

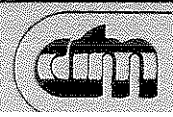
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IN THE COURT OF COMMON PLEAS
OF CUYAHOGA COUNTY, OHIO
FRANCES SMITH, etc.,
Plaintiff,
vs.
ST. LUKE'S HOSPITAL, et al.,
Defendants.

DOC. 201
Case No. 100877

- - - - -
Deposition of EDGAR B. JACKSON, JR.,
M.D., a witness herein, called by the
Defendants for examination under the statute,
taken before me, Denise M. Cogan, a Registered
Professional Reporter and Notary Public in and
for the State of Ohio, pursuant to notice and
stipulations of counsel, at the offices of
Ulmer, Berne, Laronge, Glickman & Curtis, 900
Bond Court Building, Cleveland, Ohio, on
Monday, July 27, 1987, at 4:12 o'clock p.m.



1 APPEARANCES:

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8 On behalf of the Defendant

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15 On behalf of the Defendants

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PG LN J344 smith/jackson ---COMPUTER INDEX---

PG LN BY-M*

4	12	B. JACKSON, JR., M.D.	BY-MR. ZELLERS: Q.	
96	21	B. JACKSON, JR., M.D.	BY-MR. GROEDEL: Q.	
101	6	B. JACKSON, JR., M.D.	BY-MR. KAMPINSKI: Q.	
108	23	B. JACKSON, JR., M.D.	BY-MR. KALUR: Q.	Dr.
124	7	B. JACKSON, JR., M.D.	BY-MR. MEADOR: Q.	As
125	6	B. JACKSON, JR., M.D.	BY-MR. KALUR: Q.	
125	21	B. JACKSON, JR., M.D.	BY-MR. MEADOR: Q.	
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PG LN MARK'D

4 3 Exhibit A was mark'd for purposes of

PG LN AFTERNOON-SESSION

PG LN ---THIS INDEX IS RESEARCHED BY COMPUTER---

(Thereupon, Defendants' Deposition Exhibit A was mark'd for purposes of identification.)

EDGAR B. JACKSON, JR., M.D., of lawful age, called for examination, as provided by the Ohio Rules of Civil Procedure, being by me first duly sworn, as hereinafter certified, deposed and said as follows:

EXAMINATION OF EDGAR B. JACKSON, JR., M.D.

BY-MR. ZELLERS:

Q. Doctor, my name is Mike Zellers and I represent St. Luke's Hospital in a lawsuit filed by Mrs. Smith against St. Luke's and against a number of other defendants. I'm going to ask you a number of questions this afternoon. There are other lawyers here who will ask you questions as well.

If at any time you don't understand any of the questions that I ask you, please stop me and I'll be happy to rephrase it so you do understand. Is that clear?

A. Yes.

Q. And you'll need to speak out loud so the



1 court reporter can take down what you say.

2 Can you tell the court reporter where
3 your office or where your offices are located?

4 A. Yes, 14100 Cedar Road. In the May
5 Medical Building.

6 Q. And do you have just one office?

7 A. Yes.

8 Q. Okay. What hospitals are you affiliated
9 with?

10 A. University Hospitals of Cleveland, Mount
11 Sinai Medical Center and St. Luke's Hospital.

12 Q. Do you have a CV?

13 A. Yes, I do.

14 Q. Have you brought a CV here with you
15 today?

16 A. No, I have not.

17 Q. And you're here in response to a
18 subpoena; is that correct?

19 A. That is correct.

20 Q. And I'm handing you what's been marked as
21 Defendants' Exhibit A. Can you just identify
22 that? Is that the subpoena you received?

23 A. It looks like what I got, yes. It looks
24 like it, uh-huh.

25 Q. And does that subpoena ask you to bring

1 along with you any records that you may have
2 relating to Mr. Smith?

3 A. Yes, it does.

4 Q. And have you done that?

5 A. Yes.

6 Q. Are there any records or notes or
7 communications that you have relating to Mr.
8 Smith or relating to any care you would have
9 rendered to him that you've not brought with
10 you today?

11 A. No.

12 Q. In terms of the CV, can you forward your
13 CV to Mr. Van Wagner and then he can send it to
14 me?

15 A. Yes.

16 MR. VAN WAGNER: That's
17 fine.

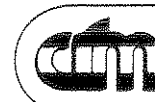
18 Q. And tell me just very briefly a little
19 bit with about your background. Where did you
20 go to medical school?

21 A. Western Reserve University.

22 Q. And when did you get out of medical
23 school?

24 A. 1966.

25 MR. KAMPINSKI: Mike, let me



1 just interrupt you a moment and tell you I
2 haven't seen his records. I'm going to submit
3 to you that I haven't seen them yet. Before
4 I'm going to allow you to release them, as a
5 representative of the Smith's and of his estate
6 I'm going to want to go through them. As you
7 go through your background, why don't you let
8 me look through?

9 Q. What did you do when you got out of
10 medical school?

11 A. I trained at Cuyahoga County Hospital,
12 then called Cleveland Metropolitan General
13 Hospital.

14 Q. And what type of training did you
15 receive?

16 A. In medicine. Internal medicine.

17 Q. And what type of program were you
18 involved in?

19 A. It was a program in training in internal
20 medicine.

21 Q. Was it an internship and residency?

22 A. Internship and residency.

23 Q. And how long did you train at Metro
24 General?

25 A. Three and a half years.

1 Q. What did you do when you finished up
2 there?

3 A. Joined the faculty of Western Reserve
4 University immediately after my training.

5 Q. Have you had any formal training since
6 that time?

7 A. Yes.

8 Q. What formal training have you had since
9 your internal medicine internship and
10 residency?

11 A. Formal training relates to post-graduate
12 education in epidemiology, vital statistics, et
13 cetera.

14 Q. And what types of courses have you taken
15 in that requirement?

16 A. At the University of Minnesota I took
17 courses on the epidemiology of health care and
18 vital statistics and health planning, things of
19 that nature.

20 Q. Is all of that outlined on your CV?

21 A. Yes.

22 Q. Have you had any additional formal
23 medical training since your residency at Metro
24 General?

25 A. No.

1 Q. Have you had any specialized training in
2 cardiology?

3 A. No.

4 Q. Is your specialty internal medicine?

5 A. Yes.

6 Q. Would you consider yourself a specialist
7 in cardiology?

8 A. No.

9 Q. Have you ever had hospital privileges
10 revoked, suspended or restricted in any way?

11 A. No.

12 Q. What hospitals have you been affiliated
13 with in the past that you're no longer
14 affiliated with?

15 A. St. Vincent's Charity Hospital, and I was
16 a little reluctant to answer you about St.
17 Luke's because I have not renewed my privileges
18 there and I think I'm on staff until the 30th
19 of this month. But I'm not certain of that.

20 Q. Is there any reason you have not renewed
21 your privileges at St. Luke's?

22 A. Distance.

23 Q. Any other reason?

24 A. And concentrating, concentrating, you
25 know, my hospital practice probably to one

1 hospital. For convenience.

2 Q. Okay. In this case I see that you had
3 admitted Mr. Smith to University Hospitals on
4 some occasions?

5 A. That's correct.

6 Q. And on the occasion that we're concerned
7 with he was admitted to St. Luke's Hospital?

8 A. Yes.

9 Q. Do you know why he was admitted to St.
10 Luke's as opposed to University or some other
11 hospital?

12 A. I did refer him to an orthopedic surgeon
13 who's on staff at St. Luke's.

14 Q. So you --

15 A. I referred him to Dr. Timothy Stephens.

16 Q. And that's the reason you ended up at St.
17 Luke's?

18 A. I think so, yes.

19 Q. Are you board certified?

20 A. Yes, I am.

21 Q. And when were you board certified?

22 A. 1971.

23 Q. You're board certified in internal
24 medicine?

25 A. Yes.

- 1 Q. And did you pass the test the first time?
- 2 A. Yes.
- 3 Q. And that would be both the oral and the
- 4 written?
- 5 A. Yes.
- 6 Q. You've indicated that when you got out of
- 7 your residency program you went on the faculty
- 8 at Case Western Reserve?
- 9 A. Yes.
- 10 Q. Are you still on the faculty?
- 11 A. Yes.
- 12 Q. And what position do you hold?
- 13 A. It's volunteer faculty and I have an
- 14 appointment of clinical professor of medicine.
- 15 Q. And how long have you held that position?
- 16 A. About a year, year and a half.
- 17 Q. Before that what position did you hold?
- 18 A. Associate clinical professor.
- 19 Q. And how long did you hold that position?
- 20 A. I'm not certain of that. But I would say
- 21 probably six years maybe. Somewhere
- 22 thereabout.
- 23 Q. Have you ever had any active teaching
- 24 duties?
- 25 A. Yes.

1 Q. And what do those consist of at the
2 present time?

3 A. Generally I attend on the medical service
4 at University Hospitals one month each year.
5 Occasionally at other hospitals I attend.

6 Q. But your teaching responsibilities would
7 be at University Hospitals primarily?

8 A. Yes.

9 Q. And those would be educating residents in
10 internal medicine?

11 A. Yes.

12 Q. And would that be a clinical work in
13 terms of them going along with you and making
14 rounds and observing what you did?

15 A. Not quite. It is attending rounds where
16 they present cases and they're taught around
17 the cases they're managing.

18 Q. And that's the extent of your teaching
19 responsibilities; is that correct?

20 A. Yes, that's correct.

21 Q. Have you at any time published any
22 literature either in journals or texts or
23 anywhere else?

24 A. Yes, I have.

25 Q. And are those outlined on your CV?



1 A. Yes.

2 Q. Is there anything that you have published
3 that specifically relates to the conditions
4 that Mr. Smith had?

5 A. I'm thinking through the conditions he
6 has. That's a very general question.

7 Q. Let me make it more specific.

8 A. Could you make it more specific?

9 Q. Sure. Anything dealing with clearing
10 patients for surgery?

11 A. No.

12 Q. Anything dealing with management of
13 postoperative complications?

14 A. No.

15 Q. Anything dealing with cardiology?

16 A. No.

17 Q. Anything dealing with the management of a
18 hypertensive patient in preparation for
19 surgery?

20 A. No.

21 Q. What are the general types of articles
22 that you've authored?

23 A. I've authored articles on sickle cell
24 disease, on health care issues, particularly
25 community health issues, more areas like that,

1 patient compliance, things of that nature.

2 Q. Mr. Kampinski is reviewing your records.
3 Can you tell me from memory when you first came
4 into contact with Mr. Smith?

5 A. Yes, as I recall, it was about 1980.

6 Q. And what was the occasion that you became
7 involved with Mr. Smith?

8 A. I don't remember that clearly. I know he
9 presented to my office. I'm not quite sure how
10 he got there. But he came to my office for
11 management of his hypertension.

12 Q. Had you treated any members of Mr.
13 Smith's family before that?

14 A. I don't think so.

15 Q. Have you treated any members of Mr.
16 Smith's family since that time?

17 A. Yes.

18 Q. What members of his family have you
19 treated?

20 A. As I recall, I treated his wife.

21 Q. For what period of time, if you recall?

22 A. I have not seen her since his death. And
23 I don't know how long after I met him before
24 she came. But in that interval I took care of
25 her.

1 Q. Were you seeing her as a regular patient
2 up until the time of Mr. Smith's death?

3 A. I don't recall that. I think it was
4 fairly irregular but I did see her.

5 Q. In terms of Mr. Smith's background and
6 the medical care that you rendered to him, is
7 it necessary for you to have your file in front
8 of you?

9 A. Depends on your questions.

10 Q. Well, I think it will be so I will start
11 at the end and work my way back until Mr.
12 Kampinski is finished.

13 A. Okay.

14 MR. KAMPINSKI: I'll be done
15 in a minute.

16 Q. What do you recall about the evening of
17 November 27th? And that was the evening that
18 Mr. Smith went back to St. Luke's Hospital for
19 the follow-up surgery. He was at St. Luke's,
20 he had the second surgical procedure. Do you
21 recall getting a call that night?

22 A. My recollection is a little fuzzy of the
23 last day he lived. That is the last day he
24 lived?

25 Q. Yes, that was the last day he lived.

1 A. Okay.

2 Q. Would it be easier for you to start in
3 the morning?

4 A. Not necessarily. I can tell you what I
5 remember.

6 Q. Why don't you tell me what you remember
7 about that last day, November 17th, 1984?

8 A. What I recall is getting a call that he
9 was ill and going to the hospital sometime, it
10 seems to me, late in the evening or in the
11 middle of the night. I don't remember the
12 exact time.

13 Q. Who called you?

14 A. I don't recall.

15 Q. Is there anything in your records that
16 would refresh your recollection about that?

17 A. I don't think so. I don't have any notes
18 in my record from the hospital. I have notes
19 about clearing him, sending him to the doctor
20 at the hospital.

21 Q. Why don't we back up, then, now that
22 you've got your file back. What I'd like you
23 to do is to go through briefly for me when you
24 first saw Mr. Smith and for what reason he
25 consulted with you. And then trace for us just



1 his general medical history in terms of the
2 visits that he made to you and what conditions
3 he had.

4 A. Okay.

5 MR. KAMPINSKI: I'll object
6 for the record with respect to the inquiry
7 about Mr. Smith other than the inquiry
8 involving this particular lawsuit, that is the
9 final admission to St. Luke's commencing, being
10 generous, sometime in October of 1984. I'm not
11 going to stop this deposition at this time but
12 I want you to understand my objection. Based
13 on privilege. And it's not being waived.
14 Rather than getting a court order to come back,
15 why don't we go ahead, if everyone's agreeable
16 to that understanding that I'm not waiving the
17 privilege. If you're not, then he's not going
18 to answer these questions.

19 MR. ZELLERS: No, I
20 understand. You've stated your position.

21 MR. KAMPINSKI: Well, do you
22 agree that I'm not waiving the privilege by
23 allowing you to continue? That's my question.

24 MR. ZELLERS: I will agree
25 that you are preserving the privilege and that

1 we will continue and then it will be up to the
2 judge as to what use, if any, can be made of
3 this information, the information prior to
4 October of 1984.

5 MR. KAMPINSKI: Okay. The
6 rest of you gentlemen agree with that?

7 MR. GROEDEL: Yes, I agree
8 with that.

9 MR. KALUR: Yes.

10 MR. MEADOR: Yes.

11 MR. VAN WAGNER: You're not
12 objecting to Dr. Jackson providing his
13 testimony, are you?

14 MR. KAMPINSKI: With the
15 understanding that I am not waiving the
16 privilege for purposes of the introduction of
17 any of this testimony later on at trial, that's
18 correct. He can testify.

