

In The Matter Of:

*Michael Geryak, et al. v.
Gastroenterology Associates, et al.*

*Louis Horwitz, M.D.
February 27, 2001*

*Mehler & Hagestrom
Court Reporters
1750 Midland Building
101 West Prospect Avenue
Cleveland, OH 44115
(216) 621-4984 FAX: (216) 621-0050*

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Word Index included with this Min-U-Script®

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[1] IN THE COURT OF COMMON PLEAS
[2] CUYAHOGA COUNTY, OHIO
[3] MICHAEL GERYAK,
[4] et al.,
[5] Plaintiffs,
[6] JUDGE FRIEDLAND
[7] -vs- CASE NO. 388997
[8] GASTROENTEROLOGY ASSOCIATES,
[9] et al.
[10] Defendants.
[11] Videotaped deposition of
[12] LOUIS HORWITZ, M.D., taken as if upon direct
[13] examination before M. Sheila Hanlon, a Registered
[14] Professional Reporter and Notary Public within
[15] and for the State of Ohio, at the offices of
[16] Weston, Hurd, Fallon, Paisley & Howley, 2500
[17] Terminal Tower, Cleveland, Ohio, at 10:00 a.m. on
[18] Tuesday, February 27, 2001, pursuant to notice
[19] and/or stipulations of counsel, on behalf of the
[20] Defendant in this cause.
[21] MEHLER & HAGESTROM
[22] Court Reporters
[23] CLEVELAND AKRON
[24] 1750 Midland Building 1015 Key Building
[25] Cleveland, Ohio 44115 Akron, Ohio 44308
216.621.4984 330.535.7300
FAX 621.0050 FAX 535.0050
800.822.0650 800.562.7100

Page 2

[1] APPEARANCES:
[2] Ronald A. Margolis, Esq.
[3] Daniel M. Finelli, Esq.
[4] Finelli & Margolis P.L.L.
[5] 730 Leader Building
[6] Cleveland, Ohio 44114
[7] (216) 621-2222,
[8] On behalf of the Plaintiffs;
[9] Ronald A. Rispo, Esq.
[10] Weston, Hurd, Fallon, Paisley & Howley
[11] 2500 Terminal Tower
[12] Cleveland, Ohio 44113
[13] (216) 241-6602,
[14] On behalf of the Defendants.
[15] ALSO PRESENT:
[16] Randy Andrews
[17] Videotape Technician
[18]
[19]
[20]
[21]
[22]
[23]
[24]
[25]

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[1] **VIDEOTAPE TECHNICIAN:** We are now
[2] ready to begin the deposition. Will the
[3] reporter please swear in the witness.
[4] **LOUIS HORWITZ, M.D.,** of lawful age,
[5] called by the Defendants for the purpose of
[6] direct examination, as provided by the Rules of
[7] Civil Procedure, being by me first duly sworn, as
[8] hereinafter certified, deposed and said as
[9] follows:

[10] **DIRECT EXAMINATION OF LOUIS HORWITZ, M.D.**

[11] **BY MR. RISPO:**

[12] **Q:** Good morning, doctor. My name is Ron Rispo. I
[13] am here on behalf of Dr. Agliam in the case
[14] styled Geryak versus Agliam. I would like to ask
[15] you a few questions this morning.

[16] **MR. RISPO:** But before we do
[17] begin, I would like to record for the
[18] record that this deposition is being taken
[19] on direct examination for use in evidence
[20] at the time of trial.

[21] **Q:** Doctor, would you give us your full name and age,
[22] please?

[23] **A:** Dr. Louis Horwitz, I'm 48 years old.

[24] **Q:** And where do you reside?

[25] **A:** I reside in Solon, Ohio.

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[1] **Q:** What is your profession?

[2] **A:** I'm an emergency physician.

[3] **Q:** And where are you currently assigned or
[4] practicing?

[5] **A:** I'm full time on the staff of Ashtabula County
[6] Medical Center, and I work on the part-time staff
[7] of Deaconess Hospital emergency department also.

[8] **Q:** Could you give us a brief description of your
[9] education and training?

[10] **A:** I went to University of Michigan undergraduate
[11] and studied cellular biology. I went to
[12] University of Michigan for my medical school
[13] training, got my medical doctorate degree, 1979.
[14] I went immediately into an internship in internal
[15] medicine, Milwaukee County Medical Complex.

[16] I then did a two year residency in emergency
[17] medicine at Milwaukee County Medical Center where
[18] there was a residency training program. I was
[19] chief resident in my last year. I completed that
[20] training in 1982 and stayed on staff there for an
[21] additional teaching year.

