO: The question is, what
19 do you read currently?

20 A. Journals, books.

21 Q. Start with journals.

22 A. I have it's JAAPA, Advance Clinician
23 Review.

24 Q. JAA --

25 A. -- PA.

1 Q. And I take it that stands for what,
2 Journal of American --

3 A. Right, of the AAPA. The journal from
4 them. There is a book, a magazine, journal
5 called Advance Clinician Review. That's just a
6 few of them. I get quite a few in the mail.

7 Q. Are these items that you get in the
8 mail at your home?

9 A. Yes.

10 Q. That you don't subscribe to; you just
11 receive as part of your professional association
12 membership?

13 A. Yes.

14 Q. Are there any books in the area of
15 internal medicine that you own in your own
16 personal library at home?

17 A. Yes.

18 Q. Which ones?

19 A. Internal medicine?

20 Q. Yes.

21 A. Current. Have you ever heard of
22 Current?

23 Q. Yes.

24 If you don't recall --

25 A. I don't recall.

1 Q. That's okay. Remember, I just want
2 to find out what you know, what you recall, and
3 if in response to my question, you just don't
4 recall --

5 A. I can't recall.

6 Q. Okay. Let me ask you perhaps an
7 easier question for you to answer.

8 In the context of this case,
9 Mrs. Medlen, and this lawsuit, have you had
10 occasion to review any medical literature,
11 either journals or textbooks, that would be
12 pertinent to the issues on the management of a
13 diabetic patient?

14 A. You mean since then?

15 Q. Since August of 1999, up to the
16 present date.

17 A. Could you please ask the question
18 again?

19 Q. Have you reviewed any medical
20 literature?

21 MS. DiSILVIO: In connection with
22 this deposition?

23 Q. In connection with Mrs. Medlen;
24 specifically with the idea of trying to find
25 information that would be relevant to this case.

1 A. No.

2 Q. Have you been provided with any
3 medical literature in connection with this case
4 by anyone here at Ohio Permanente Medical Group?

5 A. You mean charting?

6 Q. No. Medical literature. From
7 journals, textbooks.

8 A. No.

9 Q. Aside from Mrs. Medlen's hospital
10 record or medical record which we will be
11 talking about, believe it or not, shortly, have
12 you reviewed anything else in connection with
13 this deposition that would be pertinent to Mrs.
14 Medlen?

15 A. I don't understand what you want to
16 know.

17 Q. What have you reviewed in preparation
18 for today's deposition?

19 A. I looked at my notes.

20 Q. What else?

21 A. There is another note underneath that
22 I had mailed out.

23 Q. What else?

24 A. Not too much, really.

25 Q. Not too much really. That dangles me

1 out there. What else?

2 A. I had received parts of her chart and
3 I had reviewed some.

4 Q. What parts of the chart did you
5 receive and review?

6 A. My part, actually. I really didn't
7 want to look at anything else.

8 Q. Why?

9 A. Because this is the part that I'm
10 concerned about.

11 Q. You didn't want to see any other
12 portions of her record?

13 A. Well, her lab work from that day.

14 Q. Why didn't you want to look at
15 anything that would relate to her medical care
16 prior to your visit?

17 MS. DiSILVIO: Other than what is
18 contained in her own note of her medical care
19 prior to the visit?

20 MR. MISHKIND: Right.

21 A. I'm sorry, what was that?

22 Q. Why didn't you want to look at any of
23 the other records pertaining to Mrs. Medlen's
24 care for dates prior to your involvement?

25 A. You mean after the fact? After this

1 day?

2 Q. Right. Remember the question started
3 out with what did you review for purposes of the
4 deposition and you told me your note and
5 something that was mailed out to her.

6 A. Yes.

7 Q. And we are going to talk about that.

8 MS. DiSILVIO: Something she mailed
9 out is what she said.

10 Q. I asked you what else you received
11 and you indicated that you had received some
12 other stuff, and I'm trying to understand what
13 it was that you received. I'm trying to
14 understand what it is you received. The
15 questions aren't really as difficult as you are
16 making them.

17 A. I know, no, they are not as difficult
18 as I'm making them.

19 MS. DiSILVIO: You are doing just
20 fine, Nancy.

21 A. It was just parts of her chart and
22 later on -- well, not too long ago I looked at
23 some of her previous stuff, because I didn't
24 know her.

25 Q. Her previous stuff?

1 A. Chart, notes.

2 Q. For dates prior to August of '99?

3 A. Yes.

4 Q. Other than the notes you have in
5 front of you and some of the previous stuff that
6 has been provided to you for her treatment at
7 Kaiser before August of '99, have you reviewed
8 anything else in preparation for today's
9 deposition?

10 A. No.

11 Q. Have you reviewed any medical
12 literature at all to prepare you for today's
13 deposition?

14 A. No.

15 Q. Have you reviewed any records outside
16 of the Kaiser system for Mrs. Medlen?

17 A. No.

18 Q. Let me just see for one moment the
19 three pages of records that you have there.

20 - - - - -

21 (Thereupon, HOLMES Deposition
22 Exhibit 2 was marked for
23 purposes of identification.)

24 - - - - -

25 Q. You have three pieces of paper in

1 front of you, which are from the Kaiser
2 Permanente chart on Geraldine Medlen; true?

3 A. Yes.

4 Q. Two of the pages have to do with the
5 notations that you made on August 4, 1999,
6 starting from the beginning of her appointment
7 through the end of her appointment; true?

8 A. Yes.

9 Q. I'm not going to mark those, because
10 I have those in the chart, but just so the
11 record is clear, there is a third page which we
12 have marked as Plaintiff's Exhibit 2, and this
13 is a note that you wrote to Dr. Mistry?

14 A. Yes.

15 Q. When did you write this note to
16 Dr. Mistry?

17 A. I don't know.

18 Q. It's not dated, is it?

19 A. It's not dated. It's been scanned.

20 Q. And what does that mean? When you
21 say it was scanned --

22 A. Well, it's in the electronic
23 computer.

24 Q. So presumably we would be able to
25 determine when it was scanned into the computer?

1 A. Yes.

2 Q. Can you give me any indication as to
3 when this was written in relationship to the
4 August 1999 office visit, the August 4, 1999
5 office visit?

6 A. I don't have an exact date.

7 Q. Well, can you state under oath that
8 it was written in the month of August, 1999?

9 A. Yes.

10 Q. And what basis can you say that?

11 A. Because I was letting him know what I
12 was doing with her.

13 Q. Can you explain to me why it's not
14 dated?

15 A. No.

16 Q. Can you explain to me why it doesn't
17 have any type of an imprint on the chart like
18 the other notes do for Mrs. Medlen in the upper
19 right-hand corner?

20 A. Up here?

21 Q. Right.

22 A. This is a loose-leaf progress note.
23 It's actually pink. And they don't come out
24 like that.

25 Q. The reason I'm asking these questions

1 is the records that I obtained from Kaiser
2 before the lawsuit was filed did not contain
3 that, so I'm just trying to determine whether
4 this was put into the chart the same day, a week
5 later, a month later, or longer. Do you follow
6 me?

7 A. Yes. You want to know when I think I
8 might have done this, made this?

9 Q. Sure.

10 A. That's what you are asking?

11 Q. If that's the best you can do. I
12 would like to know when it was.

13 A. It would have been at least within a
14 couple days of this.

15 Q. That would have been the normal
16 procedure?

17 A. Yes.

18 Q. And the normal procedure certainly
19 would be also to date it, would it not?

20 A. Yes. This little piece is actually
21 attached to this. It's a little piece of paper,
22 a sticky back. When they call up from the lab,
23 we write things on a piece of paper, on this
24 little note.

25 Q. Do you know when they called up from

1 the lab?

2 A. For this? It probably would have
3 been that day. I can't give you a time.

4 Q. The record doesn't indicate when you
5 received a call from the lab for any lab work
6 that had been done on August 4, 1999 on that
7 exhibit, does it?

8 A. No.

9 Q. We will talk a little bit further
10 about that in a moment. Before I lose my train
11 of thought, let me mark as Exhibit 3 this
12 document.

13

- - - - -

14 (Thereupon, HOLMES Deposition
15 Exhibit 3 was marked for
16 purposes of identification.)

17

- - - - -

18 Q. I'm going to hand you what has been
19 marked as Plaintiff's Exhibit 3. Have you ever
20 seen that document before?

21 A. Uh-huh.

22 Q. That's a yes?

23 A. Yes, I am familiar with that. I'm
24 sorry.

25 Q. It's called physician assistant

1 utilization plan; is that correct?

2 A. Yes.

3 Q. Can you tell me why that document
4 exists?

5 A. This is how the state rules what
6 physician assistants do.

7 Q. And again, because I'm not a
8 physician assistant and you are obviously more
9 familiar with the procedures, when you come to
10 work for someone, does your supervising employer
11 have to file a utilization plan with the State
12 of Ohio?

13 A. Yes.

14 Q. Did Lakewood have to do the same
15 thing when you worked there?

16 Did Dr. Paras have to do that or
17 would that have predated you being a physician
18 assistant?

19 A. We did the one after I was certified.

20 Q. Through Dr. Paras' office?

21 A. Yes.

22 Q. And did the forms look basically the
23 same as what we are looking at on Plaintiff's
24 Exhibit 3? You have it right in front of you.

25 All the other forms that are used, is

1 this pretty much the same type of form?