19 MR. VAN WAGNER: Okay. Go
20 ahead.

21 A. According to my records, which I think
22 this must be the first note, I met Mr. Smith on
23 August 20th, 1980. He presented to the office
24 with a history of hypertension which he felt
25 had been controlled on Aldomet, but he had been

1 added a Hygroton antidiuretic which he said,
2 which I put in my notes messed him up. I think
3 I know what that meant now as I look back on
4 that.

5 On my examination he was hypertensive
6 that day. He had a large ventral hernia and I
7 added, I continued his Aldomet and added
8 another diuretic which would be a potassium
9 sparing agent and tried a corset for his hernia
10 rather than -- suggested a conservative
11 management of his hernia.

12 Q. What was his blood pressure on August
13 20th, 1980?

14 A. 160 over 100.

15 Q. Was he taking any medications other than
16 what you've already told us about?

17 A. He just told me he was taking Aldomet and
18 had taken a Hygroton.

19 Q. What type of medical history did you
20 obtain from him?

21 A. At that time, that was approximately what
22 I took. I mean that's all I have record of
23 taking that day.

24 Q. And do you have --

25 A. He had a questionnaire which he did not

1 complete. So I have some other demographic
2 information. From that day.

3 Q. Do you have any other medical information
4 that he would have given you on that day in
5 terms of his history?

6 A. Not on that particular day. I do have
7 subsequently medical records from him.

8 Q. When did you see him next?

9 A. Approximately one month later.

10 Q. And had his condition improved or stayed
11 the same, gotten worse?

12 A. He was feeling well, aside from his
13 ventral hernia which was causing him some
14 discomfort. He wanted to get that fixed. At
15 that time his blood pressure was normal. And
16 he was referred to a surgeon for repair of that
17 hernia.

18 Q. Did you refer him to the surgeon?

19 A. Yes, I did.

20 Q. And who did you refer him to?

21 A. Dr. Kent Johnston.

22 Q. And Dr. Johnston would have been at
23 University Hospitals?

24 A. Yes.

25 Q. And did Mr. Smith then go forward with

1 the surgery at University?

2 A. Yes, he did.

3 Q. What's the next note that you would have
4 in your chart?

5 A. November 7th, 1980, this would have been
6 maybe six weeks later. Do you want me to
7 basically go over what --

8 Q. Yeah. This was after the surgery?

9 A. No.

10 Q. What I'd like you to do is I'd like to go
11 through your notes briefly, tell me any
12 significant changes in Mr. Smith's condition.

13 A. Okay.

14 Q. And I'd like you to also kind of follow
15 through the different medical problems that he
16 had and whether he was getting better, getting
17 worse or staying the same.

18 A. It's difficult to answer that. It's a
19 very extensive question but I will be happy to
20 start. Now, you can maybe guide me if you want
21 me to go along.

22 Q. Why don't you start.

23 A. Anyway, I next saw him in November. At
24 that time his hypertension was controlled. And
25 his blood pressure was fine so he was scheduled

1 to see the surgeon in a few days. I asked him
2 to do that. No, I'm sorry, he had already gone
3 to the hospital by then. Which I don't have
4 records of but I recall seeing him in the
5 hospital. And in the hospital we learned that
6 he had a lot of muscle spasms, sometimes
7 totally unprovoked, generalized muscle spasms.
8 So much so that he was evaluated for a
9 neuromuscular disorder which we could not
10 document.

11 Q. Who evaluated him for that?

12 A. Dr. Johnston did a biopsy of muscle. I
13 think a neurologist saw him. I'm not sure.
14 But he had all the chemical data obtained and
15 even a muscle biopsy done.

16 Q. Do you note any other complications from
17 that hospitalization or that procedure?

18 A. No. We were very concerned, though,
19 about muscle, about muscle spasm at that time.

20 Q. And you're not sure who Dr. Johnston
21 specifically brought in to look at that?

22 A. No. I don't recall.

23 Q. When did you next see Mr. Smith?

24 A. So when I saw him on the 7th of November
25 he had already gone through his surgery at

1 University Hospitals and he was going back to
2 the surgeon for follow-up and I was interested
3 in following some blood enzymes about muscle
4 function. And we still wondered why he had had
5 that muscle dysfunction.

6 Q. Do you know what specific tests were
7 ordered for that?

8 A. Yes. An Aldolase which is primarily
9 serum Aldolase.

10 Q. Were the results conclusive at all?

11 A. They were abnormal. They were elevated.
12 But he couldn't figure out why. I mean there
13 was no good explanation as to why.

14 Q. Was there any more follow-up on that?

15 A. I don't think so.

16 Q. When did you next --

17 A. This was the biopsy, understand.

18 Q. And that was done at University
19 Hospitals?

20 A. Yes.

21 Q. When did you next see Mr. Smith?

22 A. Again in November. At that time he
23 stated he was feeling well, he was still
24 drinking alcohol occasionally though we had
25 asked him not to because of his muscle cramps.

1 He had no cramps, however, at that time and he
2 was back at work. He was looking well, doing
3 well, his pressure was perfect. And I simply
4 advised him not to drink.

5 January of 81 was the next visit. At
6 that time he realized he had had, apparently he
7 told me he had had a drink but realized he
8 could not longer drink because he got muscle
9 spasms when he did. And he looked well, his
10 blood pressure was normal, he had a bowel
11 syndrome and basically there's nothing that's
12 dramatic at that time.

13 Similarly I saw him in April of 81.
14 Nothing really remarkable except that I
15 commended him on not drinking at that time.
16 And we were talking of trying to -- we
17 discontinued one of his medications, his
18 pressure was doing so well.

19 Q. And the primary reason you're treating
20 him through this period is because of his
21 hypertension?

22 A. His hypertension, yes.

23 Q. Are there any other medical reasons
24 you're treating him?

25 A. Not until that.

1 Q. Up until that point?

2 A. Occasionally sinusitis, bronchitis, flus,
3 but nothing serious.

4 Q. When did you next see him?

5 A. I saw him again in June of 81. There
6 again, I don't consider anything I have here
7 very dramatic. He had a viral syndrome which I
8 call a flu syndrome with bronchitis, therefore
9 he was treated with antibiotics and a
10 decongestant.

11 In July of 81 he again was doing pretty
12 well except for his sinus congestion.

13 And then I don't know why this hiatus, as
14 I look at I now, I saw him next in April of
15 83. Some almost two years later.

16 Q. Do you know if he saw any other
17 physicians during that time?

18 A. I don't think he did. At least my note,
19 my next note doesn't suggest that there was any
20 problem, though. He just said he had been
21 well. I started my notes has been well.
22 Taking his blood pressure medication
23 religiously. Essentially came in today because
24 of decreased libido which he attributed to his
25 Dyazide. He had been --

1 MR. KALUR: I'm sorry. To
2 his what?

3 A. His medication. His Dyazide.

4 MR. KALUR: The Dyazide?

5 A. The diuretic he was started on a couple
6 years previous. And he had been working, he
7 was feeling well, he had no difficulty with his
8 muscles, was not depressed or anxious. His
9 exam was unremarkable.

10 I thought his blood pressure was not as
11 well controlled as we had wanted. And I
12 thought his decreased libido might indeed be
13 related to his Dyazide so I stopped it, put him
14 back on his Hydralazine and started his Lasix.

15 Q. What was his blood pressure at that time?

16 A. 144 over -- 146 over 84.

17 Q. And why did he come to see you at that
18 time? If you know.

19 A. He said he came in today because of
20 decreased libido. Decrease in sexual
21 performance or function. That's what had his
22 attention there.

23 Q. During the period of time he was not
24 being seen by you in the office, were you
25 prescribing him medications?



1 A. I need a moment to look at his records to
2 see. I saw him in July of 81. And I wrote no
3 prescriptions for him again until April of 83
4 when I saw him. Now, he probably had adequate
5 -- no, I don't know how he got his medicine.
6 As I look at this.

7 Q. He didn't get his meds from you. At
8 least your records --

9 A. I can't say. I mean my records say I
10 wrote them in June of 81, I had five refills on
11 medicine that should have lasted six months and
12 I saw him in two and a half years. But he told
13 me he was still taking his medicine.

14 Q. And you've got nothing in your notes that
15 would reflect where he was being seen or what
16 type of medical attention, if any?

17 A. No, in fact, he may have been taking
18 medicine from me. As an antihypertensive, many
19 pharmacists will help him until he can get into
20 that doctor, so I don't know. That's all I can
21 say.

22 Q. When did you see him again after April of
23 83?

24 A. I saw him again in August of 83. At that
25 time he presented, his job sent him in, he was

1 short of breath, he had an EKG done at work
2 which showed changes consistent with a left
3 anterior hemiblock. And he had had dyspnea on
4 exertion for two weeks and sleeping on two
5 pillows. Denied chest pain. He came because
6 his job told him to come.

7 On examination, then, he was noted to
8 have an S4 gallop, which would suggest
9 increased strain on his heart, and intermittent
10 an S3 gallop. I thought he had left
11 ventricular heart failure and I noted probable
12 angina as well. And added Digoxin at that time
13 to his regimen.

14 Q. Any other notes you have regarding that
15 August 1983 visit?

16 A. No. Some diagnostic studies, an x-ray
17 was done, things like that. I told him to go
18 home and go to bed.

19 I saw him again a week later. At that
20 time he was still -- his blood pressure was not
21 controlled. He was feeling much better. And
22 at that time his antihypertensives were
23 changed.

24 Q. What was his blood pressure?

25 A. 164 over 100.



1 Q. What else did you note, if anything?

2 A. That's about it. We talked about
3 controlling his blood pressure better.

4 Q. What was your plan relative to the heart
5 disease or heart condition?

6 A. I don't recall. All I can say is what I
7 have recorded. That's a while back. I just
8 don't remember.

9 Q. What do you next have recorded?

10 A. I next saw him on September 12 in 83. He
11 was feeling well and back at work. However,
12 and while he had no gallop his blood pressure
13 was noted to be uncontrolled and I felt that he
14 had a murmur consistent with failure. I
15 increased his Hydralazine at that visit.

16 And I next saw him October 3rd of 83. He
17 had had some nighttime cough, early morning
18 shortness of breath, no chest pain, at the time
19 work was going well, he had a gallop which
20 suggested again that he had heart failure. And
21 he had an increase in -- had a diuretic
22 increased at that time.

23 And my recollection is between that visit
24 and the next he was hospitalized with an
25 intervening problem. I don't remember that for

1 sure.

2 Q. That would be at University Hospitals?

3 A. Yes. He was admitted to University
4 thereabouts. I should have a note about that
5 somewhere in his records.

6 Q. Would you have referred him to
7 University?

8 A. I don't recall. And it's not listed
9 anyplace. Would probably be in his hospital
10 record but I don't have that with me.

11 Q. You don't have any note that would
12 indicate he was referred?

13 A. No.

14 Q. It's just your impression or belief he
15 was?

16 A. I really just know that he was there.
17 Probably from me. But I have not reviewed the
18 hospital record. I don't know.

19 Q. Not having reviewed the hospital record,
20 can you tell me why he was referred to
21 University Hospitals or why he was there?

22 A. Yeah, he developed, as I recall, on that
23 admission he developed gastrointestinal
24 bleeding.

25 Q. And is it your understanding he was

1 operated on while at University?

2 A. Yes, he was.

3 Q. And do you have any notes at all in terms
4 of any complications that he may have had
5 during that procedure?

6 A. Yes. The only notes I have relate to his
7 having had chest pain after his procedure, as I
8 remember.

9 Q. What specifically are you referring to?

10 A. Well, he was -- I have a copy of a
11 consult note from doctor, from Dr. Nara who is
12 chief of the cardiac care unit who had seen him
13 at that time.

14 Q. Is that dated?

15 A. Yes.

16 Q. What's the date?

17 A. 12-12-83.

18 Q. Now, is it your understanding there were
19 two separate University Hospital admissions or
20 do you remember? And we're talking the end of
21 1983.

22 A. I'm not certain but I think he had two
23 University Hospital admissions about that time.

24 Q. I'm trying --

25 A. I don't recall that with certainty.

1 Q. What I'm trying to piece together as best
2 we can is kind of a running history as you know
3 it of Mr. Smith going through your chart.

4 A. Okay.

5 Q. You've indicated that the last office
6 note you have was September 12th of 83.

7 A. October 3rd.

8 Q. Okay. October 3rd?

9 A. 83.

10 Q. When did you see him after that in the
11 office?

12 A. In the hospital. Oh, in the office I saw
13 him December 20th of 83.

14 Q. But you saw him in the hospital?

15 A. Yes.

16 Q. And you've got a note on that?

17 A. I don't have a note in his chart on
18 that. But I just recall seeing him and I know
19 that I saw him.

20 Q. What do you recall about seeing him in
21 the hospital?

22 A. What I recall is his being in the
23 surgical intensive care unit. And having some
24 trouble with his blood pressure control but
25 that's all I remember as problems and he had

1 felt chest pain postoperatively. And for that
2 reason was put into the unit, coronary care
3 unit.

4 Q. Do you recall anything else about that
5 admission?

6 A. No.

7 Q. What can you --

8 A. I know he had a fair amount of bowel
9 resected and that sort of thing. But I don't
10 remember anything else.

11 Q. You were referring to the consultants
12 note?

13 A. Yes.

14 Q. Does that add anything to your
15 recollection?

16 A. Not really. I recall he had GI bleeding,
17 he had surgery and as I look at this now it
18 seems to me he developed a small bowel
19 obstruction postoperatively. I think that's
20 the way he got back into the hospital.

21 Q. Can you tell me if you were the physician
22 who referred him to University Hospitals?

23 A. No, I cannot with certainty, though I
24 suspect I was. I don't know.

25 Q. If you had referred him into University

1 Hospitals, would you then have remained
2 involved in his progress and in the treatment
3 that he received there?

4 A. I don't know. Sometimes -- I can't
5 answer that. I just don't know.

6 Q. When is the next time you saw Mr. Smith
7 in your office?

8 A. I saw him December 20th, 1983.

9 Q. And what was his condition at that time?

10 A. It was good. His blood pressure was in
11 good control, he was on no medication. He was
12 doing well.

13 Q. Any complications you've got noted from
14 the surgery or surgeries?

15 A. No. Not with that visit.

16 Q. Anything else noted in December of 83?

17 A. No. That's it.

18 Q. When did you next see Mr. Smith?

19 A. January of 84.

20 Q. And what was his condition at that time?

21 A. He was feeling all right. Basically. I
22 had no worries about him at that time.

23 Q. How was his hypertension at that time?

24 A. Blood pressure was not as good as
25 previously but it was still okay.

1 Q. What was his blood pressure?

2 A. Blood pressure was 144 over 80 to that
3 visit. On the previous visit it had been 110
4 or 80 or 124 over 84.

5 Q. Was he taking medication?

6 A. No.

7 Q. Any other medical problems or conditions
8 you noted?

9 A. No.

10 Q. When did you next see him?

11 A. In February of 84. He was having a lot
12 of bowel movements at that time. And his
13 abdominal exam showed nonspecific tenderness
14 over his abdomen although I presume I thought
15 it was primarily from his shortened bowel from
16 his surgery or his GI bleeding.