[22] **Q:** And after you completed the teaching assignment
[23] at Milwaukee, where did you go?

[24] **A:** After I was residency teaching coordinator, I
[25] came here to Cleveland. I was on the staff of

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[1] St. Alexis Hospital for approximately a year, and
[2] then in January of 1984 I was appointed director
[3] of Community Hospital of Bedford emergency
[4] department where I stayed for 14 years.

[5] **Q:** What were your responsibilities as director of
[6] the community hospital emergency room department?

[7] **A:** As director of the department I had clinical
[8] responsibilities of a full-time emergency
[9] physician. I saw the patients that came in
[10] during my shift. I was also responsible for the
[11] protocols, the policies of running the emergency
[12] department, scheduling the physicians, patient
[13] and physician complaints, quality assurance and
[14] monitoring, joint commission, surveys, emergency
[15] medical service, ambulance teaching and
[16] coordination, the industrial medicine program and
[17] we had a fast track program that also ran through
[18] the emergency department.

[19] **Q:** I see. And how long were you at Bedford
[20] Hospitals?

[21] **A:** I was there for 14 years.

[22] **Q:** Were you there in 1997?

[23] **A:** Yes.

[24] **Q:** Were you at that time acquainted with Dr. Agliam?

[25] **A:** Yes, he was a staff physician. I think he was on

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[1] the family practice there.

[2] **Q:** Had you known Dr. Agliam before he became a staff
[3] physician at Bedford?

[4] **A:** No.

[5] **Q:** You didn't train with him?

[6] **A:** No.

[7] **Q:** Did you know him socially?

[8] **A:** No.

[9] **Q:** Did you ever have a professional association with
[10] him?

[11] **A:** Other than my position as director and he was on
[12] staff, no. I was never in a group practice with
[13] him, is that what you mean?

[14] **Q:** Yes.

[15] **A:** No, I was never a business partner in a group
[16] practice with him.

[17] **Q:** Can you estimate the number of doctors that had
[18] privileges at Bedford Hospital in 1997?

[19] **A:** I don't quite know, 30 or 40 at least.

[20] **Q:** And he was just one of those 30 or 40?

[21] **A:** Yes.

[22] **Q:** Okay. And since that time, have you had occasion
[23] to meet or speak with Dr. Agliam concerning this
[24] case?

[25] **A:** No.

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[1] Q: Apart from our meeting this morning, have we ever
[2] met before concerning this matter?

[3] A: No.

[4] Q: Have you ever been consulted to testify on behalf
[5] of a client of either Mr. Margolis or Mr.
[6] Finelli?

[7] A: Not that I recall.

[8] Q: Okay. I gather from your resume, doctor, you are
[9] board certified in internal medicine?

[10] A: Emergency medicine.

[11] Q: I'm sorry.

[12] A: I'm board certified in emergency medicine.

[13] Q: I'm sorry for that mistake.

[14] When were you board certified?

[15] A: Can I see that.

[16] Q: Sure.

[17] A: I was board certified in 1984, and I was
[18] recertified in 1993.

[19] Q: Okay. In the field of emergency medicine, how
[20] would you describe your area of responsibility in
[21] the normal course of treating your patients?

[22] A: My responsibility is to address the primary
[23] complaint that the patient comes in with and
[24] determine whether an emergency exists. As part
[25] of that determination, I need to determine

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[1] whether the patient needs to be admitted to the
[2] hospital or can be discharged for an outpatient
[3] workup. But most importantly, to rule out that a
[4] significant emergency exists that needs to be
[5] addressed right away.

[6] Q: Do you offer admission routinely to all patients
[7] in the emergency room?

[8] A: No.

[9] Q: What is the distinction between those patients
[10] that you do offer admission and those that you do
[11] not?

[12] A: Patients I offer admission to I feel will benefit
[13] from hospitalization, that they will undergo
[14] rapid diagnostic testing that can only be done in
[15] a hospital, or they would undergo therapies that
[16] can only be administered in the hospital, or
[17] they're sick enough in any number of ways that
[18] they can't be managed at home. Those are the
[19] people in general who need emergency admission.

[20] Q: Is it possible in the emergency room to diagnose
[21] every condition that presents?

[22] A: No.

[23] Q: And there are times when further testing is
[24] required?

[25] A: Yes.

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[1] Q: Do you have an active independent recollection of
[2] the patient involved in this matter, Mr. Michael
[3] Geryak?

[4] A: No.