2 A. Yes.

3 Q. If you would look to the fourth page
4 of the physician assistant plan. There is a
5 reference under B3 to medical record review
6 indicators, and then in parentheses, see
7 attached medical record review summary sheet and
8 Kaiser Permanente physician/PA ambulatory
9 medical record review policy. Do you see that?

10 A. Uh-huh.

11 Q. That's a yes?

12 A. Yes.

13 Q. Have you ever seen those documents
14 that are referenced in the parentheses?

15 MS. DiSILVIO: The medical record
16 review summary sheet and the ambulatory medical
17 record review policy?

18 MR. MISHKIND: Correct.

19 MS. DiSILVIO: The question is have
20 you ever seen those two.

21 A. I believe so.

22 Q. The reason I'm asking, again, just to
23 try to make it easier for you, they weren't
24 attached to the document that was provided to me
25 by counsel, and I'm curious as to what those --

1 I would like a copy of that since it's part of
2 this utilization plan and it may have been just
3 innocently forgotten -- but I'm curious since I
4 don't have it in front of me, if you can tell me
5 what the medical record review summary sheet,
6 what kind of information it contains, and the
7 same for the medical record review policy.

8 MS. DiSILVIO: To the extent that you
9 have to provide any information, when you answer
10 that question about quality assurance matters or
11 peer review matters, I direct you not to answer
12 it. To the extent that you can answer that
13 question without providing that information,
14 certainly answer it.

15 THE WITNESS: He needs the sheet from
16 the quality review department.

17 Q. I'm sorry?

18 A. You probably need to get a copy of
19 that sheet from the quality review department.
20 It asks a lot of things that the physician has
21 to fill out.

22 Q. Whether it's located in the quality
23 review department, that doesn't in and of itself
24 make it privileged under the peer review
25 statute, because if there is a form that is

1 referenced as part of a document that's filed
2 under the utilization plan, it certainly is
3 discoverable.

4 MS. DiSILVIO: We can agree to
5 disagree on that. Depending upon what is
6 contained in that document, I will certainly let
7 you know our position as to the production of
8 that document.

9 Q. Can you as you sit here right now --
10 because I do want to move this along, believe it
11 or not -- can you tell me what kind of
12 information is set forth in either of these
13 documents, the medical record review summary
14 sheet or the record review policy?

15 MS. DiSILVIO: Again, to the extent
16 that you can answer that question without
17 providing information about quality assurance or
18 peer review, please answer it. If you cannot,
19 then you cannot.

20 A. I can't answer that question. I
21 don't remember the questions that are on it.

22 Q. Fair enough.

23 MR. MISHKIND: What I'm going to do
24 is make a formal request that I be provided with
25 a copy of those documents. I don't see in the

1 context of the blank forms how they would be
2 protected under peer review, and then subject to
3 what those documents are, I may or may not have
4 some additional questions for this witness at a
5 later point, but I am going to move on.

6 MS. DiSILVIO: Fair enough, and my
7 objection still stands.

8 MR. MISHKIND: Okay.

9 Q. Page six of the document, if you
10 would turn to that, please.

11 There is a Code 7 policy document.
12 Do you see on page six, number five? It says
13 Code 7 policy deals with cardiac arrests.

14 Now, that's not relevant to this
15 case, is it?

16 A. No.

17 Q. Are you familiar with the Code 7
18 policy document?

19 MS. DiSILVIO: Objection. You may
20 answer.

21 A. I don't remember.

22 Q. You don't remember whether you --

23 A. If I have seen it or not.

24 Q. Fair enough.

25 Do you know how frequently a

1 utilization plan has to be filed by your
2 employer with the State **of** Ohio?

3 A. I believe yearly.

4 Q. And you're licensed as a physician
5 assistant. How often does that have to be
6 renewed?

7 A. Every two years.

8 Q. So let's see, you were licensed
9 initially in '98, was it?

10 A. '98.

11 Q. So in the year 2000, you had to renew
12 your license?

13 A. Yes.

14 Q. And then again in the year 2002 you
15 will have to renew it?

16 A. Yes.

17 Q. Have you ever had your license
18 suspended or revoked?

19 A. No.

20 Q. Have you ever had it limited in any
21 way?

22 A. No.

23 Q. Have you ever had your privileges
24 here at Ohio Permanente Medical Group suspended
25 or revoked or limited in any way?

1 A. No.

2 Q. I presume that that was the answer,
3 but one of those questions that we like to ask
4 anyway, okay?

5 A. Okay.

6 Q. I didn't mean anything by it.

7 Do you have any special certification
8 as a certified physician assistant in the area
9 of diabetes, other than what comes along with
10 your degree and your licensure?

11 A. No.

12 Q. When you worked at the Free Clinic,
13 you were working with diabetic patients there?

14 A. Yes.

15 Q. Did you have a particular physician
16 or group of physicians that you worked with on a
17 regular basis that were supervising you?

18 A. Yes, there was one doctor.

19 Q. Which doctor was that?

20 A. Cuberly.

21 Q. With a C or K?

22 A. C-U-B-E-R-L-Y.

23 Q. Does Dr. Cuberly still practice in
24 the Cleveland area?

25 A. I don't know if he is still there.

1 He was at the Free Clinic.

2 Q. Was that pretty much his full-time
3 position?

4 A. Yes, that was his job.

5 Q. Do you recall Mrs. Medlen?

6 A. Vaguely.

7 Q. Sometimes I ask that question and
8 people say, zero, I don't have any recollection.
9 You didn't respond that way. You said vaguely.

10 A. Well, I couldn't pick her out in a
11 crowd.

12 Q. Is there anything that stands out
13 from your examination that you remember that
14 might not be reflected in your notes?

15 A. Not really.

16 Q. So your notes from the initial
17 subjective complaint through the objective,
18 through the assessment, through the plan, all of
19 that is reflected in your note; true?

20 A. Yes.

21 Q. And again, I ask that because
22 sometimes witnesses will tell me, I remember
23 this or I remember that, and it's not recorded
24 in the note, That's not the case with
25 Mrs. Medlen; is that true?

1 A. True.

2 Q. Thanks.

3 (Recess had.)

4 Q. We are going to back up for one
5 second and then I'm going to come back to
6 hopefully getting into the August visit.

7 I asked you before whether you had
8 ever given a deposition and you told me no.
9 Have you ever been a party to any litigation,
10 either as the plaintiff or the defendant, the
11 person bringing a claim or the person being
12 sued?

13 A. No.

14 Q. Are you able to paint a picture in
15 any way in your mind of Mrs. Medlen,
16 appearance-wise?

17 A. No.

18 Q. When you read over your note from
19 August of 1999, does that help you in any
20 respect in terms of recalling the patient?

21 A. Are you talking about physical
22 appearance?

23 Q. Yes.

24 A. No.

25 Q. When you saw this patient on August

1 4, '99, you would have been aware that she had
2 been seen last on July 27th, '99; true?

3 A. Well, this isn't the whole chart of
4 the day.

5 Q. Well, obviously it isn't. But when
6 you see the patient, you have the patient's
7 chart; correct?

8 A. Pieces of it, yes.

9 Q. Well, is there any reason to believe
10 that you would have had the chart in your
11 possession when you saw the patient on August 4,
12 1999?

13 A. You mean the whole big chart? Not
14 the whole big chart.

15 Q. Well, if she was seen on July 27th,
16 1999, just 11 days or so before, do you have any
17 reason to believe that that note for July 27th
18 would not have been in the chart that you had
19 available to you?

20 A. That note was not in the chart.

21 Q. How do you know that?

22 A. Because I have this in my hand. It
23 doesn't print out.

24 Q. When you say it doesn't print out,
25 what is the "it" that doesn't print out?

1 A. You are talking about the visit
2 before.

3 Q. A patient comes in. I'm seeing you
4 on August 4, 1999. Aside from a progress sheet
5 that has on the left-hand side a listing of all
6 of the medical problems that the patient has,
7 what else do you have readily available to you
8 concerning the patient's immediate prior medical
9 history?

10 A. There is another sheet that goes with
11 this that has prior vital signs or who they
12 might have seen.

13 Q. Okay.

14 A. And then the other sheets that go
15 with it are like for the nurses to fill out,
16 bubble sheets.

17 Q. Well, let me show you, and just to
18 try to speed things up, I'm just going to
19 represent on the record this is the July 27,
20 1999 visit to Parma Medical Center in the
21 podiatry department, Dr. Matalavage, an office
22 visit on August 27th. It's a two-page document.

23 Have you ever seen that document
24 before a moment ago?

25 A. No, I have not read his note.

1 Q. Was that one of the items that was
2 sent to you that you did or did not read in
3 preparation for the deposition?

4 A. I don't know if it's in there.

5 Q. Do you have any of the material that
6 was sent to you to review besides these three
7 pages? Do you have it with you today?

8 A. No.

9 Q. Where is it?

10 A. At home.

11 Q. You just can't tell me whether or not
12 this July 27 note was one of those items?

13 MS. DiSILVIO: In fairness, Howard, I
14 will represent she was sent the whole chart.

15 MR. MISHKIND: I would imagine she
16 would have been.

17 MS. DiSILVIO: For the purpose of
18 today, I told her I would bring her notes, to
19 focus on her notes. I will represent that to
20 you.

21 MR. MISHKIND: I appreciate that.

22 Q. Does that refresh your memory in
23 terms of you being provided with the entire
24 Kaiser chart, not just stuff?

25 MS. DiSILVIO: Actually, wait, let me

1 take that back. She may have been provided with
2 the progress notes. I will be happy to let you
3 know in greater detail what she was provided
4 with.