17 Q. Any other symptoms at that time?

18 A. No, my specific note says still is having
19 libido problems. Having irritation from
20 frequent bowels movements. Aside from that
21 feels great. And that was about it.

22 Q. What ever happened with the cardiac or
23 heart problems or symptoms you were observing
24 back in the fall of 83? Was there any specific
25 follow-up on those?

1 A. Not really. He was seen in the unit, is
2 what it says here, myocardial infarct was ruled
3 out.

4 Q. This is this unit at University
5 Hospitals?

6 A. Yes.

7 Q. That would be back in December of 83?

8 A. Yes.

9 Q. You did not refer him to a cardiologist,
10 did you?

11 A. I don't recall.

12 Q. But you don't have any indication?

13 A. Not in my record. Not from the office, I
14 did not. I may well have done it in the
15 hospital, I just don't remember.

16 Q. When did you next see him after February
17 of 1984?

18 A. March, no, I didn't see him, my colleague
19 saw him. I next saw him, yeah, March 12th,
20 1984.

21 Q. Is that your colleague that saw him?

22 A. He saw him on March 9th.

23 Q. As we've gone through your notes, have
24 there been any other notes that were written by
25 your colleague as opposed to you?

1 A. No. That's the only one.

2 Q. Which one of your colleagues saw him?

3 A. On March 9th? Dr. Felix Vilinsky.

4 Q. And what was his condition at that time?

5 A. He had been short of breath, his blood

6 pressure had gone up quite a bit at that time.

7 He complained of dyspnea and hematocrit was

8 noted to be low, the negative stool guaiac and

9 he was put on another antihypertensive at that

10 time.

11 Q. Anything else done for him at that time?

12 A. No, that's it.

13 Q. When did you next see him?

14 A. I saw him three days later. At that time

15 he was feeling markedly improved. His blood

16 pressure was 114 over 84. He had an occasional

17 S4 gallop but no S3 which says his congestive

18 failure was better. Lungs were clear. And I

19 thought he had had congestive failure from his

20 hypertensive cardiovascular disease and

21 suggested he take his diuretic and Hydralazine

22 again.

23 Q. Were there any other tests that you

24 ordered in terms of working up this heart

25 problem?

1 A. No. No.

2 Q. Was it causing him any problems at work
3 that you've got noted?

4 A. No.

5 Q. Would you have discussed this with him?

6 A. Discussed what?

7 Q. His heart failure and the heart symptoms
8 that you were identifying.

9 A. I don't understand what you're asking me
10 now.

11 Q. Well, you've gone through a set of
12 findings that you've made.

13 A. Yes. Yes.

14 Q. In terms of his cardiac condition. Is
15 that something that you would have discussed
16 with Mr. Smith?

17 A. Uh-huh. I discussed it frequently, the
18 fact that if we control his blood pressure he
19 should do well. I mean that's in essence what
20 I would probably tell him.

21 Q. Do you have any specific recollection of
22 discussions you had with Mr. Smith?

23 A. I read you some of them.

24 Q. I understand.

25 A. No, I don't remember this. I don't

1 remember telling Mr. Smith anything specific,
2 aside from we need to control your blood
3 pressure. And when his blood pressure is
4 controlled he generally does well.

5 Q. Go ahead. When did you next see him?

6 A. I've got to answer a page, if I may take
7 a break.

8 (Discussion had off the record.)

9 A. He was next seen on March 30th at which
10 time he had mistakenly taken his Lasix twice a
11 day for several days instead of twice a week.
12 And had got weak but no cramps, resumed the
13 right schedule and felt okay. He was doing
14 rather well at that point. His blood pressure
15 was 140 over 90. I thought that he was in good
16 control then and offered a longer interval of
17 visits. He returned as he was scheduled
18 apparently on April 12th complaining of a lot
19 of pain in his ankle.

20 Q. Which ankle, Doctor?

21 A. Left ankle. And when was that, I didn't
22 say what day it was, but anyway, I prescribed
23 some medication over the phone for him until he
24 could get here. He had gone to work the day I
25 saw him. His ankle findings and history were



1 consistent with acute gout, his uric acid was
2 elevated and he was started on antigout
3 regimen.

4 Q. Did you see him?

5 A. Saw him on April 12th, uh-huh. Uh-huh.
6 At that time he had a swollen ankle and I
7 thought he had acute gout.

8 Q. When did you next see him?

9 A. May 18 of 84. At that time his major
10 concern it appeared was one of sexual
11 dysfunction. His blood pressure was elevated a
12 little to 148 over 94. He was referred to a
13 urologist at University Hospitals for
14 evaluation. Next seen in June, June 30 of 84.
15 Complaining of left hip pain. Worse at the end
16 of the day. Works as a towmotor operator where
17 he sits much of the day. He limped with his
18 left leg. Had slight quads, atrophy on the
19 left side. Reflexes were normal. Good
20 mobility in his hips, surprisingly. Thought
21 that he had had low back strain, accounting for
22 his low back pain and perhaps also for his hip
23 pain. His blood pressure was uncontrolled.

24 Q. Was in control?

25 A. Not controlled. Uncontrolled.



1 Q. What was --

2 A. 154 over 98.

3 Q. Was he taking medication at the time for

4 the blood pressure?

5 A. Let's see. Yeah. Says he's taking, he

6 told me he was taking 50 milligram of

7 Hydralazine twice a day and the Lasix every

8 other day religiously.

9 Q. Any other medications he was taking?

10 A. Motrin for five days.

11 Q. Anything else?

12 A. And that time we talked about exercises

13 and to get x-rays if it didn't go away.

14 Q. Was that the first indication you have of

15 a left hip problem?

16 A. Yes.

17 Q. When did he next come to see you?

18 A. July of 84. At that time he said his

19 pain went away when he moved his wallet. So

20 that he didn't drive sitting on his wallet all

21 day. He looked good. His blood pressure was

22 still uncontrolled. He was having diarrhea.

23 At that time we changed his blood pressure meds

24 and that was about it. On August 30th, August

25 13, rather, 1984 he returned saying continuing

1 to have left hip pain. Especially when he
2 drives his truck at work. On exam he had
3 tenderness over the left hip anteriorly and
4 laterally. At that time his blood pressure was
5 under good control. I suggested rest from work
6 and x-ray of his hip.

7 Q. Doctor, for the last few visits you've
8 not had any cardiac findings. Is that because
9 you didn't measure those, you didn't record
10 those, he didn't have them or do you know?

11 A. Well, they were measured each visit. I
12 mean his blood pressure was measured each
13 visit. I didn't record -- I didn't record his
14 chest findings. But my habit is to listen to
15 the chest of every patient I see. So I know I
16 listened.

17 Q. All right.

18 A. So I would assume that he was all right.
19 I don't know.

20 Q. If it's not in your note, does that mean
21 his condition's the same as it had been before,
22 does it mean it's better?

23 A. I don't know that.

24 Q. Go ahead. When did you next see him.
25 Saw him next August 27th, 84. At that time the

1 hip was the overriding problem, continued to
2 have left hip pain, especially after riding his
3 towmotor during the day, on weekends his pain
4 became quite a bit better.

5 At that time he recalled a childhood
6 injury where he had been laid up for six months
7 with his left hip. Left leg slightly shorter.
8 He was quite obviously limping on his left
9 leg. He was tender laterally so he had
10 definite findings and he had -- I must have had
11 an x-ray at that time but I don't have it
12 listed right there. Because I now make a
13 diagnosis of degenerative arthritis probably
14 secondary to Legg Perthes disease. So, yeah,
15 he got the film on August 15, 1984.

16 Anyway he had degenerative arthritis. At
17 that time he was offered Motrin and referred to
18 Dr. Stephens for evaluation.

19 Again I was not that concerned, I guess,
20 about his heart and pressure. He was told to
21 come back in a month's time.

22 I next saw him September 26, 1984. At
23 that time he recounted having had an excellent
24 vacation, occasional palpitations, a company
25 doctor had sent him to a doctor at St. Luke's

1 who wanted to send him to the Cleveland Clinic
2 for consideration of surgery according to
3 this.

4 On exam he looked good, tenderness of the
5 low back, left hip was tender, walking with a
6 limp, thought he had a significant left hip
7 problem, perhaps congenital and I referred to
8 Dr. Stephens again. He apparently had not yet
9 seen him.

10 Q. Did you see him again before he went to
11 the hospital?

12 A. No, I don't think he had seen him the
13 first time that I suggested he see him. So at
14 that time I referred him again.

15 Q. When did you next see the patient?

16 A. I saw him, oh, yeah, I saw him next I
17 think in the hospital. I have a copy of a
18 consultation I left at the hospital on October
19 23rd.

20 Q. What did your consultation --

21 MR. KALUR: Excuse me a
22 second. I presume you're going to ask him to
23 read that consult and I would ask you ahead of
24 time, Doctor, to go slowly, please, because my
25 copy is very poor and I'm going to be filling

1 in as you go.

2 THE WITNESS: All right.

3 Q. Why don't you read that consult for us,
4 Doctor?

5 A. Okay. It says he had Jackson internal
6 medicine, 10-23-84, the request is preoperative
7 clearance. And it's signed by Dr. Stephens'
8 partner, Curtis Smith.

9 My response is October 23rd, 1984, 4:50
10 p.m. I began with definition of his problems,
11 hypertension, I have cardiovascular disease and
12 bronchitis. My note says symptomatically. He
13 had the onset of sore throat two days ago, felt
14 he would be okay. Today he noted an increase
15 in cough of slightly yellow phlegm. Felt he
16 was always tense upon entering hospital, thus
17 he was not surprised that his blood pressure
18 was up.

19 He had recent dyspnea on exertion as
20 well. I said that on examination, that O means
21 objectively, he was a febrile, his blood
22 pressure was 170 over 108, at this moment it
23 said. His jugular venous pulse was flat. His
24 extremities showed no edema. His heart showed
25 no gallop. And he had no rales. He had

1 scattered expiratory rhonchi, his
2 electrocardiogram showed stable, subendocardial
3 ischemic changes, sinus mechanism.

4 My assessment was uncontrolled
5 hypertension and acute viral syndrome with
6 bronchitis. I recommended delaying surgery,
7 treating him with antibiotics and increasing
8 his antihypertensive and coming to the office
9 in one week's time.

10 Q. That is your entire consult?

11 A. That's it.

12 Q. Did you order any tests or other
13 procedures in connection with that
14 consultation?

15 A. I don't know. That would be on the order
16 sheet. I doubt it. But I don't know. I've
17 not seen the hospital again but --

18 Q. What is your usual practice in terms of
19 clearing a patient for surgery?

20 A. Usual practice would be to assess the
21 patient with a complete examination. Complete
22 history, complete physical examination.
23 Appropriate diagnostic studies when I'm
24 concerned about an issue.

25 Q. In this case would you have recommended

1 any particular diagnostic studies?

2 A. I doubt it. Other than things that were
3 probably already on the chart like routine
4 electrolytes, he had already had an
5 electrocardiogram, chest x-ray I would imagine
6 was already done, though I didn't comment on
7 it. Those kinds of things I would like, I
8 would be interested in with him.

9 Q. But from looking at your consult note
10 alone, you don't know one way or the other
11 whether you ordered any additional test or
12 relied on anything specifically in the chart?

13 A. No, that's right, I cannot tell.

14 Q. Would you have at that point called in
15 any additional consultants such as a
16 cardiologist?

17 A. No. I would not have.

18 Q. Was it necessary in your opinion to call
19 in a cardiologist at that time?

20 A. No, not at all.

21 Q. When did you next see Mr. Smith?

22 A. October 29th, 1984. That was to
23 follow-up that hospital, he did go home on the
24 medications as suggested. At that time he felt
25 well. My note says feels fine, much better,

1 has no cardiovascular complaints. On
2 examination his lungs are clear, still has
3 occasional ectopy, however on EKG, I took an
4 EKG, it shows premature atrial contractions.
5 His ischemia is markedly improved and his blood
6 pressure now controlled. And I said plan,
7 clearance for hip surgery is given and Dr.
8 Curtis Smith is called. He'll arrange it as
9 soon as possible.

10 Q. And the date on that is October 29th?

11 A. October 29th, 1984.

12 Q. Do you have any more office notes
13 relating to Mr. Smith?

14 A. No. That's it. Yeah, I have one more
15 thing from another consult note I wrote on
16 November 13th.

17 Q. Before we get to your November 13th, 84
18 note, do you have any other records or
19 notations in your chart that you personally
20 made that we've not discussed?

21 A. That I made?

22 Q. Yes.

23 A. No. I have old records on him from other
24 hospitals, that's all.

25 Q. In looking through your records on the

1 break, it looks like you've got a discharge
2 summary there from St. Vincent Charity
3 Hospital?

4 A. Yes.

5 Q. For an admission in February of 1980?

6 A. 80, yes.

7 Q. Where the provisional diagnosis was
8 myocardial infarction and I think the discharge
9 diagnosis may have been hypertensive heart
10 disease?

11 A. With a myocardial infarct having been
12 ruled out. That's correct.

13 Q. Were you involved at all in that
14 hospitalization?

15 A. No, that was before, I guess it's before
16 he came to me. I think it was. Pretty sure it
17 was. I was not involved then.

18 Q. Other than records from University
19 Hospitals and the record that we talked about
20 from St. Vincent, what other hospital records
21 or excerpts do you have in your chart?

22 A. Just these two consults. No, that's it.
23 As far as I know, that's it.

24 Q. What about additional lab studies or lab
25 tests? And I saw --

1 A. My x-ray reports and things like that.
2 Is that what you mean?

3 Q. I saw something in there in May, or
4 strike that, in January of 1984 from the May
5 Medical Lab?

6 A. Okay. That's the lab in my building
7 where I am. Yeah.

8 Q. And would that have been something you
9 would have ordered, or do you know?

10 A. I would have ordered it, probably. I
11 could look at that if you point it out to me.
12 And let you know for sure. You said what?
13 When was it?

14 Q. That was in January of 1984. And it was
15 a complete blood count?

16 A. Oh, okay. Yeah. I would have done that
17 from the office. Uh-huh. I often keep those
18 on a flow sheet. No, it's not there. So where
19 would it be?