[5] Q: Have you had an opportunity to review your notes
[6] and records of his visit to the emergency room on
[7] May 9th of 1997?

[8] A: Yes.

[9] Q: Based upon the notes and records, doctor, can you
[10] tell the jury what the circumstances were when
[11] Michael Geryak presented to you in the emergency
[12] room on May 9th, 1997?

[13] A: Mr. Geryak was a 37-year-old with a history of
[14] inflammation of the colon, colitis. And he
[15] presented with left lower quadrant pain in the
[16] left lower part of the abdomen. He had some loss
[17] of appetite. He had had workup for this in the
[18] past. He had had colonoscopy, he had had
[19] endoscopy, and my job was to find out what that
[20] complaint was about.

[21] Q: Based upon your records, is there any indication
[22] or suggestion that he had complaints relating to
[23] the testicles?

[24] A: There's nothing in the record that I see that
[25] states the patient had a complaint regarding,

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[1] relating to the testicles.

[2] Q: So then he didn't complain of pain either in the
[3] testicles or radiating to the testicles?

[4] A: That's correct.

[5] Q: Did he have any complaint of swelling or
[6] localized tenderness?

[7] A: No.

[8] MR. MARGOLIS: Of the testicles, I
[9] assume?

[10] MR. RISPO: Of the testicles, yes.

[11] Thank you.

[12] Q: Based upon his presenting complaints and history
[13] when you saw him, what was your impression?

[14] A: My impression is that he was having worsening or
[15] exacerbation of his colitis and worsening or
[16] exacerbation of diverticulitis.

[17] Q: Did you do any examination?

[18] A: Yes.

[19] Q: Could you describe the examination as best as you
[20] can?

[21] A: Would you like me to read it.

[22] Q: Yes, please.

[23] A: My physical examination is listed as this: He
[24] has a low grade temperature. The head, ears,
[25] eyes, nose and throat shows no signs of

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[1] infection. Pharynx is not injected. The mucous
[2] membranes are slightly dry. The lungs are clear
[3] in all fields. Cardiac exam without gallop or
[4] murmur. The abdomen, he has left lower quadrant
[5] abdominal tenderness without rebound or guarding.
[6] Bowel sounds are normal active. There's no flank
[7] tenderness. Testicles are non-tender. There's
[8] no hernia, the rectal vault is empty. The
[9] prostate is non-tender. Extremities are
[10] unremarkable.

[11] Q: Did you do any testing?

[12] A: Yes.

[13] Q: And what were your findings following the
[14] conclusion of your examination and testing?

[15] A: My findings to sum the whole case up is that he
[16] had left lower quadrant pain, he had a history of
[17] colitis, he had a history of diverticulosis, and
[18] now he presented with left lower quadrant pain,
[19] which is a classic area for the colon or
[20] diverticula to present with pain.

[21] His white blood cell count was elevated,
[22] meaning there was some type of infection, and I
[23] felt that he would benefit from hospitalization
[24] from intervenous antibiotics to help quell this
[25] infection, and I recommended hospitalization.

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[1] The diagnosis I believe I listed were
[2] exacerbation of colitis and exacerbation of
[3] diverticulitis as the cause of his chief
[4] complaint on that day.

[5] Q: Did the patient accept your offer of admission?

[6] A: No.

[7] Q: Did he explain, or do you recall why he did not?

[8] I'm not aware that there's any note in the
[9] record. I just wondered if you had an
[10] independent recollection?

[11] A: I don't recall and there's nothing in the record
[12] to reflect why he refused.

[13] Q: Did you explain to the patient why it was that
[14] you did recommend admission?

[15] A: Yes.

[16] Q: So he would be aware of those reasons before he
[17] turned it down?

[18] A: Yes. I would have explained it as I just did
[19] just now, that he would benefit from
[20] hospitalization from administration of
[21] intervenous antibiotics would be stronger,
[22] produce a higher level of cure. And we would
[23] like to keep his bowel at rest, not feed him,
[24] feed him intravenously instead, which helps the
[25] bowel heal in these inflammatory conditions.

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[1] Q: Okay. Getting back to the examination, doctor,
[2] would you describe for us what is the customary
[3] practice and procedure that you follow in
[4] examining the testicles?

[5] A: When I examine the testicles, I'm looking for
[6] masses, tenderness, swelling and firmness of the
[7] testicle. Specifically I'm looking for
[8] tenderness in the back of the testicle, which is
[9] the area where the epididymis becomes inflamed.
[10] That's a very common presentation in the
[11] emergency department.