5 Q. Before a moment ago, do you remember
6 ever seeing this July 27, '99 note? Yes or no?

7 A. No.

8 Q. However, whether you did or didn't
9 see it before, you would have been aware on
10 August 4, '99 that she had been seen on July
11 27th, 1999; correct?

12 A. She didn't tell me.

13 Q. You just told me a moment ago that
14 you have a sheet that shows the various problems
15 that the patient has; correct?

16 A. Yes.

17 Q. And you also have another sheet that
18 shows the various dates that the patient had
19 been seen; correct?

20 A. Yes.

21 Q. And if she was seen on July 27th,
22 1999, just ten days, 11 days before you saw her,
23 or whatever the computation is, that would have
24 been on the sheet of information in terms of
25 when she had last been seen; true?

1 A. Possibly. I can't tell you that for
2 sure. It doesn't always show up right away.

3 Q. Do you have any basis to tell me as
4 you sit here now that the information from her
5 having been seen on July 27th, 1999 wasn't
6 readily available to you on August 4, 1999?

7 A. I don't know.

8 a. Do you have any basis to tell me that
9 you were not on August 4, 1999 aware from the
10 recordkeeping that Kaiser follows that on August
11 4, 1999 she had, by history, been seen on July
12 27, 1999?

13 A. Could you rephrase that?

14 Q. Can you tell me as you are sitting
15 here right now that on August 4, 1999,
16 information on the other sheet that you talked
17 about in terms of prior visits, that that didn't
18 record information that she had been seen on
19 July 27, 1999?

20 A. I can't remember that.

21 Q. So whether she told you that she had
22 been seen on July 27th, 1999 or not, frequently
23 with the way the Kaiser record evolves, you are
24 provided information about the patient's prior
25 encounters or prior office visits by way of a

1 history sheet; true?

2 A. Yes.

3 Q. And along the same line, if she had
4 been seen on June 30, 1999 in the podiatry
5 department for follow up on a left foot ulcer,
6 would that information in terms of the date of
7 prior visit, would that also be something that
8 would be recorded on this note showing her prior
9 encounters or her prior office visits?

10 A. Yes.

11 Q. Do you know whether you had available
12 to you when you saw Geraldine on August 4, did
13 you have a copy of the June 30, 1999 visit, the
14 actual document for that visit?

15 A. No, I did not have the document.

16 Q. So your testimony is that on August
17 4, '99, you didn't have the actual progress
18 sheet for the June 30 visit; true?

19 A. Yes.

20 Q. And you also did not have in your
21 possession the actual progress sheet for the
22 July 27th, '99 office visit; true?

23 A. True.

24 Q. All that information, even if it
25 wasn't physically in your possession, the

1 information about the visits and all of the
2 findings by way of labs and things of that
3 nature would be readily available to you by way
4 of computer, if necessary; true?

5 A. Yes.

6 Q. So in terms of getting a history on
7 the patient, in addition to having the ongoing
8 list of problems along the left side of the
9 progress sheet, as well as a listing of dates of
10 treatment on another sheet, you also had
11 available to you necessary information on the
12 computer on what the patient had been seen for,
13 what had been done, and what the patient's
14 complaints were on previous visits; true?

15 A. Yes.

16 Q. Can you tell me whether on the August
17 4, '99 visit you took it upon yourself to look
18 to the computer to obtain any information on
19 this patient to get a sense as to what might be
20 going on to cause the patient to have a fever?

21 A. I don't remember.

22 Q. Would that have been a reasonable
23 thing for a doctor to have done; to look back at
24 some of the recent visits to determine whether
25 or not there might be a source for the patient's

1 fever that you could not determine on the date
2 that you saw her on August 4, '99?

3 MS. DiSILVIO: Whether there was a
4 source for her August 4th fever and visits in
5 June and July?

6 MR. MISHKIND: Based upon the
7 information from the June and July visits, true.

8 THE WITNESS: I'm sorry, could you
9 repeat that?

10 (Record read.)

11 A. I didn't think it was indicated at
12 the time.

13 Q. Is it fair to say that from time to
14 time in seeing a patient, having information
15 about recent visits to Kaiser can be helpful to
16 you in terms of arriving at a differential
17 diagnosis?

18 A. It can be at times, but everybody is
19 different.

20 Q. What is a differential diagnosis to
21 you?

22 A. That could be whatever is causing a
23 particular condition, from soup to nuts.

24 Q. You are familiar as a physician
25 assistant of that nomenclature of differential

1 diagnosis?

2 A. Yes.

3 Q. And you certainly have the training
4 and experience to establish a differential
5 diagnosis when a patient presents with a
6 combination of symptoms; true?

7 A. Yes.

8 Q. And, obviously, having information
9 about the patient's medical history by way of
10 prior treatments and diseases and illnesses
11 along the left-hand side is certainly helpful to
12 you, is it not, in terms of trying to establish
13 a differential when a patient presents with a
14 new problem?

15 A. I hate to do this to you, but could
16 you shorten that? Rephrase it.

17 Q. Having the problem list -- you know
18 what I'm referring to?

19 A. Yes.

20 Q. Having the problem list is helpful to
21 you as a physician assistant at arriving at a
22 differential diagnosis on a patient that
23 presents with a recent onset of new symptoms;
24 correct?

25 A. It can.

1 Q. Can we agree that on August 4, 1999
2 when Mrs. Medlen presented, that she presented
3 with an acute or a recent onset of symptoms?

4 A. It looked like recent.

5 Q. And at least from the information
6 that you had at that time -- first, Mrs. Medlen
7 was an established patient, you knew that;
8 correct?

9 A. Well, you assume from her number and
10 she has already got medications listed on here
11 that she is not a brand new patient. Is that
12 what you mean?

13 Q. Well, she also had a number of things
14 along the left-hand side in terms of risk
15 factors or problems; correct?

16 A. Correct.

17 Q. She had Charcot fracture. Do you see
18 that?

19 A. Yes.

20 Q. And that was circled; correct?

21 MS. DiSILVIO: Which note?

22 MR. MISHKIND: July 27, '99.

23 MS. DiSILVIO: I don't know if we
24 have that in front of you. We have June 30 and
25 August 4th in front of us.

1 MR. MISHKIND: I will give that back
2 to you.

3 MS. DiSILVIO: His question was, was
4 it circled on the July 27th visit?

5 THE WITNESS: Yes, it is.

6 Q. Now, the items under the problem
7 list, it says circle the one or two to indicate
8 primary or secondary diagnosis for this visit.

9 On the August 4, '99 visit, was
10 anything circled either in terms of primary or
11 secondary diagnosis for this visit?

12 A. On the next page. Fever, it was
13 written.

14 Q. Fever, unknown etiology?

15 A. Correct.

16 Q. You wrote that?

17 A. Yes.

18 Q. However, you knew that the patient
19 carried these various diagnoses from prior
20 visits; true?

21 A. Yes. It's on there.

22 Q. And again, that's to provide you with
23 further information about the patient's prior
24 medical history; true?

25 A. True.

1 Q. That's the nicety of the Kaiser
2 system, even if you don't actually have the full
3 record, you've got an increasing checklist, if
4 you will, of conditions that the patient has
5 been treated for in the past; correct?

6 A. Correct.

7 Q. So you knew that the patient was a
8 high risk amputation; correct?

9 A. Yes.

10 Q. You knew that the patient had
11 peripheral neuropathy; correct?

12 MS. DiSILVIO: In the interest of
13 time, Howard, which page is it on?

14 MR. MISHKIND: It's on the August 4
15 visit.

16 MS. DiSILVIO: The first page?

17 MR. MISHKIND: Exactly.

18 A. Yes.

19 Q. All of the things that are on here,
20 the hypertension, hyperlipidemia, all these
21 things are matters of medical history that you
22 would have been aware of had you read through
23 that list on August 4, '99; correct?

24 A. Yes.

25 Q. And then in order to get further

1 information about when she had last been treated
2 for an ulcer on her toe, or any problems with
3 cellulitis on her left foot, or infection in her
4 right foot, that kind of information would have
5 been readily available to you by way of the
6 computer if you didn't actually have the chart
7 itself in your hands; true?

8 A. Yes.

9 Q. Now, can we agree that on August 4,
10 '99, that Mrs. Medlen presented to you, at least
11 based upon the information that you had on
12 August 4, '99, with a new condition?

13 A. Yes.

14 Q. And when a patient presents with a
15 new condition, the patient is supposed to be
16 personally evaluated by the supervising
17 physician; true?

18 A. True.

19 Q. Was the patient personally evaluated
20 by the supervising physician on August 4 of '99?

21 A. I don't remember. You will have to
22 defer to him.

23 Q. Does the record indicate, based upon
24 what you have documented, that the supervising
25 physician actually personally evaluated

1 Mrs. Medlen as opposed to your communicating
2 with him?

3 A. He didn't write anything on here, if
4 that's what you are asking.

5 Q. So according to the record that was
6 generated on August 4, 1999, there is no
7 evidence from the written record that would
8 suggest from what you have written that the
9 supervising physician actually personally
10 evaluated Mrs. Medlen; true?

11 MS. DiSILVIO: In terms of a
12 documentation to that effect?

13 MR. MISHKIND: Yes.

14 A. Yes.

15 Q. This Exhibit 2 that we talked about
16 before that you wrote to Dr. Mistry, in that
17 note, you didn't indicate anything to Dr. Mistry
18 about the supervising physician actually seeing
19 the patient when you saw her on August 4, 1999;
20 true?