20 Q. And I guess what I'm asking, are there
21 any other lab studies or lab tests that were
22 done other than at University Hospitals or at
23 St. Luke's that you've got in your chart there?

24 A. No.

25 Q. Now, I see that you've got some EKG

1 strips?

2 A. Yes.

3 Q. In your chart. Where did you have those
4 tests performed?

5 A. Most of them were, well, some were from
6 University Hospitals and some from my office.
7 The bulky ones are from the hospital.

8 Q. That would be from University Hospitals?

9 A. I think. These would be from University
10 Hospitals, yes.

11 Q. Would these EKG tests be something you
12 would have ordered?

13 A. Not necessarily. I may have. But not
14 necessarily.

15 Q. Is it --

16 A. Any of the attending doctors can do it.

17 Q. Is it a diagnostic test that you use
18 routinely in your practice?

19 A. Yes.

20 Q. And so you interpret and use and refer to
21 EKG strips?

22 A. Yes.

23 Q. Why don't we go, then, to your consult on
24 November 13th of 1984. And if you'd read that
25 for us, slowly and clearly, we'd appreciate

1 it.

2 A. On November 13, 1984 at 4:15 p.

3 patient well known to me for hyperten

4 myositis secondary to meds and prematu

5 contractions recently delayed surgery because

6 of bronchitis and uncontrolled hypertension.

7 Has a long history of hypertensive

8 cardiovascular disease with mild cardiomegally

9 and left ventricular hypertrophy and strain on

10 electrocardiogram. Never has had CHF or

11 angina. Seen in office one week with stable

12 EKG with PACs. Blood pressure normal,

13 bronchitis resolved. Today head, eyes, ears,

14 nose and throat examination is negative. Chest

15 exam reveals clear lungs. Heart is free of

16 gallop. Abdomen is negative. Extremities show

17 no edema. His blood pressure is 150 over 90

18 now.

19 My assessment was hypertensive

20 cardiovascular disease, stable, with blood

21 pressure controlled. And hip problem. My plan

22 was medically cleared for general anesthesia,

23 blood pressure control may require intravenous

24 Hydralazine, 5 to 10 milligram every six to

25 eight hours, please call me prn. Systolic

1 heart rate is at 200 over diastolic more than
2 120 millimeters of mercury. Will follow.

3 Thanks, E. Jackson.

4 Q. That's your complete consulting note?

5 A. That's it.

6 Q. And is it my understanding that the
7 purpose of your coming in and doing a
8 consultation was to clear Mr. Smith medically
9 for surgery?

10 A. That's correct.

11 Q. And did you have whatever information was
12 necessary for you to make that determination?

13 A. Yes, I was satisfied when I wrote that
14 note that things were in order. He was okay to
15 go.

16 Q. Was it necessary, in your opinion, to
17 call in a cardiologist at that time as a
18 consultant?

19 A. No.

20 Q. Was it necessary to call in any other
21 consultants at that time to clear Mr. Smith for
22 surgery?

23 A. No.

24 Q. Were you the internist who was following
25 Mr. Smith during that hospitalization?

1 A. Yes. I don't think any other was.

2 Q. And what was your understanding of your
3 role during that hospitalization? And from now
4 on when I refer to hospitalization, I'm talking
5 about Mr. Smith's November 12th, 1984 admission
6 to St. Luke's.

7 A. My role, as I saw it, was that of his
8 primary physician who was also consulting to
9 the surgeons taking care of him. And I saw as
10 my role general assessment of his status and
11 calling to the attention of the attending
12 anything I thought he needed that he was not
13 getting.

14 Q. It was your understanding that you were
15 the only medical doctor involved in following
16 Mr. Smith? By that I mean internist.

17 A. Yes. I knew there would be instances
18 where others would be involved, like in the
19 units and so forth, but I was the only doctor
20 that I knew of that was following him, general
21 internist.

22 Q. And in terms of following him, that was
23 both before surgery and after surgery?

24 A. That is correct.

25 Q. What do you recall independently of the



1 chart? I take it that we've gone through all
2 of the notes that you have in your office chart
3 relating to that St. Luke's Hospital
4 admission?

5 A. That's correct.

6 Q. And I take it from your earlier testimony
7 that you've not reviewed the St. Luke's
8 admission record for that hospitalization?

9 A. That is correct.

10 Q. What did you review before you came here
11 today?

12 A. I reviewed an order that I wrote on the
13 day, I've forgotten the date, but it was in
14 November, after this note, I've forgotten the
15 date of that but it apparently was the day he
16 died, I think, and my progress note I think I
17 wrote that day, that morning.

18 Q. On November 17th?

19 A. I reviewed those, yes. Aside from that,
20 I have not seen his record since the night of
21 his death.

22 Q. What do you recall about that
23 hospitalization? Sitting here today.

24 A. I recall his having gone through surgery,
25 as I remember, fairly well. I know that I

1 stopped in to see him regularly. I don't know
2 that I wrote notes daily because I didn't see
3 that as a role to do that.

4 Q. You would have seen him every day?

5 A. Well, I don't even know that. But I saw
6 him at some frequency.

7 Q. And was it your practice to follow-up
8 frequently on patients that you were following
9 in the hospital?

10 A. Yes. Generally daily but to some extent
11 it would depend on how sick I thought he was
12 and what role I felt I needed to play in his
13 care as I did not always go to St. Luke's every
14 day but I know I saw him soon after surgery. I
15 know that I remember him doing very well and,
16 as I recall, he didn't have any specific
17 problems. Medically, postoperatively.

18 Q. Do you recall anything else about Mr.
19 Smith and about that hospitalization, without
20 going through and looking at the records?

21 A. Yes, though I must admit my memory is
22 fuzzy from then, but I next remember getting a
23 call where he was in trouble. And I remember
24 going to the hospital that night, and I also
25 remember seeing him that morning, the morning



1 of the day he got in trouble, and that morning
2 he was different from previously. I mean he
3 was not as well that morning and I was
4 concerned about him. But my concern related to
5 an abdominal process I thought that he may be
6 having. And I ordered studies and made
7 suggestions related to that. And the next I
8 recall is getting a call that he was in
9 trouble. And coming to the hospital. And I
10 remember meeting Dr. Stephens there that
11 evening and my best recollection is that he
12 was, he had arrested when I -- after -- I mean
13 before I got there and was undergoing
14 resuscitation when I arrived.

15 Q. Do you remember who called you that
16 night, November 17th, 1984?

17 A. No. I don't.

18 Q. Do you recall what time of the day or
19 evening it was?

20 A. I remember being at the hospital either
21 in the middle of the night or early in the
22 morning. It was late. And I remember coming
23 to the hospital soon after I was called.

24 Q. Do you remember anything else about those
25 discussions?

1 A. No, I don't.

2 Q. Did you receive just one phone call?

3 A. I don't know. That's all I recall.

4 Q. Except for what occurred at the hospital
5 after you got there late in the evening on
6 November 17th, is there anything else that you
7 recall about Mr. Smith's hospitalization or the
8 events leading up to that evening?

9 A. No. What keeps coming to my mind, and
10 again I've not seen his chart, it must be three
11 years almost, is that he had been doing pretty
12 well postoperatively. We were all excited that
13 he was doing better and the only concern I had
14 I think was his abdominal pain the morning I
15 saw him. Or abdominal stress with some
16 dystension of his abdomen. And I don't
17 remember being worried about anything else. I
18 may have been concerned about his blood
19 pressure too and manipulated his meds. I don't
20 recall that, though.

21 Q. It's my understanding that Mr. Smith went
22 to the ICU after the first procedure on
23 November 14th?

24 A. Yes. That's correct. I remember that.
25 I remember seeing him there. I do remember

1 that now.

2 Q. And what was your understanding as to why
3 he needed to go to the ICU after surgery?

4 MR. KALUR: After the first
5 surgery?

6 MR. ZELLERS: After the
7 first surgery.

8 A. After the first surgery.

9 Q. And, Doctor, before you answer, I don't
10 want you to guess. Okay?

11 A. I really don't remember. I mean I just
12 have to say I don't remember.

13 Q. Fine.

14 A. I remember seeing him on the floor and I
15 remember seeing him with a colleague from
16 cardiology at the time on the floor. I
17 remember that but I don't remember why he got
18 there or why I got there. I remember that
19 scene but I don't recall why.

20 Q. You remember seeing him in the ICU?

21 A. Yes.

22 Q. And you remember seeing him there with a
23 cardiologist?

24 A. With a cardiologist or a fellow or
25 someone from cardiology, yes.

1 Q. Doctor, what I'm going to do is I'm going
2 to hand you the St. Luke's Hospital chart from
3 that November 12th, 1984 admission and what I'd
4 like you to do first is to go through the
5 physician orders and see if any of those orders
6 in the order sheet are yours.

7 A. Okay. I'd like to take a break for a few
8 minutes, get some water, rest my head for a
9 minute.

10 Q. Fine.

11 A. Okay? And then I'd be happy to do that
12 for you.

13 (Discussion had off the record.)

14 Q. Doctor, what I'd like you to do, I've
15 given you the St. Luke's Hospital admission. I
16 am going to ask you to go through whatever
17 portions of that you think are pertinent to get
18 a feel for the admission and for whatever your
19 role may have been in it, in particular what
20 I'd like you to look at are the physician
21 orders and identify if any of those orders are
22 yours and also identify any notes that you may
23 have on the chart. So if you'd take a few
24 minutes and look through it, I'd appreciate
25 it. Do you want to do it that way or do you

1 want me to go section by section and be
2 specific?

3 A. I didn't have time to review the chart
4 and it's been over three years so why don't you
5 ask me a question.

6 Q. Why don't you look at the physician
7 orders, please? And what I'd like you to do is
8 identify if any of those orders are yours.

9 A. I'm concerned that I may miss a verbal
10 order, though I'm looking for that. I've
11 encountered the first one I've written on
12 November --

13 Q. What page is that on, Doctor?

14 MR. VAN WAGNER: 52.

15 A. 9:15 a.m., November 17, 1984 I wrote to
16 discontinue Ascriptin. I ordered a clear
17 liquid diet. Ordered a stat CBC at 4 p.m.
18 today. And an SMA at 6 and CBC in the
19 morning. And I ordered Tylenol 350
20 milligrams.

21 Q. Anything else?

22 A. That's all that I wrote there.

23 Q. Why would you have discontinued the
24 Ascriptin, if you know?

25 A. Probably I was worried about

1 gastrointestinal irritability. He had had a GI
2 bleed previous and I was concerned, I think,
3 looking at this, he may have an intra-abdominal
4 problem. With aspirin being contraindicated.

5 Q. Any other concerns that you can identify
6 from that order?

7 A. The other concern I had, but I recall now
8 having read my note that day so it's not only
9 from this order, was that he might have an
10 intra-abdominal process going on, what his
11 white count was, wanted to make sure he wasn't
12 bleeding, that his crit wasn't dropping.

13 Q. Anything else?

14 A. His electrolytes were okay. No, I can't,
15 there's no other concern that I can tell from
16 this.

17 Q. Any other orders that you wrote during
18 that admission?

19 A. Let me continue to look here. That's
20 it. These are all the orders, that's it.

21 Q. The order that you wrote at 9:15 a.m. on
22 November 17th, that is an order in your
23 handwriting?

24 A. Yes, it is.

25 Q. Were there any verbal orders from you

1 that you saw when you went through?

2 A. None that I picked up. And I doubt that
3 I made any. But I didn't see any.

4 Q. Why don't you go through the progress
5 notes. And tell me if you've got any notes in
6 the chart, through the progress notes.

7 A. Nurse's notes there. They're probably in
8 back, huh? I think I'm close, I guess. I
9 don't know. Nurse's notes. This is getting
10 there, I think, if the chart's like it is at
11 the hospital.

12 MR. KAMPINSKI: Probably
13 about 115, something like that.

14 MR. VAN WAGNER: Page 115.

15 A. Yeah, this is it. 115?

16 MR. KAMPINSKI: Somewhere in
17 that area.

18 A. Okay. Yes.

19 MR. KAMPINSKI: Think you've
20 got one November 15th and another one November
21 6th?

22 A. Yes. Let me go back to the very
23 beginning. Okay. This is the admission
24 sheet. These all come like that.

25 Q. Doctor, before you skip over the

1 admission sheet, on page 108, would the initial
2 history and physical be done for your purposes,
3 for the orthopedic surgeon's or for both of
4 you, if you can say?

5 A. Well, it's really done for everyone but
6 the attending doctor is the one primarily it's
7 done for, attending physician, but it's really
8 done to help all of us.

9 Q. Why don't you go through and tell me if
10 you've got any notes in the chart?

11 A. Yes. On 11-14-1984 at 4:10 p.m. I saw
12 him.

13 Q. And if you'd read that note loud and
14 clear, I'd appreciate it.

15 A. Symptomatic patient intubated though very
16 easily aroused. First I started saying
17 internal medicine follow-up, is what kind of
18 note it is.

19 On exam his blood pressure was 140 over
20 80, his urine output is one hundred -- geez, I
21 can't read this myself. It's not the
22 original. It even makes it a little harder.
23 One hundred -- I think it's 50 to one hundred,
24 it's got it in the reverse order, cc's per
25 hour, what I suspect that is, that would be a

1 good urine output. Easily aroused. Blood
2 sugar is 226. Magnesium is slightly
3 decreased. Electrocardiogram shows frequent
4 PACs that are old.

5 My assessment was hypertensive
6 cardiovascular disease with stable blood
7 pressure and atrial arrhythmia. No additional
8 recommendations except to monitor his sugar
9 every six hours three times then each day.

10 Discussed with cardiology coverage of Dr.
11 Luria. Atrial arrhythmia not troublesome
12 unless it becomes atrial fibrillation. Will
13 follow. E. Jackson. Left my office number.

14 Q. What was your assessment at that time, if
15 it's anything other than what's in the note?

16 A. I'd have to be led by my note. I think I
17 felt that medically he was pretty stable, I was
18 a little worried about his sugar being up. His
19 PACs did not trouble me. They trouble me
20 enough in that setting to ask someone else
21 about it but really it's a harmless process.