[12] I'm looking for twisting of the testicle,
[13] firmness of the testicle, representing
[14] abnormality of torsion or a mass or tumor.

[15] I'm looking for hernias coming down into the
[16] scrotal sack. I'm looking for the proper
[17] orientation of the testicle being vertical, up
[18] and down, longus, versus horizontal, which helps
[19] you rule out testicular torsion as a cause for
[20] the pain.

[21] Q: If you were to find any of those conditions to be
[22] abnormal, would that have been noted in the
[23] record?

[24] A: Yes.

[25] Q: Did you find any abnormalities in the case of

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[1] Michael Geryak?

[2] A: No.

[3] Q: In addition to examining the testicular area, did
[4] you also examine the prostate?

[5] A: Yes, I examined the prostate in addition.

[6] Q: What is the procedure for examining the prostate?

[7] A: You do a rectal examination.

[8] Q: And that was negative?

[9] A: Yes.

[10] Q: What would you consider to be an abnormal finding
[11] in the prostate?

[12] A: The prostate exam you're looking for tenderness,
[13] boggiess of the prostate or mass. You're also
[14] looking for stool for cult blood on the rectal
[15] examination.

[16] Q: And all those were negative?

[17] A: Yes. Let me correct myself. In this particular
[18] case there was no stool since the rectal vault
[19] was empty, so I could not perform the stool for
[20] cult blood testing.

[21] Q: Okay. If you had found a mass in the testicular
[22] region, what would have been your procedure?

[23] A: If I had found a tender mass in the testicular
[24] region, most likely I would have called Dr.

[25] Agliam, got a urology consult and undertaken some

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[1] further workup with ultrasound or some type of
[2] scanning to determine what the source of the
[3] tender mass was.
[4] Q: Did you order an ultrasound in this case?
[5] A: No.
[6] Q: And why is that?
[7] A: I didn't find any abnormality of the testicle
[8] that warranted any further workup.
[9] Q: Do you recall if you engaged or referred the
[10] patient for a urology consult?
[11] A: No, I did not.
[12] Q: Do you recall that you spoke with Dr. Agliam in
[13] this matter?
[14] A: Yes.
[15] Q: And on the occasion when you spoke with Dr.
[16] Agliam, did you report any abnormal findings in
[17] the testicular area?
[18] A: No, I did not.
[19] Q: And once again, did the patient report to you any
[20] complaints relating to the testicular area?
[21] A: No, he did not.
[22] Q: Specifically, did he report any pain in the
[23] testicular area?
[24] A: No.
[25] Q: Any pain radiating from another point to the

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[1] testicular area?
[2] A: No.
[3] Q: Or from the testicular area radiating to another
[4] point?
[5] A: No.
[6] Q: Did he complain of masses or swelling in the
[7] testicular area?
[8] A: No.
[9] Q: Doctor, you have been engaged in full-time
[10] practice since about 1984, is that right?
[11] A: Yes, July, 1983.
[12] Q: So over 15 years?
[13] A: Yes. I think a little longer.
[14] Q: Okay. And it's all been in the emergency room
[15] area?
[16] A: Yes.
[17] Q: And how many testicular exams would you say you
[18] have done over that 15 years?
[19] A: Thousands.
[20] Q: Okay. Have you ever had a case where there was a
[21] mass in the testicular area?
[22] MR. MARGOLIS: Objection. For
[23] purposes of the record, Mr. Rispo, I have
[24] given you some latitude. This clearly goes
[25] beyond the medical records of Mr. Geryak's

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[1] 5/9/97 admission. This man has not been
[2] identified as an expert witness but as a
[3] fact witness.
[4] You are now asking him questions
[5] about his treatment of other patients, and
[6] it's beyond the confines of what this
[7] witness should be permitted to testify to.
[8] MR. RISPO: Okay. Your objection
[9] is noted. I don't think you'll have any
[10] real objection, Ron, if I'm just permitted
[11] to complete this thought.
[12] Q: Have you ever found a patient with a mass in the
[13] testicular area?
[14] A: Yes.
[15] Q: And in those cases, have you ordered an
[16] ultrasound or referred him for a urologist?
[17] A: Yes.
[18] Q: Is there any reason whatsoever why you would not
[19] have ordered an ultrasound or referred to a
[20] urologist in this case if Mr. Geryak had a
[21] complaint of pain in the testicular area or your
[22] examination was abnormal?
[23] A: No. There would be no reason not to refer or not
[24] get an ultrasound.
[25] MR. RISPO: Okay. I have no