21 A. True.

22 Q. Dr. Mistry didn't see the patient on
23 August 4, 1999; correct?

24 A. True, yes, he didn't.

25 Q. Who was the supervising physician

1 that you would have been working under the
2 supervision of on August 4, 1999?

3 A. Dr. Yang.

4 Q. And what is Dr. Yang's first name?

5 A. David.

6 Q. Is Dr. Yang an internist?

7 A. Yes.

8 Q. Does Dr. Yang have a subspecialty?

9 A. I don't know.

10 Q. Where was Dr. Yang on that visit on
11 August 4, '99?

12 A. Working in the same hall as me.

13 Q. I'm going back to the August 4.

14 Hopefully I'm not bouncing around too much for
15 you. I'm talking about the August 4, '99 visit.

16 Do you see under plan there is an abbreviation.

17 Do you see that?

18 A. Yes.

19 Q. The D/W.

20 A. Yes.

21 Q. That means discussed with?

22 A. Correct.

23 Q. That doesn't indicate that Dr. Yang
24 actually personally evaluated the patient;
25 correct?

1 A. Correct.

2 Q. And there is no record that you have
3 seen that Dr. Yang wrote himself with regard to
4 any objective findings or any diagnoses that he
5 made himself on August 4, '99; correct?

6 A. Yes.

7 Q. My statement is accurate?

8 A. Yes.

9 Q. Thank you.

10 Were you assisted by anyone on August
11 4, '99 in terms of doing any of your physical
12 examination of Mrs. Medlen?

13 A. No.

14 Q. On August 4, 1999, did you inspect
15 Mrs. Medlen's feet?

16 A. I don't remember.

17 Q. Does the record indicate that an
18 examination of her feet was conducted?

19 A. No.

20 Q. And in fairness to you, is it fair to
21 conclude that if it's not written and you don't
22 remember doing the examination, that more likely
23 than not on August 4, 1999 you did not examine
24 her feet?

25 MS. DiSILVIO: Objection. You may

1 answer.

2 A. Sometimes you don't write everything.
3 It doesn't mean something wasn't done. I don't
4 know how to answer that.

5 Q. Do you have any basis to tell me that
6 you probably inspected her feet on August 4,
7 1999?

8 A. Usually when I do an exam and they
9 are lying down I will say, do you have any other
10 problems, anything else hurting, and they will
11 answer that. She was displayed in front of me.

12 a. Well, the fact that the patient may
13 not have said anything to you about any other
14 areas hurting, can you tell me without her
15 saying to you -- in other words, let's assume
16 she didn't say anything to you about any other
17 area hurting. Can you tell me that you probably
18 inspected her feet or are you unable to tell me
19 that?

20 A. I can't remember.

21 Q. Fair enough. So the only thing that
22 we can rely upon is the record does not reflect
23 any such examination of her feet; correct?

24 A. Yes.

25 Q. And you are not able to tell me based

1 upon any independent recollection what her feet
2 looked like on August 4, '99; correct?

3 A. Correct.

4 Q. You are not able to tell me what her
5 pulses were into her lower extremity; correct?

6 A. I can't tell you.

7 Q. If you had done a physical exam **on** a
8 patient that has diabetic foot ulcers, would you
9 normally do a neurological exam on the patient?

10 MS. DiSILVIO: For any presenting
11 complaint or for this presenting complaint?

12 Q. If you are going to do an exam on a
13 patient that has recent **and** ongoing treatment
14 for diabetic foot ulcers and you inspect the
15 feet, would your physical exam, if such an
16 inspection had been done, would it have included
17 checking for the neurological exam, as well as a
18 vascular exam?

19 A. If it's indicated for that patient.

20 Q. If you had examined her feet, would
21 you have checked for pulses, capillary refill,
22 things that you as a physician assistant are
23 trained to look for as signs and symptoms of
24 concerning events in a patient that has a
25 diabetic foot ulcer; true?

1 A. If indicated, yes, for that patient.

2 Q. So as to the appearance of the ulcer
3 on her feet, how the skin looked on her feet on
4 that day, the pulses, none of that is
5 independently recalled by you; correct?

6 A. Correct.

7 Q. And from looking at the record, you
8 can't indicate to me to any degree of certainty
9 that you inspected her feet on that date;
10 correct?

11 A. Correct.

12 Q. Is it more likely that because her
13 presenting symptom on that date was fever that
14 you probably didn't do a full physical exam,
15 which would have included checking her feet on
16 that day?

17 MS. DiSILVIO: Objection. You may
18 answer.

19 A. Could you rephrase that?

20 Q. Is it probable, given the fact that
21 her presenting symptoms to you on August 4 were
22 running fever since Sunday night, body aches, is
23 it probable or likely given that new condition,
24 an acute onset of symptoms, that you probably
25 did not inspect her feet on August 4, 1999?

1 MS. DiSILVIO: Objection. You may
2 answer.

3 A. I'm not sure how to answer that. Can
4 you rephrase that?

5 Q. Sure. We talked about that she
6 complained of fever, body aches times three
7 days, that her temperature had been 101 on
8 Sunday, Monday aching, Tuesday evening was 101.
9 That's all in your notes; correct?

10 A. Yes.

11 Q. This a.m. the temperature was normal.
12 She continued with body aching. And the rest of
13 the symptoms you have written there.

14 Basically, with the new condition, is
15 it fair to say that you probably did not, when
16 you look at your entire note from start to
17 finish, that you probably did not do a physical
18 exam and assessment of her feet on that day?

19 MS. DiSILVIO: Objection. You may
20 answer.

21 A. I don't remember.

22 Q. I know you don't remember and we have
23 already talked about that your notes don't
24 reflect such an exam. I will just state it one
25 more time and if you can't answer, I'm not

1 trying to beat a dead horse with a stick, but
2 knowing how you were looking at this new
3 concern, this new issue, is it more likely that
4 you did not inspect her feet on that date?

5 MS. DiSILVIO: Objection. Asked and
6 answered. You have already told him you don't
7 recall. If you can't give a better answer, tell
8 Mr. Mishkind you can't. If you can, please give
9 it.

10 A. I can't give you a better answer.

11 Q. Okay, that's fine.

12 Do you know what peripheral
13 neuropathy is?

14 A. Yes.

15 Q. What is peripheral neuropathy?

16 A. That's when you don't have nerve
17 feelings in the outlying area, when it's a
18 depletion of nerve feelings in your extremities.

19 Q. Is peripheral neuropathy a common
20 finding in a diabetic patient that has a history
21 of foot ulcers?

22 A. It could be. It's not necessarily
23 100 percent for everybody.

24 Q. I am not suggesting 100 percent, but
25 it's more common when a patient has diabetes and

1 is being treated for foot ulcers that there will
2 be some degree of peripheral neuropathy?

3 A. That's possible. I don't have
4 statistics, though.

5 Q. That's fine.

6 Are such patients that have
7 peripheral neuropathy that are diabetics and
8 have foot ulcers, are they more prone to or
9 susceptible to infection?

10 A. Yes, they could be.

11 Q. And that's something that you are
12 aware of, correct, as a physician assistant?

13 A. Yes.

14 Q. And if a patient has peripheral
15 neuropathy, a diabetic patient with foot sores,
16 do they normally have less knowledge of
17 reduction in sensory feeling in their toes or in
18 their feet?

19 MS. DiSILVIO: Objection. You may
20 answer.

21 A. I'm not a specialist in that.

22 Q. But you are certainly trained to
23 recognize that a diabetic patient with
24 peripheral neuropathy may not appreciate
25 sensation and feeling in their toes and in their

1 feet in the same way that you or I, who
2 hopefully do not have diabetes and peripheral
3 neuropathy, would feel such things?

4 A. Some don't.

5 Q. Under the problem area it says
6 cellulitis, left foot, toward the very bottom of
7 your sheet there. Do you see that?

8 A. Yes.

9 Q. What is cellulitis of the left foot?

10 A. Redness, infection, swelling.

11 Q. How long had she had, or when had she
12 had cellulitis of the left foot?

13 A. I don't know.

14 Q. It doesn't appear as if you inquired
15 at all about her history of cellulitis or her
16 history of infection in her feet when you saw
17 her on August 4, '99; is that a fair statement?

18 A. Yes.

19 Q. Do you know what gas gangrene is?

20 A. I have an idea of what it is. I have
21 never seen it.

22 Q. Do you know how gas gangrene is
23 treated?

24 A. Not to the physician's level, no, I
25 don't. I know antibiotics.

1 Q. In terms of the sensitivity or the
2 appropriate antibiotics, is that something
3 outside of your realm of expertise?

4 A. Yes.

5 Q. What about a septic foot, what does
6 that mean when someone says a patient has a
7 septic foot?

8 A. Infection.

9 Q. A patient presenting with an
10 infection, is it common for them to present with
11 a history of a recent onset of fever and body
12 aches?

13 A. Say that again.

14 Q. A patient that has an infection, is a
15 common presenting symptom or complaint that of
16 fever and body aches?

17 A. Not always.

18 Q. I'm not saying not always. But when
19 you have a patient that has an infection, is
20 fever a common symptom or finding?

21 A. No.

22 Q. The patient that has a fever, that
23 has an elevated temperature, is that consistent
24 with a patient that has an infection?

25 A. I'm sorry, could you repeat that?

1 Q. I will reword it. Maybe this will be
2 more helpful.

3 If a patient has an infection, is it
4 common to see an elevated temperature as one of
5 the findings when a diagnosis of infection is
6 made?