22 Q. That was a cardiologist that you asked?

23 A. Yeah. Yeah. That covered for Dr.
24 Luria. Myron Luria is a cardiologist on the
25 staff at St. Luke's.

1 Q. Were you the one who would have asked for
2 the cardiology consult?

3 A. I called for Dr. Luria, as I recall,
4 somehow I talked to the doctor in Dr. Luria's
5 place.

6 Q. You don't recall specifically whether it
7 was you that called for the cardiologist or
8 not? Or do you?

9 A. I don't think I did. I don't know. No,
10 I don't remember.

11 Q. But you were aware that a cardiologist
12 was involved at that time?

13 A. What this really says to me, I think if I
14 were to literally read this it would say that I
15 arrived there, saw his arrhythmia, called Dr.
16 Luria. I called Dr. Luria probably, though I
17 don't know this, and he was away and I got the
18 doctor in his place. This does not say that I
19 asked the doctor to see the patient or
20 anything. I just discussed him with him. And
21 his comment to me was atrial arrhythmia's not a
22 problem unless it develops or progresses to
23 atrial fibrillation. That's what I reconstruct
24 this to say.

25 Q. What other impressions, if any, did you

1 have about Mr. Smith's condition at that time?

2 A. I'd have to read the whole chart to try
3 to reconstruct what I saw that night but I
4 think I put down what I was concerned about in
5 that note. And that's all I remember really.

6 Q. Would you have seen Mr. Smith on the
7 15th, the 16th? If you know.

8 A. I don't know. I don't know. I think at
9 the time I was not that worried about his being
10 medically unstable. So I don't know whether I
11 would have or not.

12 Q. Would you have ordered any tests or any
13 procedures on the 14th when you saw him?

14 A. Yeah, I know where I can find where I saw
15 him. Because, see, unless I really thought I
16 was working I would not have left a note. But
17 I think I left -- my bill might show it. Let
18 me look and see.

19 Q. I thought I saw a bill on this side.

20 A. Because I would do courtesy calls just
21 sort of dropping in to check and if I wasn't
22 worried I wouldn't write a note probably. Just
23 drop in, make sure I felt comfortable that he
24 was okay and move on.

25 Q. I saw a bill here.

1 A. Oh, yeah, here's one here. Let's see.

2 Q. Can you tell me from that bill when you
3 would have seen Mr. Smith?

4 A. Oh, yeah. I saw him 11-14, 11-15, 16, 17,
5 18 and 19 and then I saw him each day
6 thereafter but as a courtesy without charging
7 him.

8 Q. Are we on the right year?

9 A. November 19, 1983.

10 Q. We're in the wrong year. We're talking
11 1983?

12 A. 84. Taking too much credit. Geez, I
13 thought I had seen him every day there. I'm in
14 the wrong year, huh?

15 Q. Yes. We're looking for November of 1984?

16 A. 84. Then I don't have anything there.

17 Q. Do you have any bill or record that would
18 indicate --

19 MR. KAMPINSKI: I'm sorry.

20 I didn't hear that answer. Did you say you
21 have nothing now?

22 A. That's right. I said I have nothing.

23 I saw a bill that had dates and I thought
24 it might be the bill for that hospital stay.

25 Wait, here's a bill. That's 83. Same bill. I

1 don't have it in this chart.

2 Q. Do you recall anything more about your
3 examination of Mr. Smith?

4 A. No.

5 Q. On November 14th other than what you've
6 got in the chart?

7 A. No. No, that's all.

8 Q. When did you next see him that you have a
9 written record of?

10 A. The morning of November 17th, 84.

11 Q. Would you read that note, please?

12 A. Internal medicine follow-up,
13 symptomatically said he had abdominal pain for
14 the past 12 hours. That's been about the
15 same. He was not nauseated. He had passed a
16 little gas. Denied chest pain. On exam he was
17 slightly diaphoretic, slightly sweating, blood
18 pressure 140 over either 70 or 90. I can't
19 read that. His chest was clear. His abdomen
20 was slightly distended with decreased bowel
21 sounds.

22 My assessment was a slight ileus. My
23 plan was to increase activity as soon as
24 possible. Start a clear liquid diet.
25 Discontinue Ascriptin, place a nasogastric tube

1 if he vomits again. So he must have vomited.
2 And follow his hematocrit for twice a day.

3 Q. Anything else you've written in your
4 note?

5 A. No.

6 Q. What is your usual practice when you go
7 and you visit a patient on a post-surgical
8 round? You go back and look at the notes that
9 are in the chart between the time you last saw
10 the patient and this visit?

11 A. Generally I read the chart first and then
12 see the person, yes.

13 Q. You don't have any indication in your
14 chart or note about Mr. Smith's leg being
15 internally rotated or dislocated. Is there a
16 reason for that? If you know.

17 A. I think I would have been primarily
18 concerned with his non-orthopedic problems. I
19 mean I would have been primarily concerned I
20 think about how he was doing generally. That's
21 assuming I came. I have no proof that I came.
22 But I certainly I looked at that I think by the
23 time I did this. So I suppose -- I don't know
24 why I wouldn't comment on that. I think my
25 mind set would be how he is doing from

1 medically his blood pressure and his heart and
2 the things I follow.

3 Q. How was he doing medically in your
4 opinion on November 17th in the morning?

5 A. Well, at that time I was concerned about
6 his abdomen. Aside from that, I don't have any
7 worries expressed here. He had had abdominal
8 pain for 12 hours.

9 Q. Did you have any concerns about his
10 cardiac status at that time?

11 A. Not beyond what I have noted, listening
12 to his chest and checking his blood pressure.
13 And asking him about chest pains, which he
14 denied.

15 Q. There would have been a lab test for his
16 CPK/MB ratio; are you aware of that?

17 A. No.

18 Q. I'd like you to look at the orthopedic
19 note on November 16th?

20 A. Okay.

21 Q. At 12:45, and just read that.

22 A. 11-16 at 9:30?

23 Q. No, the top note, the 4:45.

24 A. 11:40 or though post-op day two, a
25 febrile patient complaints of stomach gas, left

1 leg with intact neurovascular check, PIT or
2 listed 12.4 and 39 seconds. White count
3 12,000. Hiatal hernia 11.4 over -- no, no, it
4 says hemoglobin, hematocrit. 149, BUN 14, CPK
5 339 with two percent MB fraction. Patient
6 continues to have frequent PACs but blood
7 pressure remains stable. Will begin total hip
8 activity protocol, Mylicon-80.

9 Q. Would you have been aware of that
10 information when you saw the patient on
11 November 17th in the morning?

12 A. I should have been. It's in the chart.
13 It was written the day before so I should have
14 been.

15 Q. Would that information be relevant or
16 important to you? And let me strike that and
17 ask is that significant to you?

18 A. Yeah, that's significant. That's
19 significant information. It's not definitive
20 information but it's significant.

21 Q. In what way is it significant?

22 A. Well, it would raise the issue of whether
23 he's had a heart attack or not. Or whether
24 it's all from muscle. The fraction is kind of
25 low but it's bothersome.

1 Q. What do you mean the MB fraction is low?

2 A. Well, certainly MB fractions 10, 15
3 percent and higher are often very, very
4 diagnostic of myocardial infarction. But its
5 mere presence is very troublesome. I mean it
6 suggests heart as the sort of the CPK.

7 Q. Is it diagnostic?

8 A. I don't recall well enough to say. I
9 would not consider myself an expert with that
10 decision. At two percent.

11 Q. What other findings are significant in
12 that note?

13 A. The other significant thing is that his,
14 well, his CPK is elevated but that could be
15 just post-op. That in and of itself is not
16 that troublesome.

17 Q. What about the hemoglobin or hematocrit
18 levels?

19 A. That's a little low but consistent with
20 post-surgical state with any blood loss.

21 MR. KAMPINSKI: Have you
22 asked him as compared to what it was before?

23 Q. Why don't you, Doctor, since if I don't
24 ask you I'm sure the other attorneys will,
25 compare those levels with the pre-operative

1 levels? Pre-operative, and the operation I'm
2 speaking of is November 14th.

3 A. I don't know where to find that in this.
4 Do either of you have a page number? Probably
5 130, 120.

6 MR. GROEDEL: Probably 129,
7 the admitting note from the orthoped.

8 Q. 109.

9 MR. KAMPINSKI: You might be
10 better off looking for labs.

11 A. Yeah, I think that that would be probably
12 in this area here somewhere.

13 MR. KAMPINSKI: 160, or, I'm
14 sorry, 129.

15 A. 129?

16 MR. KAMPINSKI: 30, 31 or
17 32. Back to 126, I think.

18 A. Back here earlier, yes.

19 MR. KALUR: 34 has a
20 hematocrit.

21 Q. November 12th was his date of admission.

22 A. That was the date of admission. We have
23 a hemoglobin of 15.8 and a hematocrit of 48.9
24 on that date and the date we were just talking
25 about it was down to 11.4 and I think 35

1 percent would be my best estimate of bottom
2 number. That's a significant drop.

3 Q. Would you have been aware when you were
4 seeing Mr. Smith back in November of 1984 of
5 the admission lab results?

6 A. I would think so. Yes.

7 Q. Is that something that you would look at
8 in terms of giving Mr. Smith clearance for
9 surgery?

10 A. Yes.

11 MR. KAMPINSKI: Wait.

12 Wait. You're asking about the first --

13 MR. ZELLERS: First surgery.

14 MR. KAMPINSKI: Oh.

15 Q. November 14th. So when you saw Mr. Smith
16 on November 13th?

17 A. I saw him the next day. Yes, these data
18 would be available. Uh-huh.

19 Q. Then when you saw him on the 14th, would
20 you review whatever lab work had come in?

21 A. Uh-huh. Uh-huh.

22 Q. When you saw him on the 17th, would you
23 have reviewed?

24 A. I would look at the previous data, yes.

25 Q. So you'd look at whatever lab results

1 were available?

2 A. Yes. Are available in the chart at that
3 time, yes.

4 Q. And you were managing his medical
5 condition? Is that right?

6 A. What do you mean by that?

7 Q. Well, he was being followed by an
8 orthopedic surgeon, correct?

9 A. Uh-huh.

10 Q. He was out of the ICU and he was on the
11 floor, correct?

12 A. That's correct.

13 Q. And you were following him as an
14 internist, correct?

15 A. That's correct.

16 Q. Were there any other physicians following
17 him at that time?

18 A. House staff I think would be the only
19 other physicians that would be seeing him. I
20 don't know of any other attending doctor who
21 would be seeing him.

22 MR. KAMPINSKI: I'm sorry.
23 I didn't hear that.

24 A. I'm not aware of any other attending
25 physician who would have been seeing him.

1 MR. KAMPINSKI: You're not
2 aware of whether Dr. Stephens --

3 A. No, no. I'm sorry. A non-orthopedic
4 attending is what I'm trying to say.

5 MR. KAMPINSKI: Oh, I see.

6 A. No, I know the attending in orthopedics
7 were seeing him.

8 Q. And you were following him for his
9 medical condition?

10 A. That's correct.

11 Q. When you had this information available
12 to you, the lab results, the hemoglobin, the
13 hematocrit levels, the CPK level, the MB
14 fraction, on November 17th, did that concern
15 you?

16 MR. KAMPINSKI: I'm going to
17 object. He did not say that he saw him. He
18 said they may have been available if they were
19 in the chart. I don't think his testimony was
20 that he saw them. I think he said he should
21 have seen them if they were there. It's not
22 clear to me that these lab values were posted
23 in the chart. So I don't think he's ever said
24 that he's actually seen them.

25 Q. Would you have reviewed the lab values

1 for the days prior to your visits to Mr. Smith?

2 A. I would have to say that my note says
3 that I was concerned about his hematocrit so I
4 would maybe assume that I had seen his blood
5 count fall and I was concerned that he be
6 checked twice in a day. Now, it's hard for me
7 to believe that I would see the above data and
8 not respond to that as well. It's obvious I
9 did not respond to it. So whether I saw it or
10 not, I can't say. I mean it's hard for me to
11 believe I would have.

12 Q. At that time as the internist following
13 Mr. Smith, should you have reviewed that data?

14 A. Depends on where it was. I mean
15 obviously I wish I had, I mean I don't know. I
16 don't know where it was at that time.

17 Q. Where were lab results recorded for
18 physicians back in November of 1984?

19 A. In the lab section of the chart.

20 Q. And would that lab section of the chart
21 be available for your review?

22 A. Generally, yes.

23 Q. And if the lab work was not available,
24 would you question that? If you came in to see
25 Mr. Smith on November 17th and didn't find any

1 lab work or lab results, what would you do?

2 A. If I thought the lab tests were needed, I
3 would order, I would ask for it, I would order
4 it or ask for it.

5 Q. If the lab test weren't there, would you
6 look for them?

7 A. Sure.

8 Q. Would you call the lab?

9 A. I would look for them. I can't say
10 exactly all I would do but if I thought a test
11 were indicated, I did not see it, I would ask
12 for it.

13 Q. How long did it take to get the lab
14 results that you're looking at on page 128 of
15 the chart back -- and we're just picking out
16 page 128, it dates back to pages prior to
17 that.

18 A. I can't really answer that aside from the
19 fact that often maybe a day or two before you
20 have the data in this form.

21 Q. Any more than that?

22 A. I don't know.

23 MR. KAMPINSKI: In fairness
24 to the doctor, Mike, I thought we had an
25 agreement to have the original record here at

1 all times. Apparently it's not here. My
2 recollection is that the dates of some of these
3 tests were one, two and three and four days
4 subsequent to when, in fact, they were ordered
5 and that as far as the computerized sheet
6 itself, it wasn't until some time until that
7 was placed in the chart.

8 MR. KALUR: You mean when
9 they were reported out?

10 MR. KAMPINSKI: I don't know
11 whether they were reported out as far as
12 somebody calling in and getting the results but
13 as far as the computerized sheet, I think the
14 testimony has been that it was quite some time
15 after Mr. Smith's death that they ever got to
16 the chart and if that was true, they certainly
17 wouldn't have been readily available for the
18 doctor to look at when he looked at the chart.

19 MR. ZELLERS: I'm not sure
20 if that's the testimony.

21 MR. KAMPINSKI: If we had
22 the original here we could tell but it's not
23 here and that's my recollection.

24 Q. Doctor, in what form are these lab
25 results before they are printed out on the

1 computer sheet?

2 A. Well, they may come in different forms.
3 That's a general question. I can give you a
4 general answer. It may come in the form of a
5 nurse's note, it may come in the form of a
6 phone call. It depends on how significant the
7 test is thought to be.

8 Q. Back in November of 1984, and looking at
9 just for example page 128 of the chart and
10 we're being looking at the top at the lab data
11 for November 15th at 5:30 hours and then
12 beneath that we've got a November 16 date and
13 beneath that a November 17th date. Would these
14 sheets come out on a daily basis and then be
15 replaced at the end with this compilation or
16 would you have to wait?