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[1] further questions. Thank you, doctor.
[2]
[3] CROSS-EXAMINATION OF LOUIS HORWITZ, M.D.
[4] BY MR. MARGOLIS:
[5] Q: Doctor, we are present today in the law firm of
[6] the conference room of the law firm of Weston,
[7] Hurd, is that correct?
[8] A: Yes.
[9] Q: And prior to meeting you this morning, you have
[10] never spoken with myself or Mr. Finelli, is that
[11] correct?
[12] A: That's correct.
[13] Q: And prior to this deposition going forward this
[14] morning, you did have an opportunity to have a
[15] meeting with Dr. Agliam's lawyer, Mr. Rispo, is
[16] that correct?
[17] A: Yes.
[18] Q: And in the context of that meeting, Mr. Rispo
[19] asked you several questions, and you had the
[20] opportunity to respond to those questions, is
[21] that correct?
[22] A: Yes.
[23] Q: At any point in time when you met with Mr. Rispo
[24] this morning did you indicate that you wanted Mr.
[25] Finelli or myself to be present at that meeting?

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[1] A: No.

[2] Q: At any point in time did you contact Mr. Geryak
[3] and inquire from him whether or not he waived his
[4] physician/patient privilege relative to treatment
[5] you provided to him April — excuse me, May 9th
[6] of 1997?

[7] A: No.

[8] Q: At any point in time did you contact Mr. Finelli
[9] or myself as Mr. Geryak's attorneys and inquire
[10] whether or not it was acceptable for you to speak
[11] with Mr. Rispo without us being present about the
[12] medical care you provided to Mr. Geryak?

[13] A: No.

[14] Q: Did you ever inquire from Mr. Rispo as to whether
[15] or not it was a violation of the
[16] physician/patient privilege for you to have
[17] discussions with him about the care rendered to
[18] Mr. Geryak under these circumstances?

[19] A: No, I assumed if there was a problem, he would
[20] have told me.

[21] Q: All right. But the privilege, the
[22] physician/patient privilege is your
[23] responsibility as the physician, correct?

[24] A: Yes.

[25] Q: Okay. And you never questioned anyone about the

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[1] propriety of discussing the medical care and
[2] treatment you provided to Mr. Geryak before you
[3] discussed with third parties those issues, is
[4] that a fair statement?

[5] A: Well, I was issued a letter, and I was told I was
[6] going to have a subpoena, so I assumed it was
[7] proper for me to discuss the case with whoever
[8] wanted to discuss it with me.

[9] Q: And I'm not quibbling with you about your
[10] assumptions, I'm just asking you point blank, did
[11] you ever as the physician that treated Mr. Geryak
[12] on May 9th, 1997 inquire from anyone as to the
[13] propriety of you discussing his medical care and
[14] treatment with people other than him?

[15] MR. RISPO: Let me interrupt at
[16] this point, Ron. I think you're going well
[17] beyond the pail of trying to intimidate the
[18] witness. It's real clear that once
[19] Mr. Geryak filed this lawsuit, put in issue
[20] his condition and claimed that he had a
[21] radiating testicular pain for a period of
[22] years before he was diagnosed in 1998, any
[23] physician who treated him during that
[24] period of years is relevant, and he has
[25] waived any privilege he had in that regard.

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[1] Furthermore, you were on notice of
[2] the intent to call Dr. Horwitz to testify
[3] this morning. Copies of the notice were
[4] served upon you well in advance. You had
[5] ample time and opportunity to contact the
[6] doctor and/or object if you chose.

[7] To continue to suggest or imply
[8] that Dr. Horwitz has done something wrong I
[9] think is improper at this time.

[10] MR. MARGOLIS: I move that Mr.
[11] Rispo's speaking objection be stricken from
[12] the record. My questions go to this
[13] witness's capacity as a physician.

[14] I am not making an implication to
[15] him that he did anything wrong. I am just
[16] asking him what if any steps he took prior
[17] to the time he spoke with you. I do not
[18] dispute your statement of the law, that
[19] when a medical malpractice case is filed
[20] there is a waiver. I just wanted to know
[21] what this witness's state of mind was on
[22] this issue and what he did.

[23] MR. RISPO: Okay. And I move to
[24] strike all of your questions in that
[25] regard, because their purpose was clearly

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[1] inappropriate. Especially when you
[2] acknowledge that the waiver has already
[3] been accomplished by the filing of the
[4] lawsuit, so.

[5] Q: My question, doctor, to you is at no point in
[6] time before you gave discussions to Dr. Agliam's
[7] attorney did you inquire from anyone the
[8] propriety of you discussing your patient's
[9] medical condition with someone other than the
[10] patient. Is that an accurate statement?