7 A. No.

8 Q. It's not common?

9 A. No.

10 Q. Well, when you talk about a patient
11 presenting with a fever, and you are looking for
12 the cause of the fever, you, as a physician
13 assistant, try to arrive at a differential?

14 A. Correct.

15 Q. And you mark down fever of unknown
16 etiology; correct?

17 A. Correct.

18 Q. Well, before you mark down fever of
19 unknown etiology, you have had to have
20 considered what could be causing this patient's
21 fever; true?

22 A. Correct.

23 Q. And obviously, in order to meet the
24 standard of care that the patient is entitled to
25 receive, you had to consider potential causes of

1 the fever; true?

2 A. Yes.

3 Q. In your thought process, what
4 conditions needed to be within your differential
5 as potential causes for this patient developing
6 the fever and giving the history that she
7 presented on August 4, 1999 with?

8 (Record read.)

9 MS. DiSILVIO: You may answer.

10 Q. What should have been within your
11 differential on August 4, 1999 as an explanation
12 for the patient's fever?

13 MS. DiSILVIO: Objection. You may
14 answer.

15 A. I don't know.

16 Q. You don't know?

17 A. You just want to know what I was
18 thinking at the time?

19 Q. Sure. Absolutely.

20 A. I have no idea what I was thinking at
21 the time. That's why you do tests. I went and
22 talked to the physician.

23 Q. But as a physician assistant, a
24 certified physician assistant that is faced with
25 a patient that has a new problem -- I'm sorry, a

1 new problem or a new condition, and what appears
2 to be the primary symptom or finding is fever,
3 you obviously want to consider what could be
4 causing this particular patient with this
5 medical history to be developing signs and
6 symptoms of a fever; true?

7 A. Yes.

8 Q. And that's the reasonable and
9 standard thing that anybody should be doing in
10 assessing a patient with this medical history
11 with a new onset of fever; true?

12 A. Yes.

13 Q. And from your training and experience
14 and work here at Kaiser, what was going through
15 your mind as possible explanations for why this
16 patient with the history that you knew she had,
17 why she was having fever?

18 A. Right, okay. **So** it could have been a
19 virus, is that what I am understanding your
20 question? You want the differential diagnosis?

21 Q. That's what I thought I was asking.

22 A. I'm sorry. It could be virus, which
23 can cause fever to go up like that. Chest x-ray
24 for possible pneumonia. Urinalysis and blood
25 work, just to see if she had bacteria in her

1 throat or wherever, you know, in her blood.

2 Q. So you told me about --

3 A. Urine.

4 Q. I didn't mean to cut you off.

5 A. And urine. So we did testing on her
6 to start.

7 Q. Let's go back to the question which
8 was differential.

9 A. I'm sorry.

10 Q. That's okay. You told me about virus
11 as the possible explanation. Then you talked
12 about bacteria and that's why you were doing
13 some blood work and that's why you were checking
14 the urine.

15 When you think about bacteria and you
16 look at the blood work and the urine, can we
17 agree that within your differential has to be
18 infection, bacterial infection?

19 A. Uh-huh.

20 Q. That's a yes?

21 A. Yes.

22 Q. Anything else with this history that
23 should be within your differential other than
24 virus, a bacterial infection that could be
25 pneumonia, could be some type of a urinary tract

1 infection; right?

2 A. Yes.

3 Q. What else should be within, and most
4 likely was within your differential given this
5 patient's medical history and her symptoms on
6 that day?

7 MS. DiSILVIO: And her physical exam?

8 MR. MISHKIND: Sure. The physical
9 exam that we know she performed, although
10 obviously we have her testimony as to what she
11 didn't and did do.

12 THE WITNESS: What was that question?
13 I'm sorry.

14 (Record read.)

15 A. I think that's it.

16 Q. On August 4, would you have conducted
17 your examination of the patient before going to
18 Dr. Yang?

19 A. Yes.

20 Q. That's the formal process; true?

21 A. Yes.

22 Q. Did you tell Dr. Yang that the
23 patient was presenting with a new condition?

24 A. Yes.

25 Q. Where does it say that?

1 A. That's the procedure; you gather your
2 information and go and talk to the physician.

3 Q. Do you remember specifically having
4 the conversation with Dr. Yang?

5 A. No.

6 Q. So as to whether you told him that
7 this was a new or ongoing problem, can you tell
8 me what you did in this case? In other words,
9 can you tell me --

10 A. The specific conversation, no.

11 Q. Can you tell me that you probably
12 told him that this patient had a new condition;
13 that according to the information you had, had
14 not previously been documented in the records?

15 A. Yes.

16 Q. Now, along the left-hand side on the
17 second sheet where it has Dr. Yang's name, what
18 does that say?

19 A. Per Dr. Yang, negative for
20 infiltrate.

21 Q. What else?

22 A. The ASAP goes with it. That means to
23 send the patient down for the x-ray right away,
24 as soon as possible.

25 Q. And what does that mean per Dr. Yang

1 negative for infiltrate?

2 A. It means the patient brought the
3 x-ray back up and it was viewed.

4 Q. So Dr. Yang looked at the x-ray?

5 A. Yes.

6 a. And then told you that it was
7 negative for infiltrate?

8 A. Yes.

9 Q. Again, this doesn't indicate that the
10 doctor actually examined the patient; true?

11 MS. DiSILVIO: This notation?

12 MR. MISHKIND: Correct.

13 A. True.

14 Q. Now, under plan, where it says
15 discussed with Dr. Yang, the next entry is chest
16 x-ray, rule out pneumonia. Was that what
17 Dr. Yang told you to do?

18 A. Yes.

19 Q. So he said, based upon whatever
20 information you gave to him, he said, get the
21 chest x-ray to rule out pneumonia?

22 MS. DiSILVIO: I'm going to object,
23 because we don't know whether or not Dr. Yang
24 had seen the patient at that time.

25 MR. MISHKIND: That's fine.

1 MS. DiSILVIO: You may answer.

2 Q. Based upon this note, it says chest
3 x-ray, rule out pneumonia, and you would have
4 gotten the x-ray to rule out pneumonia based
5 upon Dr. Yang telling you to do that?

6 A. Yes.

7 Q. And there is no indication at this
8 point in the record that Dr. Yang had listened
9 to the patient's chest or lungs or done any type
10 of a physical examination before telling you to
11 rule out pneumonia; true?

12 A. True. There is no documentation
13 there.

14 Q. Now, the labs, who decided which labs
15 to order?

16 A. Dr. Yang.

17 Q. When were these labs ordered?

18 A. On the 4th.

19 Q. What time on the 4th?

20 A. At the time of the appointment.

21 Q. According to the record, can we agree
22 that the appointment on that day was 2:45 p.m.?

23 A. Yes. That was the time.

24 Q. And where you're trying to
25 investigate fever of unknown etiology, is the

1 chest x-ray and the labs, are these done just in
2 the normal course of business or are these done
3 stat?

4 A. When it's marked ASAP, they do it and
5 then the patient brings them back.

6 Q. Well, that's the chest x-ray, is it
7 not?

8 A. Yes.

9 Q. I'm talking about the labs.

10 A. Now, you said ordinarily --

11 Q. Let me go back. On the left-hand
12 side of the note, it says per Dr. Yang, negative
13 for infiltrate; correct?

14 A. Uh-huh.

15 Q. That's a yes?

16 A. Yes.

17 Q. Now, where it says ASAP, is that your
18 handwriting, ASAP?

19 A. Yes.

20 Q. Was the ASAP relative to what was
21 written to the right of the ASAP?

22 A. Correct.

23 Q. So the per Dr. Yang negative for
24 infiltrate was written afterwards?

25 A. Yes.

1 Q. The ASAP is your nomenclature for
2 doing things stat?

3 A. There is two levels. There is stat
4 like the emergency room does, or ASAP, which
5 means they will do it right away and give it to
6 you right away.

7 Q. Now, the ASAP that you wrote -- I
8 presume that x-rays and lab work are done right
9 here at Kaiser?

10 A. Yes.

11 Q. There is a lab to do the UA and the
12 CBC?

13 A. Yes.

14 Q. And there is a radiology department
15 to do chest x-rays?

16 A. Yes.

17 Q. What was to be done right away?

18 A. All of it.

19 Q. Did the patient physically have to go
20 someplace to have the lab work done, the UA, the
21 CBC, et cetera?

22 A. Yes.

23 Q. And then what was she then to do
24 after having the chest x-ray and the lab work
25 done?

1 A. She was to come back.

2 Q. Is there any indication on here that
3 she didn't come back?

4 A. No. I would think she would come
5 back because Dr. Yang read the x-ray and we
6 wouldn't see it without her.

7 Q. Now, you have told me that you wanted
8 the x-ray and the lab work done **ASAP**, which is
9 just one step below stat, but right away;
10 correct?

11 A. Yes.

12 Q. **Was** the lab work done right away?

13 A. I believe so.

14 Q. **Do** you have a copy of the lab work?

15 A. I don't,

16 Q. From your understanding of the
17 physician assistant protocol, the utilization
18 plan, would it be unacceptable for a physician
19 that is supervising you not to personally
20 evaluate a patient when the patient presents
21 with a new problem?

22 A. By Paw, that's what they have to do.

23 Q. So that we can agree that it would be
24 a violation of standard practice not to
25 personally evaluate the patient under those

1 circumstances; true?