17 A. With some studies they would come out
18 right away. Daily, like the CBC often would
19 come each day.

20 Q. Would you get the hemoglobin results each
21 day?

22 A. Generally within a day of requesting it,
23 sure, that would be on the chart.

24 Q. Would you get the hematocrit results each
25 day?

1 A. Uh-huh. Probably.

2 Q. The CPK figure was in the chart before
3 you saw Mr. Smith on November 17th, wasn't it?
4 We looked at the note?

5 A. It was, yes, by an orthopedic doctor,
6 yes.

7 Q. And the MB fraction was in the chart
8 prior to that, wasn't it?

9 A. Yes.

10 Q. Is it fair to say, then, that the
11 information that we've looked at was available
12 to you back on the morning of November 17th?

13 MR. KALUR: What
14 information?

15 A. That's a very -- what do you mean? What
16 you're saying is --

17 MR. KALUR: Just so it's
18 clear.

19 Q. Sure.

20 A. May I say what I hear you saying?

21 Q. Sure.

22 A. What I hear you saying is the note,
23 apparently from an orthopedic resident, was
24 written in on the chart when I reviewed it and
25 that I had that available to me and read it;

1 that's what you're suggesting, that's what
2 you're asking me?

3 Q. I'm not even suggesting, no. My question
4 was was it available to you?

5 A. I don't know. What I tried to tell you a
6 moment ago was I must have known the hematocrit
7 had fallen because I asked for it twice a day.
8 Now, I don't think I would look at an MB
9 fraction or a CPK and ignore it. I'm not
10 programmed to do that. So I'd have to think
11 therefore I did not see it. Is it because it
12 was not written then, or because it was written
13 in somewhere else, I don't know. I can't
14 conceive of reading that and ignoring it.

15 Q. You will agree that your note comes in
16 sequence after the note we looked at?

17 A. Let me go back to it.

18 MR. KAMPINSKI: You mean as
19 far as the page date?

20 MR. ZELLERS: Right.

21 A. On the same day, it doesn't come on the
22 different page as I remember.

23 Q. There's that note there. We're looking
24 at page 114. We've got the November 16th,
25 12:45 orthopedic note and then the next note is

1 November 16th, 9:30 p.m. And then the next
2 note on the next page is November 17th at 7:40
3 and then the next note on November 17th is your
4 note; is that correct?

5 A. That's correct.

6 Q. Now, looking at the note on November 16th
7 at 9:30 p.m., do you make reference to that
8 note or to those observations in your note the
9 following day?

10 A. No. The only reference I make that I
11 could relate to that would be that he vomited
12 again. And I don't know whether I got that
13 from the patient or from the note above or the
14 preceding page. I just don't know.

15 Q. Because the preceding page refers to some
16 gastric complaints; is that right?

17 A. Yes. And so does the note above mine.

18 Q. Based upon the information -- well,
19 strike that. If you had been aware of the
20 information that we've gone over, the CPK
21 reading, the MB fraction, the hemoglobin,
22 hematocrit levels, what would you have done on
23 November 17th when you saw Mr. Smith?

24 A. I can't answer that beyond saying that I
25 was concerned about his hematocrit. In that

1 note that says to me I was aware his hematocrit
2 had changed, probably. I would have to surmise
3 that. I can only answer you in a general way
4 about the other information. And I can't tell
5 you what I would have done had I seen it. What
6 I ordinarily do when I see that would be to
7 rule out a myocardial infarct. That means put
8 the patient in the coronary care unit and
9 follow-up. Is ordinarily what I would do.

10 Q. Would you call in a cardiologist?

11 A. Usually, yes.

12 Q. Would you do anything else?

13 A. If I suspected a myocardial infarct I
14 would put the patient in coronary care and call
15 in a cardiologist. Usually call a
16 cardiologist. Always coronary care unit.

17 Q. Now, were you aware that Mr. Smith was
18 going to go back for a second procedure on
19 November 17th when you saw him that morning?

20 A. I would think not. I don't recall it.
21 And I have no mention of it in my note. I did
22 not give him an operative clearance. I did not
23 have that in my mind when I wrote that note.

24 Q. What additional tests, if any, would you
25 have run to give Mr. Smith operative clearance

1 on the morning of November 17th?

2 MR. KAMPINSKI: Wait. Wait.

3 A. I can't answer that.

4 MR. KAMPINSKI: Okay.

5 A. I don't know the answer to that. I can't
6 answer that. I don't know.

7 Q. Based upon the information in your note
8 on November 17th of 1984, would you have
9 cleared Mr. Smith for an operation on that
10 day?

11 MR. KAMPINSKI: I'm going to
12 object. Only because you're not providing this
13 doctor with an opportunity to be apprised of
14 all the facts surrounding Mr. Smith's condition
15 prior to that surgery. None of which are
16 contained in his note.

17 Okay. You've asked him to look at
18 certain things which he claims he wasn't aware
19 of and now are you asking him to assume those
20 things to be the fact in responding to your
21 question now? Because if you are, I want to
22 know all of the assumed facts that you're
23 asking this doctor to make.

24 Q. Doctor, is it your practice to put down
25 whatever findings you deem significant when you

1 see a patient? That is your usual practice?

2 A. Yes. Things that I consider significant,
3 yes. I generally will write them.

4 Q. At the time you saw Mr. Smith on November
5 17th of 1984 would you have followed that
6 general practice of yours?

7 A. I would think so.

8 Q. Based upon your note that you wrote on
9 November 17th and based upon the items that you
10 have mentioned in there, would you have cleared
11 Mr. Smith for surgery that afternoon?

12 MR. KAMPINSKI: Based only
13 on his note?

14 MR. ZELLERS: Based on his
15 note.

16 MR. KAMPINSKI: Only.

17 MR. ZELLERS: Only.

18 A. I would say that I could never answer
19 that, you know, any way but to say that it's a
20 very case specific, situation specific
21 question. And the only way I could answer the
22 question, I mean I would have to be posed with
23 the question at the time. I did not approach
24 the patient with that question in mind that
25 morning. And I could not answer you. It would

1 depend on how threatening, how great the
2 surgery was needed and whether, you know, I
3 thought the patient could understand the risks
4 involved with surgery now and the risks of no
5 surgery. There would be a lot of information
6 that's not here to make that judgment.

7 Q. If I asked you to assume the additional
8 studies and information that we've gone over,
9 the MB fraction, the CPK, hematocrit,
10 hemoglobin, can you answer that question,
11 whether or not --

12 A. No.

13 Q. -- you would have cleared Mr. Smith for
14 surgery?

15 A. No, I can't. Because at least you can
16 ask me, I can't answer it. Because it would
17 depend on why he needed surgery, how urgent his
18 surgery was. It would all have to be weighed
19 and a judgment made.

20 Q. Do you recall anything else about your
21 examination of Mr. Smith on November 17th?

22 A. No.

23 Q. Do you recall discussing Mr. Smith with
24 any other physician that morning?

25 A. I don't recall.

1 Q. Do you have any recollections of Mr.
2 Smith or any discussions that you would have
3 had with anyone at the hospital relating to his
4 care up until this point in time? That we have
5 not talked about?

6 A. I don't believe so. I think I've told
7 you everything.

8 Q. You indicated earlier --

9 A. That I remember about it.

10 Q. Are there any other places in the St.
11 Luke's chart that you would have written a note
12 or an order or anything else?

13 A. I would not have written an order any
14 other place and I doubt a note any other place.

15 Q. Other than the physician progress notes
16 and the consultation sheets, is there anywhere
17 else that you would commonly write notes?

18 A. No.

19 Q. Tell me what you remember about the
20 evening of November 17th, 1984 after you
21 received a call concerning Mr. Smith and his
22 condition?

23 A. The question is getting harder and harder
24 to answer with all the new information I'm
25 getting today. But I recall receiving a call

1 that he was in difficulty and coming to the
2 hospital to see him and at the time I arrived
3 he had arrested. The details are fuzzy to me
4 now about reconstructing what happened to him.
5 But I think I was told that during the second
6 procedure that became essential to do, he had a
7 marked increase in his blood pressure and then
8 he became hypotensive. And unresponsive. And
9 I think it's fair to say that we were all very
10 surprised at that because, as I remember, it
11 was a spinal anesthesia, the second surgery.

12 MR. KALUR: Move to strike.

13 A. I'm not sure about that part.

14 MR. KALUR: Move to strike
15 that portion of the testimony that deals with
16 hearsay statements of the doctor about what
17 occurred during the second surgery.

18 A. Okay.

19 MR. KALUR: By the way,
20 whether you know it or not, maybe you do,
21 there's a note, you were just asked about what
22 happened after you arrived late at night there,
23 you do apparently have an entry here on page
24 124.

25 A. Okay.

1 Q. Why don't you read that note for us,
2 Doctor?

3 A. 11-18-84, 12:30 a.m., internal medicine
4 note, case and record reviewed. Patient's
5 unstable blood pressure apparent pulmonary
6 edema and ventricular tachycardia are most
7 consistent with an acute myocardial infarct.
8 Above explained to the family. Unfortunately
9 not able to resuscitate in spite of appropriate
10 treatment.

11 Q. What other conversations do you recall
12 that evening with either of the physicians who
13 were there at the hospital or with Mrs. Smith?
14 Or with anyone else?

15 A. I don't recall any other conversations.
16 Except the usual ones of dismay when someone
17 doesn't do well.

18 Q. You say dismay. Did you consider Mr.
19 Smith to be stable when you had seen him that
20 morning?

21 A. No, I was concerned about his abdomen
22 that morning. And I think that's why I ordered
23 a clear liquid diet and his blood count and
24 changing his meds and that sort of thing. I
25 was concerned about his abdomen.

1 Q. Did you discuss an autopsy with Mrs.
2 Smith?

3 A. I don't know.

4 Q. Did you discuss an autopsy with any of
5 the physicians?

6 A. I don't know.

7 Q. You had made a comment before about a
8 spinal anesthetic. What was the meaning of
9 that?

10 A. Well, I would have expected less
11 difficulty. I don't know what really what he
12 had but my recollection is that he had had a
13 spinal, which I would have judged to have been
14 the safe, you know, thing to do. The
15 relatively safe things to do. And I remember
16 being very surprised that he didn't do well
17 that surgery.

18 Q. Do you recall any specific discussions
19 with Mrs. Smith that evening?

20 A. Yes, I remember seeing her. I remember
21 talking with her. I don't remember what I
22 said. My note suggests I would have told her
23 that I thought he had a heart attack.
24 Reconstructing what happened to him.

25 Q. What did she say?

1 A. Now, why I would have thought that, I
2 don't know.

3 Q. What did she say to you?

4 A. Not much. She seemed in shock.

5 Q. Do you recall anything she said?

6 A. No. Except one of being very, very
7 distressed and upset, which I thought was
8 appropriate, to be very surprised and upset
9 about it.

10 Q. Other than what you've already testified
11 to, did you have any specific discussions with
12 Dr. Stephens or Smith?

13 A. No.

14 Q. What about with Dr. Lee?

15 A. No.

16 Q. With any of the nurses?

17 A. I don't think so.

18 Q. With any of the residents?

19 A. I talked with residents when we was on
20 the unit. I know that. But who I talked with
21 and what we talked about, I'm not sure.

22 Q. You mean you talked to residents when you
23 would come in to see Mr. Smith?

24 A. When he was in the intensive care area of
25 the hospital.

1 Q. Do you recall any specific discussions?

2 A. No, I think we had concerns the night he
3 had that arrhythmia that I wrote a note about.

4 Q. That was on November 14th?

5 A. (Nodding affirmatively.)

6 Q. You need to speak out loud.

7 A. Yes.

8 Q. How did Dr. Oliver get involved in the
9 case?

10 A. I don't know Dr. Oliver. I don't know
11 who that is.

12 Q. Following the evening of November 17th or
13 the early morning hours of November 18th, did
14 you ever discuss this case with anyone?

15 A. Would you ask me that again?

16 Q. Sure. You left the hospital the evening
17 of November 17th, early morning hours of
18 November 18th?

19 A. Yes.

20 Q. You told me about every specific
21 conversation you can recall up until that time;
22 is that right?

23 A. Yes. Yes.

24 Q. What I'm asking is that any time after
25 that you discussed this case with any of the

1 physicians or with Mrs. Smith or anyone else?

2 A. Yes, I discussed it with my counsel.

3 Q. I don't want to know --

4 A. Oh, no. No. That's it.

5 Q. Did you ever have a follow-up discussion

6 with Dr. Stephens or Smith about this case?

7 That you recall.

8 A. Not that I recall.

9 Q. Did you ever have a follow-up discussion

10 with Dr. Lee about this case?

11 A. Not that I recall.

12 Q. What about with anybody else in the

13 anesthesia department at St. Luke's?

14 A. I don't recall any conversations.

15 Q. What about with Mrs. Smith?

16 A. I'm certain I have not talked with her.

17 Since the night he died.

18 Q. Has she returned to see you since that

19 time?

20 A. No.

21 Q. Have you discussed this case with any

22 lawyers other than Mr. Van Wagner?

23 A. No.

24 Q. Have you discussed this case with anyone

25 that we haven't talked about?

1 A. I can't think of anyone. Maybe my wife.
2 I don't know. No, I didn't discuss it with
3 anyone that I know of.

4 Q. Did you ever prepare any written
5 record --

6 A. No.

7 Q. -- of this case?

8 A. No.

9 Q. Did you ever exchange any letters --

10 A. No.

11 Q. -- with any other physicians about this
12 case?

13 A. No. Not that I recall.

14 Q. And what you have brought with you and
15 what we'll have marked as Defendants' Exhibit B
16 is your complete office file --

17 A. That's correct.

18 Q. -- relating to Mr. Smith? I don't have
19 anything further.

20 EXAMINATION OF EDGAR B. JACKSON, JR., M.D.

21 BY-MR. GROEDEL:

22 Q. Dr. Jackson, my name is Marc Groedel. I
23 represent Dr. Curtis Smith. And I just have a
24 few questions for you. After the -- before the
25 first surgery, you saw Mr. Smith, I think it

1 was on November 13th, correct?

2 A. Yes.

3 Q. And that was when you wrote up a
4 consultation note?

5 A. Yes.

6 Q. And was it the purpose of that evaluation
7 for you to specifically clear him for surgery?

8 A. Yes.

9 Q. Was it your understanding that prior to
10 that surgery Mr. Smith would also be evaluated
11 by an anesthesiologist?

12 A. Yes.

13 Q. Okay. And what would be the reason for
14 the anesthesiologist evaluating Mr. Smith prior
15 to that surgery?

16 A. I'm just talking in general now. That is
17 what you're asking me, generally what happens?
18 What is your question?

19 Q. Well, in Mr. Smith's case he was examined
20 by an anesthesiologist and evaluated prior to
21 the first surgery; was he not?