[11] A: Yes.

[12] MR. RISPO: Move to strike that
[13] question again and answer.

[14] Q: And as far as your treatment of Mr. Geryak, you
[15] saw him on only one occasion, May 9th of 1997,
[16] correct?

[17] A: Yes.

[18] Q: Okay. You did not in your May 9th, 1997 workup
[19] inquire from him whether or not he had any
[20] scrotal pain or discomfort dating back two or
[21] three years prior to May 9th of 1997, did you?

[22] A: I don't recall inquiring that, and I don't see
[23] that he volunteered that information either.

[24] Q: All right. And if you would have inquired, and
[25] he would have responded to you, that would have

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[1] been something you would have documented in the
[2] medical chart?

[3] A: Yes.

[4] Q: Okay. And in all fairness to you, doctor, when
[5] this patient came in, he was actually advised by
[6] Dr. Agliam to come to the emergency room for an
[7] evaluation by you correct?

[8] A: Yes.

[9] Q: Or by whoever the staff was?

[10] A: Yes.

[11] Q: And there was a thought at that time that the
[12] patient may have had a kidney stone.

[13] If you look at the front portion, it says
[14] chief complaint possible kidney stone.

[15] A: Yes.

[16] Q: Okay. And it wouldn't be at all unusual for a
[17] family physician who was suspecting that a
[18] patient may have an acute kidney stone to send
[19] the patient to the emergency room to be worked up
[20] for that condition, correct?

[21] A: That's correct.

[22] Q: All right. And you did a history on the patient,
[23] and at that point in time you learned that the
[24] patient did in fact have some positive findings
[25] based upon diagnostic exams of some digestive

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[1] disorders?

[2] A: Yes.

[3] Q: Some GI disorders?

[4] A: Yes.

[5] Q: And the GI disorders that the patient had been
[6] diagnosed with previously would be consistent
[7] with what some of his presenting complaints were
[8] in your emergency room on May 9th of '97?

[9] A: Yes.

[10] Q: Now, as far as talking about the testicular exam
[11] that you performed, you'll agree with me that
[12] when you perform a testicular exam, you're
[13] looking extensively for three broad categories
[14] whether there's swelling, whether there's
[15] tenderness and whether there's masses, correct?

[16] A: Yes.

[17] Q: And you'll agree with me that in your charting,
[18] you simply diagnosed that the testicles are not
[19] tender, correct?

[20] A: Yes.

[21] Q: You did not chart that there were no masses,
[22] correct?

[23] A: Yes.

[24] Q: And you did not chart that the testicles were not
[25] swollen, correct?

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[1] A: Yes.

[2] Q: And you in the treatment of this patient had
[3] certain discussions with Dr. Agliam, did you not?

[4] A: Yes.

[5] Q: And you knew that the patient was going to follow
[6] up with Dr. Agliam the day after he left the
[7] emergency room, correct?

[8] A: Yes.

[9] Q: As far as a testicular exam is concerned, we can
[10] agree, doctor, that a negative testicular exam
[11] does not 100 percent exclude the fact that there
[12] may be a mass contained within the testicles that
[13] is just unable to be palpated by the examiner?

[14] A: Yes.

[15] Q: If the patient, doctor, came to the emergency
[16] room and indicated to you that they had
[17] testicular pain which was coming and going over a
[18] several month period of time, you performed a
[19] testicular exam, it was negative, would you still
[20] not advise that patient that if the pain
[21] continued that they should follow up with the
[22] urologist?

[23] A: I would advise the patient to follow up with a
[24] urologist in that particular case that you
[25] presented.

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[1] Q: Fine. Thank you.

[2] MR. MARGOLIS: Go off the record a
[3] minute.

[4] VIDEOTAPE TECHNICIAN: Off the
[5] record.

[7] (Thereupon, a discussion was had off
[8] the record.)

[10] VIDEOTAPE TECHNICIAN: On the
[11] record.

[12] Q: Dr. Horwitz, I'm just about completed with my
[13] questioning. You advised the patient, and you
[14] relied upon Dr. Agliam to follow up on whatever
[15] the patient's medical needs were after he left
[16] your emergency room on May 9th, 1997, correct?

[17] A: Yes.

[18] Q: And you will agree with me, doctor, that early
[19] diagnosis and medical treatment of testicular
[20] seminoma will provide a patient with the best
[21] possible chance of cure of that disease?

[22] A: Yes.