2 MS. DiSILVIO: You may answer. I'm
3 just objecting for the record. You may go ahead
4 and answer.

5 Q. It would be a violation of accepted
6 practice, below accepted standards for a
7 physician not to personally evaluate a patient
8 under those circumstances; true?

9 MS. DiSILVIO: I'm just objecting
10 because she is not a physician as to her
11 commentary on the physician's standard of care,
12 but you may answer.

13 A. It's state law for new complaints
14 that a physician goes in.

15 Q. And if one doesn't examine a patient,
16 that a physician assistant under the utilization
17 plan presents to that physician with a new
18 problem, a new condition, that would not be in
19 keeping with what you understand to be the
20 standard and accepted practice; true?

21 MS. DiSILVIO: Objection to her
22 commentary to the standard of care for a
23 physician, but with that objection, you may
24 answer.

25 A. I can't answer for a doctor.

1 Q. You understand as a physician
2 assistant, though, that you have an obligation
3 to bring that to the physician that it's a new
4 problem, a new medical condition; true?

5 A. Yes.

6 Q. And it would be a violation on your
7 part not to present it to the supervising
8 physician to enable him to do a personal
9 evaluation; true?

10 A. Yes.

11 - - - - -

12 (Thereupon, HOLMES Deposition
13 Exhibits 4 thru 10 were marked for
14 purposes of identification.)

15 - - - - -

16 Q. Now, I'm going to show you
17 Plaintiff's Exhibits 4 through 10. Exhibit 4 is
18 a lab result sheet; true?

19 A. Yes.

20 Q. And that has the CBC from August 4,
21 '99; correct?

22 A. Yes.

23 Q. And it was ordered by you; correct?

24 A. Yes.

25 Q. The WBC was abnormal; correct?

1 A. Yes.

2 Q. And are you able to tell me whether
3 or not there were any other abnormalities when
4 one looks at the balance of the report?

5 A. Are you referring to the starred
6 things?

7 Q. Well, I'm not referring to anything.
8 I'm asking you whether or not as you look at the
9 report whether or not there are any other
10 abnormalities?

11 A. Yes, there are two others: Lymphs
12 percent and gran percent.

13 Q. And of what significance is that in
14 the face of an elevated WBC?

15 A. You need to maybe refer to a doctor
16 to find out the exact lab. I'm not a specialist
17 on all blood work.

18 Q. Do you know if that's indicative or
19 consistent with an infection?

20 A. No, I don't know.

21 Q. When was this information reported to
22 you? Let me rephrase that. On that exhibit in
23 front of you -- that's Exhibit 4; is that
24 correct?

25 A. Yes.

1 Q. Does it show on that page when the
2 results were reported to you?

3 A. No. It just shows when it was drawn.
4 And this has the date, must be when somebody
5 made a copy.

6 Q. It was collected at 1526 and looks
7 like recorded at 1527. Do you see that?

8 A. Yes.

9 Q. So the results were recorded a minute
10 after they were collected; correct?

11 MS. DiSILVIO: I don't think that
12 refers to recorded, so I will object on that
13 basis.

14 MR. MISHKIND: Let's not find out
15 from you, Marilena.

16 Q. Do you know what recorded means?

17 A. **No**, I don't. You need to ask the
18 lab.

19 Q. The COL means collected, when the
20 blood specimen was drawn; correct?

21 A. Yes.

22 Q. And as to what the minute later means
23 in terms of recorded, whether that means that
24 these results were recorded and thus available
25 for communication, you are not able to tell me

1 whether **that's** what that means?

2 A. That might be received.

3 Q. The next page, is this just a
4 continuation, the next Exhibit 5, a continuation
5 of the labs?

6 A. Yes.

7 Q. And there is also additional
8 abnormalities; correct?

9 A. Yes.

10 Q. And the next exhibit, Exhibit 6, is
11 the glucose greater than 1000, and for that
12 matter the ketones and the protein in the urine,
13 are those items of concern?

14 A. Yes.

15 Q. In fact, aren't those very
16 significant elevations in a patient, a diabetic
17 patient?

18 MS. DiSILVIO: Objection to very
19 significant. You may answer.

20 A. I don't know.

21 Q. Do you know what this indicates, a
22 glucose of greater than 1000 with 50 ketones and
23 75 urine protein, what that indicates?

24 A. Yes. They have high sugar.

25 Q. **Now**, the next exhibit, which is

1 Exhibit 7, that looks like there is a phone call
2 on August 5, '99 to Ruth. Do you see that?

3 A. Yes.

4 Q. Who is Ruth?

5 A. A nurse that used to work here.

6 Q. In what department?

7 A. In the medicine department I was at.

8 Q. That extension 2047 --

9 A. I'm not sure of the phone numbers.
10 There are quite a few phones.

11 Q. It appears that the urine glucose was
12 not called until 10:50 August 5, '99; correct?

13 A. Yes.

14 Q. Can you tell looking at Exhibit 7 or
15 Exhibit 8 when the lab results either from the
16 urine or from the CBC were reported, other than
17 on August 5 at 10:50 a.m.?

18 A. I can't.

19 MS. DiSILVIO: Exhibit 7 does say
20 phone call back.

21 Q. Do you know what phone call back
22 means?

23 A. No.

24 Q. Do you have any recollection of
25 receiving the results on August 4, '99?

1 A. Well, I wrote -- that's what this is.
2 That's what I was explaining on a little pink
3 sheet.

4 Q. Exhibit 2, we talked about earlier,
5 right?

6 A. Yes.

7 Q. But you can't tell me when it was
8 that you became aware of the urine glucose
9 greater than 1000 and the random blood sugar of
10 261, correct, whether it was on August 4 or
11 August 5, or some other date?

12 A. I can't tell you for sure.

13 Q. And you apparently sent Dr. Mistry
14 the blood work, at least according to that note?

15 A. Yes.

16 Q. Do you remember ever having any
17 discussion with Dr. Mistry about what his
18 interpretation of the blood work was?

19 A. No, I never talked to him.

20 Q. On August 4, you don't note anywhere
21 in the record dated August 4 that you were made
22 aware of the CBC or the urine being abnormal on
23 that date; correct?

24 A. Correct.

25 Q. Now, the last exhibit --

1 MS. DiSILVIO: 9 or 10?

2 Q. Actually, go to Exhibit 9. I'm trying
3 to understand what this all means, the encounter
4 documentation. It looks like something was
5 originated on August 25 at 2:25 p.m.?

6 A. Yes.

7 Q. And it was routed, looks like, to
a you?

9 A. **No.** D, the D before my number, my
10 number is 3592 in the system.

11 Q. Okay.

12 A. And the D before it is the nurse, the
13 nurses' box. It's e-mail KM3. So it went to
14 the nurses' box.

15 Q. You just said KM3. What is KM3?

16 A. That's what this is. Electric mail.

17 Q. Got you. So this encounter
18 documentation is cyberspace electric mail?

19 A. That's what this is called, KM3.

20 Q. And this is Exhibit 9.

21 Who is Marianne Carey?

22 A. I have no idea.

23 Q. Does this mean that she is the one
24 that sent this e-mail?

25 A. Yes, sender. It must be somebody at

1 the call center. MSC is the call center.

2 Q. MSC02, what does that stand for?

3 A. The call center, where the phone
4 calls go to.

5 Q. And it's routed to, it says
6 CT-Holmes, NA. What does that mean?

7 A. Holmes, Nancy.

8 Q. What is the CT?

9 A. I don't know what that stands for,
10 but that's the nurses' box.

11 Q. Who would have received this e-mail
12 that was directed to you?

13 A. Well, it wasn't sent to me. It was
14 sent to the nurses! box, whoever was covering
15 the boxes, the doctors! boxes that day.

16 Q. And then what would that person have
17 been required to do once they received this
18 e-mail communication?

19 A. Whatever it said.

20 Q. Can you tell me, is the next exhibit
21 behind Exhibit 9, which is Exhibit 10, does that
22 go with Exhibit 9?

23 A. I don't know for sure, because the
24 heading is here, but there is nothing up here,
25 so I can't tell you if they go together or not.

1 Q. Can you tell me what Exhibit 9, what
2 e-mail encounter documentation was being
3 communicated by Marianne Carey to the nurses'
4 station at D 3592?

5 A. No, I can't tell you that. I don't
6 know if there is something -- I don't know. I
7 would have to be in that system and go page by
8 page to say if this goes with this. Because
9 this doesn't say who it's from at the top. Do
10 you know what I mean?

11 Q. I understand.

12 If you had been aware of the CBC and
13 the urine on August 4th, 1999 while Mrs. Medlen
14 was still at Kaiser, what would you have done?

15 A. Referred her to the physician.

16 Q. You would have brought that
17 information to Dr. Yang's attention as the
18 supervising physician?

19 A. Yes.

20 Q. That would have been your
21 responsibility; correct?

22 A. Yes, that's a procedure.

23 Q. Assuming that information was
24 available to you and Mrs. Medlen had not been
25 discharged, not sent home at that point --

1 strike that.

2 Assuming the information was
3 available to you on August 4, 1999, and you
4 didn't provide it to Dr. Yang, would that be
5 below accepted standards for you as a physician
6 assistant?

7 MS. DiSILVIO: Objection. You may
8 answer.

9 A. Could you rephrase that?

10 Q. If the information on the CBC and the
11 urinalysis were available to you on August 4,
12 1999, collected, and test completed and the
13 information available to you, and you did not
14 bring it to Dr. Yang's attention as your
15 supervising physician, that wouldn't be a good
16 thing, would it?