22 A. I can't say that. For sure. Well, I
23 would expect it. Obviously.

24 Q. You generally accept it?

25 A. It's just it's routine, it's part of the

1 routine standard.

2 Q. And what would be the reason for that
3 evaluation by the anesthesiologist?

4 A. For the anesthesiologist to make as
5 independent assessment as possible about the
6 surgical risk of the patient.

7 Q. Okay. Would it be fair to say that the
8 anesthesiologist has the final word with regard
9 to whether or not the patient is an acceptable
10 surgical risk?

11 MR. KALUR: Show an
12 objection. We're not here to decide what's
13 fair.

14 A. I don't have -- I can't answer that
15 really straightforwardly. I don't think it's
16 so black and white. I don't know.

17 Q. Why not?

18 A. Well, you know, I think each physician is
19 responsible for their own area and responsible
20 for what they do. Of course, an
21 anesthesiologist makes the final judgment about
22 what to use and ability of the person to accept
23 it, yes.

24 Q. They make the final decision as to what
25 type of anesthetic should be used?

1 A. In my view, yes. That's my information.

2 Q. And they also make the final decision as
3 to whether or not the patient should even be
4 subjected to an anesthetic, true?

5 A. Well, I can't answer that. I mean it's a
6 complex decision. Someone decides. In my case
7 I decided the man's hip was bad enough to need
8 repair. Although I don't like for anyone who's
9 in great health to go to surgery. And
10 certainly anyone who has had a problem to go to
11 surgery. But he had a disabling problem with
12 his hip. So that to me said he ought to see a
13 surgeon who agreed he ought to be repaired. So
14 I can't let an anesthesiologist decide. To say
15 he's got to be put to sleep to fix it, I mean I
16 can't answer that.

17 Q. I take it you didn't provide any medical
18 clearance for the second surgery that was
19 performed, correct?

20 A. None that I recall.

21 Q. Okay. Would you have any problems with
22 an anesthesiologist providing such clearance?

23 A. No.

24 Q. Dr. Smith has been deposed in this case
25 just like you are being deposed right now. And

1 it's been Dr. Smith's testimony that prior to
2 the second surgery he telephoned you to advise
3 you that he was contemplating performing the
4 second surgery to repair the dislocation of the
5 hip. Do you recall receiving a telephone call
6 from Dr. Smith about that topic?

7 MR. KAMPINSKI: I object
8 because, number one, I don't recall that and I
9 think that might have been conjecture on Dr.
10 Smith's part. I don't recall from --

11 MR. KALUR: Join in that
12 objection. I don't recall that.

13 MR. KAMPINSKI: Go ahead.
14 He's asking you to assume that.

15 A. Do I recall that? No, I don't recall
16 that.

17 Q. Is it possible that Dr. Smith made that
18 telephone call and you just don't recall it
19 because it's not in your records?

20 A. No, I don't recall it.

21 MR. KAMPINSKI: Objection.

22 A. I'm sorry.

23 MR. KAMPINSKI: Move to
24 strike as to what may or may not have been
25 possible. The fact is your response is that

1 you don't recall any such --

2 A. I don't recall.

3 MR. GROEDEL: I have no
4 further questions for you, Doctor.

5 EXAMINATION OF EDGAR B. JACKSON, JR., M.D.

6 BY-MR. KAMPINSKI:

7 Q. Let me ask a few before you get started.
8 Because you may be a while. I guess.

9 Doctor, my name is Charles Kampinski. I
10 represent the estate of Mr. Smith. I've just
11 got a few questions for you.

12 Assuming just for the sake of argument
13 that you might have received a phone call from
14 Dr. Smith, do you recall whether or not he told
15 you that he was going to subject your patient
16 to an elective procedure that evening and
17 canceled the orders that you had made that
18 morning regarding follow-up care; do you recall
19 whether he told you anything such as that?

20 A. I really don't recall talking with him.

21 Q. If he would have called you, would you
22 have expected him to tell you something of that
23 nature if, in fact, that's what was going to
24 occur?

25 A. I don't think we would have had the

1 conversation you just outlined. I don't think
2 he would have said --

3 Q. Well, you would have recalled him telling
4 you he was going to operate on your patient,
5 wouldn't you?

6 A. On an elective procedure, of course.

7 Q. But you don't recall anything like that?

8 A. No, I don't recall. I'm not even sure he
9 had an elective procedure. I mean I don't
10 know.

11 Q. Well, I'll ask you to assume that Dr.
12 Smith testified that that's what it was.

13 A. I see. Okay.

14 Q. Doctor, in fairness to you, you have
15 reviewed this St. Luke's chart. What I'd like
16 you to do is turn to the order sheet, the order
17 that you gave which was on the 17th. It was in
18 the morning, I believe.

19 A. That must be page 45 or 6 or something?
20 What page number is it?

21 MR. GROEDEL: 52.

22 Q. 52.

23 A. Okay. All right.

24 Q. All right. Sir, your order was given at
25 9:15 a.m. and apparently taken off the chart at

1 9:30 a.m.; is that correct?

2 A. Yes.

3 Q. All right. The next order there is by
4 Dr. Smith. And can you indicate for the record
5 what time that order is? 10:30?

6 A. It doesn't say what time it is but it
7 looks like it was taken off at 10:30.

8 Q. Okay. So sometime between 9:30 and 10:30
9 that order would have been placed there,
10 presumably, assuming that the chronology is
11 correct here?

12 A. Yes.

13 Q. Has he done anything with respect to any
14 of your orders?

15 A. Mine, no. It says NPO for surgery 3 p.m.
16 today. CBC SMA 6 stat. Now. And that says
17 call, I think that's a staff member said that,
18 and canceled above blood work. KUB portable.
19 Done. And Kefzol. IM on-call to OR.

20 Q. What does it mean when it says cancel
21 above blood work?

22 A. That would say cancel the stat CBC at 4
23 p.m. today, is what I would read that to mean.

24 Q. All right. He was getting that done
25 right away. Is that the reason that he

1 canceled it?

2 A. I don't know why he canceled it.

3 Q. Did he call you and tell you he was
4 canceling your order? Do you have any
5 recollection of that occurring?

6 A. I don't remember that occurring.

7 MR. KALUR: He didn't cancel
8 the order, he just canceled the time to execute
9 it.

10 Q. He did it earlier apparently. Did he
11 call you during that day to tell you he was
12 going to do surgery at 3 p.m.?

13 A. I don't recall talking to him.

14 Q. Doctor, would you look at page 152 for
15 me, please?

16 MR. KALUR: What is that
17 in?

18 Q. I've got it under -- I don't know if
19 yours is catagorized. It's the anesthesiology
20 report.

21 Do you have that page, Doctor?

22 A. Yes.

23 Q. All right. That's signed by Dr. Lee
24 dated November 17th, correct, sir?

25 A. Yes.

1 Q. All right. Would you, while you're
2 looking at that, also refer to the lab reports
3 that you were looking at earlier, I believe,
4 that were on page 126 or thereabouts. Okay.
5 Would you tell me, Doctor, if the laboratory
6 findings that are set forth on Dr. Lee's pre-
7 surgery report are accurate with respect to
8 your patient's status on November 17th? The
9 hemoglobin, hematocrit, whether those are
10 accurate in terms of what --

11 A. Those appear to be the admission values.

12 Q. You mean they're not the ones on November
13 17th?

14 A. On November 12th. That's correct.

15 Q. Are those values important for making
16 determinations as to whether or not the patient
17 should undergo the surgery?

18 A. Yes.

19 Q. And these values are inaccurate; is that
20 correct, Doctor?

21 MR. KALUR: Show an
22 objection to that.

23 Q. The ones that are on page 152, that is
24 the anesthesiology report, correct?

25 A. Well, they're accurate for the 12th.

1 They're certainly inaccurate for the 17th, yes.

2 Q. Well, you wouldn't care what they were on
3 the 12th if you were evaluating somebody on the
4 17th, would you, Doctor?

5 A. I agree with that.

6 Q. All right. Would you turn to page 155,
7 Doctor? Those are the nurse's notes pertaining
8 to Mr. Smith after he got out of surgery and
9 was put in the recovery room. Would that be
10 correct, sir?

11 A. I'm not too familiar with form. Just let
12 me look at it a little longer for a moment.

13 Q. Sure.

14 A. Operation, it says operation.

15 Q. I'll indicate to you that that's what
16 they are.

17 A. Well, I don't know whether he is. This
18 is recovery?

19 Q. That's correct.

20 A. Okay.

21 Q. Were you ever apprised prior to your
22 receiving the call late at night that your
23 client or your patient had been placed in the
24 recovery room?

25 A. I don't recall hearing about that.

1 Q. All right. Were you ever told that he
2 was having any problems in the recovery room?
3 Did anybody from the hospital ever call you and
4 tell you that?

5 MR. ZELLERS: Objection.

6 Q. Do you have any recollection of that
7 occurring?

8 A. My only recollection is a call later in
9 the evening that he was in difficulty.

10 Q. And by the time you got there it was
11 apparently too late? How long would you say it
12 took you to get to the hospital after that
13 phone call?

14 A. Probably less than a half hour.

15 Q. Did you have any -- in your note that you
16 read for us before you said you reviewed the
17 record. Was this part of the record that you
18 reviewed? You just indicated you're not
19 familiar with this form. So would it be fair
20 to say that this was not part of the record
21 that you looked at before drawing your
22 conclusions as to whether or not care was
23 appropriately given?

24 A. I really can't say. Generally when I say
25 that I mean I looked at every sheet but I

1 didn't read every sheet.

2 Q. Why don't you take about two minutes and
3 read these cover little notes and maybe that
4 will refresh your recollection as to whether or
5 not you looked at this and concluded that his
6 care was fine.

7 A. I think generally I would say that I
8 think things were done appropriately except as
9 I look back with a retrospect scope, what he
10 had was mutiple ectopy and integral ectopy
11 earlier in the evening. It would have been
12 appropriate to do more than was done, I think.

13 Q. And you were notified he was having that
14 proceeds?

15 A. I don't recall.

16 Q. Do you have in any recollection of
17 reviewing these records before writing your
18 note that evening?

19 MR. ZELLERS: Objection.

20 A. I don't recall seeing all this detail.

21 MR. KAMPINSKI: Okay.

22 EXAMINATION OF EDGAR B. JACKSON, JR., M.D.

23 BY-MR. KALUR:

24 Q. Dr. Jackson, you said earlier in response
25 to one of Mr. Zellers' questions that you had

1 congratulated Mr. Smith on not having taken a
2 drink; do you recall that?

3 A. Yes, I remember that.

4 Q. You saw him one time and he came in again
5 and he was having muscle spasms when he drank?

6 A. Yes.

7 Q. Did you form an opinion at any time
8 during your course of treatment of Mr. Smith as
9 to whether he was an alcoholic?

10 A. Yes, I never thought he was an alcoholic.

11 Q. How much did he drink? Did you form an
12 opinion as to what --

13 MR. KAMPINSKI: When was
14 that? Before he stopped drinking, Mr. Kalur;
15 is that what you're asking?

16 MR. KALUR: He may have
17 started again.

18 MR. KAMPINSKI: Are you
19 asking him that? I mean why don't you tell the
20 doctor what you're asking.

21 Q. That's fair. Did you find out if he ever
22 started drinking again after you noticed the
23 time he hadn't had a drink for an interval?

24 A. I don't recall. But I also do not recall
25 drinking beer being a problem for him after I

1 began, after I stopped commenting on it.

2 Q. Have you ever seen the University
3 Hospital records of the late 1983 confinement
4 when he first had of GI bleed and then went in
5 for heart, suspect heart problems?

6 A. I don't recall that but I know he was
7 drinking then.

8 Q. All right.

9 A. I knew that he was drinking prior to
10 that. Sometimes heavily.

11 Q. Now, let's -- you know, we started way
12 back before the thing. Let's go right to the
13 time after the death. Is it not your custom
14 and procedure when there's an unexpected death
15 in the hospital to recommend to the family that
16 they have an autopsy?

17 A. Yes, generally I would request an
18 autopsy.

19 Q. Can you recall any reason -- well, strike
20 that. I take it you have no recollection of
21 recommending that to Mrs. Smith in this case?

22 A. No, I don't recall that. Asking her for
23 that. I don't recall.

24 Q. Having looked at the records as much as
25 you've been allowed in the last couple of hours

1 and your own notes, is there in any reason in
2 the world that you can think of why you would
3 not have suggested an autopsy to her in this
4 case?

5 MR. KAMPINSKI: I'm going to
6 object. He's not been given sufficient time to
7 look at this record.

8 A. I can think of lots of reasons but to
9 answer you specifically why, if I did or did
10 not, I don't recall if I did or did not. And
11 therefore I really can't tell you what my
12 thinking was.

13 Q. Well, you said you can think of lots of
14 reasons. What's any reason you wouldn't have
15 suggested an autopsy in this case?

16 A. Oh, in general I make sure I ask for an
17 autopsy when the person has unexplained
18 problems. That we have not been able to
19 diagnose or not been able to get appropriate
20 tissue to diagnose. If I think we have had
21 appropriate access to tissue to make a
22 diagnosis, I don't always ask for an autopsy.
23 I mean it depends on how much uncertainty we
24 have about the underlying problem of a person.
25 Not necessarily, I don't ask for autopsies to

1 determine the terminal event, for example. I
2 have not in my mind ever made that judgment.

3 Q. The --

4 A. If he had had an ongoing progressive
5 problem that we could not have diagnosed, could
6 not have gotten tissue for, then I would be
7 much more likely to want to ask for an
8 autopsy. So I may not have. That's the only
9 reason I felt it --

10 Q. I'm not following, then. Maybe it's
11 getting a little late in the evening. Maybe
12 I'm slow.

13 A. Maybe I'm not making sense.

14 Q. If you knew -- let me see if I
15 understand. I'll put it in a question form.
16 If you knew what you thought in your mind,
17 let's say, to a high degree of probability was
18 the terminal event, then you would not suggest
19 an autopsy, or do I have it wrong?

20 A. No, I was trying not to relate to the
21 terminal event. I was saying that if I have a
22 patient that has a significant medical problem
23 of unknown cause, and I have not been privy to
24 information about what caused it prior to
25 death, I would clearly ask for an autopsy.

1 Q. All right. Now --

2 A. But --

3 Q. Am I to assume from that in this case
4 that you had a fairly probable conclusion in
5 your mind as to what was the cause of event of
6 death?

7 A. Yes, from the suddenness of it I had a
8 pretty good notion as to one of two things that
9 happened to him.

10 Q. And what are those two alternatives
11 that --

12 A. I thought he may have had a pulmonary
13 embolus or a myocardial infarct. Those are two
14 of the things that I thought one of those two
15 had happened to him.