[23] Q: Doctor, the diagnosis that you made of
[24] Mr. Geryak's complaints and conditions on the May
[25] 9th, '97 visit at the emergency room would have

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[1] been GI in nature, exacerbation of colitis and
[2] exacerbation of diverticulitis, correct?
[3] **A:** Yes.
[4] **Q:** And those diagnoses that you made would be
[5] consistent with his presenting complaints at that
[6] time as well?
[7] **A:** Yes.
[8] **Q:** And as a physician, doctor, in the emergency
[9] room, I imagine sometimes it's necessary that you
[10] could have a patient that can have more than one
[11] disease process going on at the same time, is
[12] that correct?
[13] **A:** Yes.
[14] **Q:** And so one of the things that a physician needs
[15] to do in the treatment of the patient is focus in
[16] on all of the problems or symptoms that the
[17] patient is having so that all disease processes
[18] that are going on in the patient can be evaluated
[19] for diagnostic purposes. Would you agree with
[20] that?
[21] **A:** Yes, given limitation in the emergency
[22] department, we focus on the primary complaint —
[23] **Q:** Understood.
[24] **A:** — and the primary reason that they come in, and
[25] that's where our workup is focused on.

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[1] **Q:** And then for any ongoing problems, that's why you
[2] would refer the patient to the family doctor, for
[3] that follow-up?
[4] **A:** Yes.
[5] **Q:** Now, one of the things that you've indicated in
[6] your CV, doctor, is that — I guess in your
[7] personal statement, that you want to — your
[8] goals are to practice emergency medicine with the
[9] highest level of competency?
[10] **A:** Yes.
[11] **Q:** Would you also have that expectation that other
[12] medical practitioners should practice their
[13] respective specialties to the highest level of
[14] competency?
[15] **A:** Yes.
[16] **MR. MARGOLIS:** Go off the record
[17] one minute.
[18] **VIDEOTAPE TECHNICIAN:** Off the
[19] record.
[20]
[21] (Thereupon, a discussion was had off
[22] the record.)
[23]
[24] **VIDEOTAPE TECHNICIAN:** On the
[25] record.

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[1] **MR. MARGOLIS:** No further
[2] questions, Dr. Horwitz.
[3] **THE WITNESS:** Thank you.
[4]
[5] **REDIRECT EXAMINATION OF LOUIS HORWITZ, M.D.**
[6] **BY MR. RISPO:**
[7] **Q:** Just a couple follow-up questions, doctor.
[8] Do you recall what time you arrived in my
[9] office this morning?
[10] **A:** About 9:35.
[11] **Q:** And prior to that had we ever met?
[12] **A:** I don't believe so.
[13] **Q:** Okay. And what time did we begin this
[14] deposition?
[15] **A:** At 10:00 a.m.
[16] **Q:** So we were meeting for a period of about 25
[17] minutes?
[18] **A:** It was probably more like 15 minutes. We had to
[19] walk over here too.
[20] **Q:** Okay. Doctor, when you take a history of a
[21] patient, what kind of questions do you ask him?
[22] **A:** I ask what the problem they have today, when did
[23] it start, what makes the symptoms better, what
[24] makes it worse, have they had those symptoms in
[25] the past, what other associated symptoms with the

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[1] main complaint are there, what past history do
[2] they have, what medical problems in the past,
[3] what surgical problems, what medications, what
[4] allergies.
[5] **Q:** In this case if the patient had complained to you
[6] of either present or intermittent prior pain or
[7] swelling or tenderness in the testicular area,
[8] would you have recorded that in your history?
[9] **A:** Yes.
[10] **Q:** And in this case is there anything in your record
[11] indicating that the patient did complain of
[12] current or past intermittent pain in the
[13] testicular area, swelling or tenderness?
[14] **A:** No.
[15] **Q:** If a patient were to come in with more than one
[16] disease or condition, would it require follow up
[17] in the hospital proper for further testing?
[18] **A:** It depends on the nature of the complaint, but on
[19] many occasions, yes.
[20] **Q:** And if a patient is offered admission, and he
[21] refuses admission, what advice do you give him?
[22] **A:** My usual advice in those situations is to let the
[23] patient know that no one is angry with him, that
[24] he if changes his mind, he's welcome to come back
[25] and we would arrange the admission at that time.

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[1] That I will try and do my best for him to treat
[2] him as an outpatient, but that's not my
[3] recommendation, that follow up is important and
[4] any change of symptoms would be important also.

[5] **Q:** Okay. And how long did you work at Bedford
[6] Hospital in May of 1997? How many days a week
[7] did you work?

[8] **A:** I was working three or four days a week.