17 MS. DiSILVIO: Objection. You may
18 answer.

19 A. My job is to refer to the doctor with
20 everything, with all evidence.

21 Q. So had you had that evidence on
22 August 4, that wouldn't have been a good thing
23 for you not to bring it to your supervising
24 physician immediately; true?

25 MS. DiSILVIO: When it became

1 available to her?

2 MR. MISHKIND: Right.

3 A. Yes, when it's available.

4 Q. If you didn't bring it to the
5 doctor's attention when it was available to you,
6 assuming it was on August 4, '99, that would be
7 below accepted standards of care; true?

8 MS. DiSILVIO: Objection. You may
9 answer.

10 A. If I didn't bring it to his
11 attention?

12 Q. Yes, ma'am.

13 MS. DiSILVIO: Objection. You may
14 answer.

15 A. I'm not sure how to answer that.

16 Q. Well, under what circumstance would
17 it be anything other than unacceptable or
18 substandard on your part?

19 A. Never. I would always show what I
20 had.

21 Q. Can you tell from the labs, from any
22 of the documents which you are obviously more
23 familiar with reading and understanding than I
24 am as a lowly attorney, can you tell me whether
25 or not this information which was supposed to

1 have been gathered ASAP on August 4, 1999 was,
2 in fact, available to you on August 4, 1999,
3 other than the chest x-ray?

4 A. Say that again, please.

5 Q. Other than the chest x-ray being
6 negative **for** infiltrate --

7 A. Right.

8 Q. -- did you have available to you at
9 Kaiser the results of the blood work and the
10 urinalysis on August 4, 1999?

11 A. I don't know.

12 Q. Should you have?

13 A. I don't know.

14 Q. Based upon how it was ordered and
15 what your explanations were?

16 A. Not all tests -- like a throat
17 culture doesn't come back immediately. Those
18 have to cook.

19 Q. Forget about the throat culture. The
20 labs, the UA, the **CBC**, BUN, creatinine, should
21 those have been available on August 4, 1999?

22 A. I would think so, unless it was late
23 in the day. What time was it that she --

24 Q. Her appointment was 2:45 p.m.?

25 A. But she didn't go to the lab then.

1 She went at 3:30 or just before. You would have
2 to ask the lab how quickly they do things,
3 because I don't know.

4 Q. Mrs. Medlen was not put on any
5 antibiotics on August 4, 1999; correct?

6 A. Correct.

7 Q. What instructions was the patient
8 discharged with?

9 A. I don't know. I didn't write that.

10 Q. Who wrote that?

11 A. The medical assistant that was there.

12 Q. What's a medical assistant? How does
13 that differ from a physician assistant?

14 A. They are not as trained. They put
15 patients in a room, or you know, assist as told,
16 set up appointments, discharge them when they
17 are done. They do vital signs.

18 Q. They are unlicensed, aren't they?

19 A. I don't know. They have to do
20 something. They are sort of like a nurses aide.

21 Q. What's the name of the medical
22 assistant?

23 A. Nancy Drusky.

24 Q. Does Nancy still work here?

25 A. In Akron, I believe.

1 Q. At Kaiser in Akron?

2 A. Yes.

3 MR. MISHKIND: Add her to the list,
4 Marilena.

5 MS. DiSILVIO: For deposition?

6 MR. MISHKIND: You got it.

7 MS. DiSILVIO: Will do.

8 Q. Have you seen the instructions that
9 the patient was given?

10 A. No.

11 Q. Were they written instructions?

12 A. I don't know what she meant by this.

13 Q. Well, I'm not asking you what she
14 meant by it. My question was, were they written
15 instructions?

16 You had the chart available to you,
17 you have looked at the chart or at least stuff
18 from the chart. I'm trying to understand
19 whether a patient discharged with instructions,
20 either, A --

21 What were those written instructions?

22 We will start with A and I won't go to B.

23 MS. DiSILVIO: Objection. If you
24 know.

25 A. I don't know.

1 Q. Can you tell me if the instructions
2 weren't written, what the instructions most
3 likely would have been if they were just verbal?

4 A. I really don't know what she told the
5 patient.

6 Q. Do you know why it was that it was
7 Nancy Drusky as opposed to you, ma'am, that gave
8 the instructions on that day?

9 A. I usually talk to the patients when
10 I'm in the room, before I leave the room. No, I
11 don't know.

12 Q. Isn't it a fact that you left for
13 that day, finished your shift and didn't have
14 the information back, and that's why the medical
15 assistant was the one that wound up giving the
16 instructions to the patient?

17 MS. DiSILVIO: Objection. You may
18 answer. If you know.

19 A. I didn't leave for the day.

20 Q. What time did you leave on that day?

21 A. I don't know, but I was here most
22 every night very late.

23 Q. How do you know you didn't leave on
24 this day?

25 A. I probably had patients after that.

1 Q. I'm not trying to be difficult. I'm
2 trying to understand. You saw this patient at
3 the very beginning, you ordered tests, you
4 wanted things done ASAP. Why are the
5 instructions being given to the patient by a
6 medical assistant when the labs are either back
7 or perhaps still pending at the time that the
8 patient left? I am trying to understand why a
9 medical assistant was giving instructions rather
10 than you?

11 A. They discharge and that's pretty much
12 what they write, when they sign off a patient
13 for the day, when they are through with that
14 patient.

15 Q. The last exhibit, 10, can we agree
16 that Mr. Medlen was calling on August 5?

17 A. Uh-huh, yes.

18 Q. And Mrs. Medlen had fever, dry heaves
19 and shakes?

20 A. Yes.

21 Q. And according to this e-mail -- is
22 this an e-mail?

23 A. This is, yes, KM.

24 Q. I'm learning. MBR, what does MBR
25 stand for?

1 A. Member.

2 Q. Was seen yesterday by PA-C Holmes.
3 That's you?

4 A. Yes.

5 Q. And it further says, husband wants to
6 be contacted regarding her results.

7 Is it fair to say that at least at
8 the time that this telephone call was made on
9 August 5, the Medlens did not have knowledge as
10 to the results of the tests that had been done
11 and ordered ASAP the day before?

12 MS. DiSILVIO: Based on this KM3?

13 MR. MISHKIND: Yes.

14 A. Yes.

15 Q. Do you have any basis to say to me
16 under oath, on the record in this case, that the
17 Medlens knew the results of the blood work or
18 the urinalysis before Mrs. Medlen was discharged
19 on August 4 following her visit with you?

20 A. You are asking if they knew the
21 results of her blood work before she went home
22 that day?

23 Q. Yes, ma'am.

24 A. I don't know that. I don't remember.

25 Q. And, certainly, this note with the

1 husband calling the next day would suggest that
2 they didn't know the results; correct?

3 A. I don't know. It could, yes.

4 Q. Was there any recommendation made
5 that you could see from -- strike that.

6 You had never talked to the Medlens
7 after August 4, '99, did you?

8 A. No.

9 Q. Do you know when the Medlens were
10 advised of the results of the lab work done on
11 August 4, '99?

12 A. I don't know.

13 Q. Did you receive any communication
14 directly or indirectly -- indirectly would be,
15 perhaps, from the nurse where that e-mail had
16 been routed to --

17 A. Yes.

18 Q. -- that the labs from August 4, '99
19 were ready and available for you or for someone
20 to act upon?

21 A. Well, that's what that other --

22 Q. That's what Exhibit 2 is?

23 A. Yes.

24 Q. But you can't tell me whether or not
25 Mrs. Medlen was already in the hospital with

1 gangrene of the foot being treated for the
2 infection when you wrote this note on Exhibit 2,
3 can you?

4 A. No, I don't know when that was
5 exactly made out.

6 Q. And is it fair to say that the
7 exhibits that I presented in front of you do not
8 indicate that even on August 5, 1999, that
9 either Mr. or Mrs. Medlen were told that based
10 upon information available from August 4, and
11 based upon Mr. Medlen's call on August 5, that
12 Mrs. Medlen should go to the hospital
13 immediately or come back to see any doctor
14 immediately?

15 MS. DiSILVIO: Objection.

16 A. I don't know what transpired after.
17 I didn't get this note.

18 a. Do you have any knowledge from
19 looking at the record as to the nature of the
20 surgeries and complications that Mrs. Medlen has
21 experienced since August 4, 1999?

22 A. Since that day?

23 Q. Yes, ma'am.

24 A. I know she had surgery.

25 Q. Do you know she --

1 A. I didn't look at any more of the
2 record.

3 Q. Do you understand she underwent
4 amputation -- amputations?

5 A. I knew it was an amputation.

6 Q. But the extent of the amputation, as
7 to whether or not it was just a metatarsal or a
8 transmetatarsal or below or above the knee?

9 A. I don't know, no.

10 Q. Has Dr. Yang ever indicated to you --
11 strike that.

12 Have you ever talked to Dr. Yang
13 about Mrs. Medlen since this case came to your
14 attention, since this lawsuit came to your
15 attention?

16 A. No, not since the lawsuit came.

17 Q. Did you ever talk to Dr. Yang about
18 Mrs. Medlen after August 4, 1999 at any time?

19 A. One time.

20 Q. When was that?

21 A. The Saturday after, when I was
22 looking in the KMB notes, I saw the note in the
23 nurses' box that she had been called in and had
24 been sick, again, fever came back. And then he
25 was working with me that day and I said, oh, she

1 is back in the hospital and I have no idea why.