16 Q. I notice that in your progress note on
17 11-17, that was done in the morning, you
18 indicated that you would pass a nasogastric
19 tube if he vomited again?

20 A. Yes.

21 Q. Were you called at any time during that
22 day and told that he had indeed vomited again?

23 A. My recollection of the next time I was
24 called was when he was in distress that night.
25 I don't remember being called prior.

1 Q. Well, assume -- well, we don't even have
2 to assume anything. Why were you thinking of
3 passing an NG tube at that time if he vomited
4 again?

5 A. Oh, I was worried.

6 Q. Let's fix that question up. I put in the
7 word at any time. That's wrong. Why were you
8 contemplating passing an NG tube if he vomited
9 again when you wrote that progress entry?

10 A. I thought we were probably dealing with
11 some form of obstruction in the gut. I thought
12 we may be -- and I knew he had vomited, I knew
13 he had vomited coffee ground material, I knew
14 he had an obstructive, you know, problem in the
15 past and I thought he might have had some form
16 of ileus, either from a biochemical reason or
17 some structural reason. And so I was worried
18 about his gut. And what I would do if someone
19 were vomiting is put an NG tube down, see if he
20 has active bleeding and at the same time
21 decompress his stomach. It's good treatment as
22 well. So that's what I was thinking about. In
23 that note there.

24 Q. Have you ever asked Dr. Smith why he
25 didn't obtain your clearance for the second

1 surgery?

2 A. I don't recall asking him that, no.

3 Q. Is that a question that troubles you in
4 this case at all?

5 A. I'm more troubled as I get more
6 information. I haven't looked at this chart in
7 over three years. But --

8 Q. Well, let me give you a specific
9 question. For example, you left before that
10 CBC was done, you had written 4 o'clock?

11 A. Yes.

12 Q. And then he apparently had it done stat.
13 Then. And it came out as 33.4 on the crit and
14 the hemoglobin was 10.3, which from the
15 admission page that had been pointed out --

16 A. Which means crit fell in 5 days 15 and
17 hemoglobin fell in 5 days 5.5.

18 Q. Taking that into consideration, does it
19 trouble you that you weren't consulted about a
20 second surgery at that point?

21 MR. GROEDEL: Objection.

22 A. I have to be honest with you and the only
23 trouble I have is that he died. I mean I'm
24 troubled that the man died. But I'm not that
25 troubled about, you know, what you're supposing

1 to me because I don't remember what happened.
2 But I'm troubled that a patient of mine died.

3 Q. Well, would those values in and of
4 themselves cause you to, had you known them, to
5 say don't take this patient in for a closed
6 reduction?

7 A. I think knowing those data if I thought
8 we were doing a procedure that didn't have to
9 be done I would say wait. Like I did when he
10 had bronchitis, I said send him home, wait. If
11 it's not urgent, wait.

12 Q. Wait until we can find out why this
13 hemoglobin and hematocrit are going down?

14 A. Wait until he's stable. Wait until he's
15 stable. That's what I did the first time.
16 That's probably what I would have done the
17 second time.

18 Q. Well, then would you consider those
19 hematocrit and hemoglobin values along with the
20 rest of the chart as we've seen it today to
21 indicate he was unstable on the morning of the
22 17th with respect to his surgical risk?

23 A. I would say he was unstable that day. I
24 don't know the urgency Dr. Smith felt in
25 operating on him. I mean that's why I'm kind

1 of hedging. Because it depends on the urgency
2 of surgery. But certainly he was medically
3 unstable. There's no doubt about that.

4 Q. Do you feel a closed reduction under
5 these circumstances was an urgent matter?

6 A. I don't know.

7 MR. GROEDEL: Objection.

8 A. I really don't know. I honestly don't
9 know.

10 Q. That would be in the orthopedic realm?

11 A. You'll have to ask my colleague.

12 Q. Dr. Smith's never volunteered that
13 information to you, I take it?

14 A. I don't recall discussing Mr. Smith with
15 Dr. Smith.

16 Q. Would an NG tube at all, had it been
17 inserted, been of assistance in preventing
18 aspiration?

19 A. Again, that's a general question.

20 Q. Assuming vomiting occurred.

21 A. NG tubes can cause aspiration. So it's
22 risky to do it and risky not to do it. I mean
23 he could aspirate from an NG tube. Certainly
24 if he had a very dilated stomach and we could
25 decompress it he would probably be overall

1 better with it than without it. But it's risky
2 either way.

3 Q. Was it the normal protocol there or
4 procedure -- well, let me get a foundation.
5 Let me ask you, had you had other patients that
6 you have referred to Dr. Smith for surgical
7 procedures before Mr. Smith?

8 A. I referred him to Dr. Stephens. And I
9 have referred many patients to Dr. Stephens.
10 Dr. Smith, I don't know if I referred patients
11 prior to that or not. Certainly subsequent to
12 that but I don't know about prior to that.
13 Because he joined Dr. Stephens about that time,
14 I think. I don't know how long he's been
15 practicing.

16 Q. Were you -- you were made aware, I take
17 it, that Smith had done the first surgery on
18 the 14th?

19 MR. KAMPINSKI: I don't
20 think that's right. Oh, Smith, right. Yeah,
21 I'm sorry.

22 Q. And not Stephens.

23 A. No, I didn't. For some reason that
24 didn't stick in my mind. It really wouldn't
25 have mattered to me. I referred him to Dr.

1 Stephens. And Dr. Smith's a very competent
2 orthopedist. I have no problem with it.

3 MR. KAMPINSKI: Objection.
4 Move to strike.

5 Q. Well, was it your custom and practice in
6 dealings with Dr. Stephens when you referred a
7 patient to him that he would ask you to clear
8 that patient before a surgery?

9 A. Yes.

10 Q. Earlier on you said something about in an
11 interval before with his hip problem in 84 as
12 it was approaching November that Mr. Smith had
13 seen another orthopedic physician and had been
14 told to go to the Cleveland Clinic. Do you
15 recall the name of that physician?

16 A. I think what I said was that the company
17 doctor had referred him to someone. I don't
18 know who it was. At St. Luke's.

19 Q. I thought you said it was an orthopod?

20 A. I may have. But I don't remember that
21 being the fact. Let me just look and see what
22 I said.

23 MR. ZELLERS: It was that
24 initial note, Doctor.

25 A. It's up here, wasn't it? Oh, yeah.

1 Yeah. I did say orthopedist. Uh-huh. At St.
2 Luke's.

3 Q. Do you recall the identity of that
4 orthopedist?

5 A. No.

6 Q. Why did you refer him back to Dr.
7 Stephens if the suggestion had been to refer
8 this man to the clinic for surgery?

9 A. The reason I referred him to Dr. Stephens
10 is because he was the orthopedist with whom I
11 have an absolute confidence.

12 Q. Did you ever discuss this case with Dr.
13 Stephens after it occurred, after the death
14 occurred?

15 A. That night. I met him at the hospital
16 that night.

17 Q. And do you recall anything regarding your
18 conversation with him?

19 A. Yes, I remember the puzzlement sort of
20 that we -- discussions that we had about what
21 went wrong, why he died, issues like that.
22 That's all I recall.

23 Q. Do you recall anything that Dr. Stephens
24 said during that conversation shortly after at
25 the time of death?

1 A. Yeah, it was either Dr. Stephens or Dr.
2 Smith, I'm not sure which, who said that he had
3 a marked increase in blood pressure. And then
4 his blood pressure dropped and he went into
5 shock and subsequently arrested and they were
6 in the process when I got there of trying to
7 resuscitate him. That's really all I
8 remember.

9 Q. Do you recall --

10 A. Dr. Stephens called me too, I think. I
11 think it was he who called me that night and I
12 met him at the hospital to see this man.

13 Q. Do you recall any procedure there at St.
14 Luke's with respect to on Saturday nights the
15 recovery room would close down at a certain
16 time, the patient would be moved to a sick
17 unit?

18 A. I don't know anything about that.

19 A. Was this a Saturday night?

20 Q. Saturday night, yes. Did you have any
21 conversation with a nurse that was caring for
22 this man in the recovery room?

23 A. Yes. The place where he was, I remember
24 asking the nurse and there was a house officer
25 with him too, I thought. I mean I --

1 Q. Doctor by the name of Gill?

2 A. I don't remember the names. I didn't
3 know the doctor.

4 Q. And the nurse, did the nurse say anything
5 to you? Her name is Sims.

6 A. I don't remember.

7 Q. When you wrote your order on the 17th it
8 said stat CBC at 4 p.m. That seems to me like
9 a little bit of a nonsequitur. Why did you
10 pick 4? I'm sorry. I said 4 a.m. It was 4
11 p.m.?

12 A. 4 p.m.

13 Q. Why did you pick 4 p.m. when you were
14 there in the morning?

15 A. I wanted to know if it would change
16 during the day. And if I ordered it routinely
17 I might not have gotten it back for a day or
18 two. So I wanted to know that day what it was.

19 Q. You don't have any recollection of anyone
20 calling you during the day after Smith
21 apparently changed your stat 4 p.m. to stat now
22 and telling you the results?

23 A. I don't recall that.

24 Q. You said that those were, after the first
25 surgery, your word was old PACs.

1 A. Yes.

2 Q. What did you mean by old PACs?

3 A. He's had it previously many tiems. He's
4 had previous atrial contractions many times.
5 Both at University and at my office.

6 Q. Do you have an opinion what was the cause
7 of his drop in hematocrit and hemoglobin other
8 than some loss at the time of surgery? The
9 first surgery.

10 A. What was your question again?

11 Q. In the five days between 11-12 and 12-17
12 you note his hematocrit and hemoglobin dropped
13 15 on the crit and 5.5 on the hemoglobin. Do
14 you have an opinion as to what was the cause of
15 those, that drop?

16 A. No. As I look back I think I might have
17 thought it was probably gastritis, coughing,
18 you know, vomiting up bloody material. But I
19 don't know in the crit.

20 Q. How much would a drop of 5.5 in
21 hemoglobin be in pints?

22 A. Generally pints about three grams of
23 hemoglobin. In an average adult. So that
24 would be like a pint and a half, almost two
25 pints of blood.

1 May I take a break again?

2 MR. KALUR: I'm just about
3 done, Doctor. I may be done. Yes, I think
4 that's all. Those are all the questions I
5 have.

6 EXAMINATION OF EDGAR B. JACKSON, JR., M.D.

7 BY-MR. MEADOR:

8 Q. As I sit here this evening --

9 A. Someone else?

10 Q. I just have a couple questions.

11 A. Oh, my God. What are you guys doing to
12 me? May I take a break for a moment?

13 Q. Well, I think you can answer this very
14 quickly.

15 A. All right.

16 Q. I haven't heard you criticize the nursing
17 care that Mr. Smith received at the hospital.
18 Are you critical of the nursing care that he
19 received?

20 A. No. You know, I don't recall feeling
21 there was a deficiency there.

22 MR. MEADOR: Okay. That's
23 all I have. Thank you.

24 MR. ZELLERS: Nothing
25 further. Any other questions?

1 MR. MEADOR: What's exhibit
2 A?

3 THE WITNESS: Can I go get
4 my water?

5 RE-EXAMINATION OF EDGAR B. JACKSON, JR., M.D.

6 BY-MR. KALUR:

7 Q. Wait a minute. I just want to ask you
8 one thing. You haven't reviewed the nursing
9 care other than that minute or two that it was
10 given to you by Mr. Kampinski, have you,
11 Doctor?

12 A. I was going on memory then. I assume
13 that he was asking me what I remember about
14 that.

15 Q. You haven't seen Nurse Sims' two
16 depositions in this case, have you, either?

17 A. No, I did not. But what I gave was an
18 honest answer to what I felt was at the time
19 this man's care and treatment.

20 RE-EXAMINATION OF EDGAR B. JACKSON, JR., M.D.

21 BY-MR. MEADOR:

22 Q. Right, and you've read the recovery
23 records just now, correct?

24 A. I wouldn't consider anything I've read
25 today the opinion that I'd always like to be

1 remembered by. You know, six people sitting up
2 here grilling me, I would have to look at the
3 chart at my leisure, I think, to be responsible
4 for what I said about the record.

5 Q. But your answer is you did review the
6 recovery room records just now?

7 A. If you're asking me did I make a value
8 judgment about the quality of nursing from the
9 notes I read, I did not.

10 RE-EXAMINATION OF EDGAR B. JACKSON, JR., M.D.

11 BY-MR. ZELLERS:

12 Q. Doctor, at this time based upon your
13 recollection of this case and the documents
14 that you've reviewed, you don't have an opinion
15 as to the care rendered by any of the
16 defendants, do you?

17 A. I'm sorry. What was that question
18 again?

19 Q. You don't have or you're not expressing
20 an opinion as to the care rendered by any of
21 the defendants in this case?

22 A. No, I'm not.

23 MR. ZELLERS: Got nothing
24 further.

25 MR. MEADOR: Mike, what's

1 exhibit A? You've referred to Exhibit B as the
2 doctor's records.

3 MR. ZELLERS: Exhibit A is
4 just the subpoena asking the doctor to come in.

5 MR. KAMPINSKI: Can we ask
6 for a waiver from the doctor?

7 MR. VAN WAGNER: I think
8 we'd like him to read it. We'll get it read
9 real fast.

10 (Discussion had off the record.)

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1 CERTIFICATE

2 The State of Ohio,)

3 SS:

4 County of Cuyahoga.)

5
6 I, Denise M. Cogan, a Notary Public within
7 and for the State of Ohio, duly commissioned
8 and qualified, do hereby certify that the
9 within named witness, EDGAR B. JACKSON, JR.,
10 M.D., was by me first duly sworn to testify the
11 truth, the whole truth and nothing but the
12 truth in the cause aforesaid; that the
13 testimony then given by the above-referenced
14 witness was by me reduced to stenotypy in the
15 presence of said witness; afterwards
16 transcribed, and that the foregoing is a true
17 and correct transcription of the testimony so
18 given by the
19 above-referenced witness.

20 I do further certify that this deposition
21 was taken at the time and place in the
22 foregoing caption specified and was completed
23 without adjournment.



1 I do further certify that I am not a
2 relative, counsel or attorney for either party,
3 or otherwise interested in the event of this
4 action.

5 IN WITNESS WHEREOF, I have hereunto set my
6 hand and affixed my seal of office at
7 Cleveland, Ohio, on this 17th day of
8 August, 1987.

9
10
11
12
13 Denise M. Cogan

14 Denise M. Cogan, Notary Public
15 within and for the State of Ohio
16

17 My commission expires March 24, 1992.
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