[9] **Q:** Did you ever see this patient again in the
[10] emergency room in May of '97?

[11] **A:** I did not, no.

[12] **MR. RISPO:** Thank you, doctor. I
[13] have nothing further.

[15] FURTHER CROSS-EXAMINATION OF LOUIS HORWITZ, M.D.

[16] **BY MR. MARGOLIS:**

[17] **Q:** Doctor, the major issues that this man presented
[18] to the emergency room with on May 9th, '97 were
[19] GI in nature, correct?

[20] **A:** Yes.

[21] **Q:** Your diagnosis was GI in nature, correct?

[22] **A:** Yes.

[23] **Q:** And it's fair to state that your treatment of him
[24] that day and your workup of him surrounded the GI
[25] complaints, and you knew that he had a history of

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[1] positive diagnosis of some GI disease before May
[2] 9th of '97?

[3] **A:** Yes.

[4] **MR. MARGOLIS:** Okay. Thank you.

[5] **MR. RISPO:** I have nothing further
[6] except for the record, doctor, we have to
[7] ask you on the record whether you would
[8] like to review the transcript and/or review
[9] the tape before it's used in evidence or
[10] whether you would waive that privilege.

[11] **THE WITNESS:** I will waive it.

[12] **MR. MARGOLIS:** And for purposes of
[13] the record at this point I would also move
[14] to exclude the testimony of Dr. Horwitz at
[15] trial as a result of there being a failure
[16] to properly qualify the witness as mandated
[17] by Ohio law.

[18] **MR. RISPO:** All right. Let's go
[19] back on the record.

[20] **MR. MARGOLIS:** No, we're done,
[21] Ron. It's over and we're done.

[22] **MR. RISPO:** No, we're not done.
[23] We're going back on the record.

[24] **MR. MARGOLIS:** Ron, the depo
[25] was —

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[1] **MR. RISPO:** If we're going to rely
[2] on technical defects.

[3] **MR. MARGOLIS:** The depo was
[4] completed.

[5] **MR. RISPO:** No, we're going back
[6] on the record.

[7] **Q:** Doctor, at this point —

[8] **MR. RISPO:** Is the video on?

[9] **MR. MARGOLIS:** And I object to us
[10] going back on the record, the purpose being
[11] that the depo had been concluded, I made an
[12] objection so as to not waive it. Mr. Rispo
[13] has requested and indicated that he's going
[14] back on the record even though the
[15] deposition has been concluded, and I object
[16] and so as to not interrupt Mr. Rispo from
[17] this point forward would have a continuing.

[18] REDIRECT EXAMINATION OF LOUIS HORWITZ, M.D.

[19] **BY MR. RISPO:**

[20] **Q:** All right. Doctor, one question. What
[21] percentage of your time do you devote to the
[22] active practice of clinical medicine or teaching?

[23] **A:** Ninety percent of my time is spent in active
[24] clinical practice and teaching.
[25]

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[1] **MR. RISPO:** Thank you, doctor.
[2] Nothing further.

[3] **VIDEOTAPE TECHNICIAN:** Off the
[4] record.

[5] (Signature waived.)
[6]
[7]
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CERTIFICATE

[3]
[4]

The State of Ohio,) SS:

[5] County of Cuyahoga.)
[6] I, M. Sheila Hanlon, a Notary Public within
and for the State of Ohio, authorized to
[7] administer oaths and to take and certify
depositions, do hereby certify that the
[8] above-named LOUIS HORWITZ, M.D. was by me, before
the giving of his deposition, first duly sworn
[9] to testify the truth, the whole truth, and
nothing but the truth; that the deposition as
[10] above-set forth was reduced to writing by me by
means of stenotypy, and was later transcribed
[11] into typewriting under my direction; that this is
a true record of the testimony given by the
[12] witness, and the reading and signing of the
deposition was expressly waived by the witness
[13] and by stipulation of counsel; that said
deposition was taken at the aforementioned time,
[14] date and place, pursuant to notice or stipulation
of counsel; and that I am not a relative or
[15] employee or attorney of any of the parties, or a
relative or employee of such attorney, or
[16] financially interested in this action.

[17] IN WITNESS WHEREOF, I have hereunto set my
hand and seal of office, at Cleveland, Ohio, this
[18] ____ day of ____ A.D. 20 ____.

[19]
[20]

[21] M. Sheila Hanlon, Notary Public, State of Ohio
1750 Midland Building, Cleveland, Ohio 44115
[22] My commission expires January 22, 2006

[23]
[24]
[25]

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