2 Q. Which KM3 note are you referring to?

3 A. Not this one.

4 Q. There is another KM3 note that you
5 are referring to?

6 While we are waiting to get that, you
7 saw this KM3 note at the nurses' station?

8 A. In the nurses' mailbox.

9 Q. Was this on the computer?

10 A. Yes. I was just messing around with
11 the computer.

12 Q. And you just happened to stumble
13 across it?

14 A. Just looked in there, yeah.

15 Q. Did you happen to find the other KM3
16 note for the lab results that had been obtained
17 on August 4?

18 A. No. I just saw -- I don't know if it
19 was this one. But it's one that was sent to, I
20 think, to Dr. Mistry's office.

21 Q. What do you remember, based upon that
22 conversation with Dr. Yang, as to what, if
23 anything, he said to you?

24 A. I really don't recall any more than
25 that. I just finished out the note because I

1 saw she went to the hospital, and we have no
2 access to that.

3 Q. Did you ever have any conversation
4 with Dr. Yang about Mrs. Medlen at any other
5 time other than this Saturday encounter that you
6 just told me about?

7 A. I don't think so.

8 Q. What about talking with Dr. Mistry at
9 any time after you sent him this note that's
10 marked on Exhibit 2?

11 A. No.

12 Q. Have you talked with any of the other
13 caregivers, the podiatrist or any other
14 physicians that were involved with Mrs. Medlen's
15 care at any time since August 4, '99? In other
16 words, have you talked with anyone about
17 Mrs. Medlen's caregivers since your August 4,
18 1999 visit, other than what you have told me
19 about with Dr. Yang?

20 A. Just one other, my supervisor.

21 Q. And that would be who?

22 A. Dr. Turakhia. He was my supervisor.
23 I have a different one now.

24 Q. Can you spell that?

25 A. T-U-R-A-K-H-I-A.

1 Q. Dr. Turakhia is an internist?

2 A. Yes.

3 Q. When did you talk to Dr. Turakhia?

4 A. After that weekend, because he was
5 working The Cleveland Clinic at that time. They
6 do rotations.

7 a. What did you say to him?

8 A. I just asked if she was in the
9 hospital and is she okay.

10 Q. What did he say?

11 A. The response was, well, she has an
12 infection and she has antibiotics running, don't
13 worry about it, and I wasn't about to ask
14 anymore.

15 Q. Do you know why he told you not to
16 worry about it?

17 A. Oh, he always says that.

18 a. Were you worried about it?

19 MS. DiSILVIO: About the patient?

20 MR. MISHKIND: Sure.

21 A. As a patient, yes, I wanted to know
22 what happened to her.

23 Q. Do you have any explanation for why
24 the patient was not placed on antibiotics for an
25 infection on August 4, 1999?

1 A. You need to ask the doctor that.

2 Q. Would you agree that the patient
3 should have been placed on antibiotics for an
4 infection on August 4, 1999?

5 MS. DiSILVIO: Objection. She can't
6 speak to --

7 A. You will have to refer to a
8 physician. I'm not allowed to prescribe.

9 Q. Who made the ultimate determination
10 to mark down fever of unknown etiology? Was
11 that you?

12 A. We discussed that.

13 Q. Was that before or after you had
14 available to you the lab work?

15 A. It would have been before.

16 Q. Would you agree that had you had the
17 lab work back, as a physician assistant, you
18 would not have marked down fever of unknown
19 etiology?

20 MS. DiSILVIO: Objection. You may
21 answer.

22 A. I can't answer that.

23 Q. Have you had any discussions with
24 anyone else about Mrs. Medlen in terms of
25 caregivers, other than what you have told me

1 about?

2 A. No.

3 Q. Do you remember anything else
4 relative to the visit on August 4, '99 in terms
5 of what you did, what you were told, other than
6 what we have talked about during this deposition
7 today?

8 A. No, I can't remember anything else.

9 MR. MISHKIND: Give me a couple
10 minutes to look at my notes and we may be done.

11 (Recess had.)

12 Q. I do have a couple more questions.
13 Hypothetically, if you had been
14 provided with the results of the labs, either on
15 August 4 or August 5, would you have had an
16 obligation or responsibility to contact the
17 patient for some interaction or some steps to be
18 taken?

19 A. With the patient?

20 Q. If you had gotten --

21 A. After discussing with a physician,
22 yes, you decide what to do from there.

23 Q. So with those labs, the first thing
24 you would have had a responsibility to do would
25 be to discuss them with the physician, with the

1 supervising physician?

2 A. Yes.

3 Q. And then contact the patient?

4 MS. DiSILVIO: Objection. I think she
5 said you go from there.

6 Q. Do you have any reason, based upon
7 your training and experience as a physician
8 assistant, to believe that with the lab work
9 that was known and when it was reported and
10 available -- we will deal with that -- that this
11 patient would not have been brought back in for
12 further medical treatment?

13 MS. DiSILVIO: Objection. If you can
14 answer that.

15 A. That would be a physician's planning.

16 Q. You have no opinion on whether or not
17 these labs would have required immediate
18 antibiotic treatment?

19 MS. DiSILVIO: Objection.

20 A. I can't say that. That's a doctor's
21 call.

22 Q. The interaction sheets that we
23 have -- rather than marking them as an exhibit,
24 there appears to be an interaction sheet on
25 August 6th, '99.

1 The sender was Virginia Kurtz and it
2 was routed to Dr. Gadowski, who is the ER
3 doctor. Is this the other encounter sheet that
4 you are referring to?

5 A. No. Dr. Gadowski wasn't on that.

6 Q. There is one relative to negative for
7 beta hemolytic streptococcus group B or group
8 blank. Was this the encounter?

9 A. No. It's a regular written out, you
10 know, like somebody saying something, a
11 statement, not a result.

12 Q. And do you remember the date that
13 that --

14 A. I think it was the next day.

15 Q. And were they lab results?

16 A. No.

17 Q. What do you recall?

18 A. It was similar to that paper you have
19 already, but it was how the route went. Where
20 it was sent to. It was sent to Strongsville
21 first.

22 Q. It shouldn't have been sent to
23 Strongsville, should it?

24 MS. DiSILVIO: Objection. If you
25 know.

1 A. That's where her primary is.

2 Q. But she was seen where?

3 A. Here.

4 Q. And then had to be rerouted from
5 Strongsville, back to Snow, to Kaiser Snow;
6 correct?

7 A. Right.

8 Q. How long did it take to get rerouted
9 from Strongsville to Kaiser?

10 A. I don't know.

11 Q. Would you agree that sending it to
12 Strongsville and having to reroute it to Kaiser
13 Snow in this case led to a further delay in
14 getting the information?

15 MS. DiSILVIO: Objection. Delay or
16 further delay? You haven't established that
17 there was any delay.

18 A. I can't answer that.

19 Q. Well, let's talk --

20 A. I can't account for it.

21 Q. You can't account for it?

22 A. Yes.

23 Q. Well, the labs should have been
24 reported on August 4, 1999; correct?

25 MS. DiSILVIO: Objection. I think

1 she said the lab gets them done on August 4,
2 '99.

3 MR. MISHKIND: She didn't say that,
4 Marilena, and I would appreciate if you didn't
5 testify for her.

6 MS. DiSILVIO: I would appreciate if
7 you don't mischaracterize her testimony. I
8 wrote it down.

9 MR. MISHKIND: Just make your
10 objection.

11 MS. DiSILVIO: Don't mischaracterize
12 her testimony and I won't make a speaking
13 objection.

14 Q. You said you had no expectation that
15 ASAP would mean that it couldn't be done on
16 August 4, 1999; correct?

17 MS. DiSILVIO: Objection. You may
18 answer.

19 A. I don't know how long it takes them
20 to do some of those tests.

21 Q. Do you have any reason to believe
22 that on August 4, 1999, the CBC and urinalysis
23 could not be done in the afternoon of that visit
24 within a half hour or an hour?

25 MS. DiSILVIO: Objection. If you

1 know.

2 A. I don't know the time frames. I'm
3 sorry.

4 Q. That's all right. We will deal with
5 that with someone else.

6 MR. MISHKIND: I have no further
7 questions for you.

8 MS. DiSILVIO: We will read it.
9 Can we have more than the seven days?

10 MR. MISHKIND: Sure.

11

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13 (Deposition concluded at 1:30 p.m.)

14 (Signature not waived.)

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1 AFFIDAVIT

2 I have read the foregoing transcript from
3 page 1 through 120 and note the following
4 corrections:

5 PAGE LINE REQUESTED CHANGE

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NANCY J. HOLMES, PA-C

18

19 Subscribed and sworn to before me this
20 day of , 2001.

21

22 Notary Public

23

24 My commission expires .

25

CERTIFICATE

State of Ohio,

SS :

County of Cuyahoga.

I, Vivian L. Gordon, a Notary Public within and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within named NANCY J. HOLMES, PA-C was by me first duly sworn to testify to the truth, the whole truth and nothing but the truth in the cause aforesaid; that the testimony as above set forth was by me reduced to stenotypy, afterwards transcribed, and that the foregoing is a true and correct transcription of the testimony.

I do further certify that this deposition was taken at the time and place specified and was completed without adjournment; that I am not a relative or attorney for either party or otherwise interested in the event of this action. I am not, nor is the court reporting firm with which I am affiliated, under a contract as defined in Civil Rule 28 (D).

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Cleveland, Ohio, on this 22nd day of October, 2001.



Vivian L. Gordon, Notary Public
Within and for the State of Ohio
My commission expires June 8, 2004.

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