

Copy of Transcript

IN THE COURT OF COMMON PLEAS
LAKE COUNTY, OHIO

MICHAEL PAOLELLA, ETC.,

Plaintiffs,

v.

Judge Martin Parks
Case No. 03CV001425

SONIA KIRK, M.D., et al,

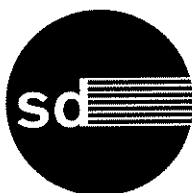
Defendants.

DEPOSITION OF
BRUCE JANIAK, M.D.

July 30, 2004
10:00 a.m.

130 Howell Road
Suite D
Tyrone, Georgia

Bonnie L. Smith, RPR, CCR-B-2432



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Deposition of Bruce Janiak, M.D.

July 30, 2004

BRUCE JANI¹AK, M.D., having been first
duly sworn, was examined and testified as
follows:

EXAMINATION

BY-MS.ZAJAC:

Q. Okay. Doctor, would you please
state your name for the record?

A. Bruce David Janiak.

Q. And my name is Ingrid Zajac, and I'm
one of the attorneys representing Dr. Kirk and
Lake Emergency Services in this lawsuit. And I
understand you've been identified as an expert
witness for the plaintiff in this case; correct?

A. Yes.

Q. And, Doctor, I believe you've been
deposed before; correct?

A. Yes.

Q. Are you there?

A. Yes.

Q. Did you answer my question?

A. Yes.

Q. Okay. We didn't get the answer.

A. Okay.



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1 Q. Anyway, particularly because we're
2 doing this by phone, I would ask that you allow
3 me to finish my questions before you provide
4 your answers and I will try to afford you the
5 same courtesy. If at any time I ask you a
6 question that you don't understand, please ask
7 me to restate it or rephrase it and I'll be
8 happy to do that. Okay? And then, obviously,
9 you know, you need to answer the questions
10 verbally both for us and for the court reporter
11 who's down there with you. Fair enough?

12 A. Yeah. You didn't give me a chance
13 to say okay.

14 Q. Okay. I figured I'd get it all out
15 there at once.

16 A. You just blew your whole thing out
17 of the water, but that's all right.

18 Q. Doctor, do you have your file with
19 you?

20 A. I do.

21 Q. Okay. What I'd like to do if I
22 could is determine what the contents of your
23 file are and if you would be so kind as to go
24 through what you have for me.

25 A. Okay. I have the Lake West



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1 emergency department records from the 22nd of
2 August of 2002 and then the Lake West admission
3 records from the 22nd and 23rd, all the way
4 through to the death and then the autopsy
5 report. I have what looks like some office
6 records of Dr. Gupta and office records of Dr.
7 Long, L-O-N-G. I have a medical review report
8 from Dr. Friedlander. I have multiple cover
9 letters that came with each one of the documents
10 that I received. I have an expert report from
11 Dr. Chris Brickman, B-R-I-C-K-M-A-N. And then I
12 have depositions of Mr. Novak; Dr. Kotak,
13 K-O-T-A-K; Dr. Gujral, G-U-J-R-A-L; Dr. Kirk,
14 K-I-R-K; and Michael Paolella. And that's it.
15 I think that's the end of the file.

16 Q. Okay. Now, as far as the
17 correspondence that you've received, I'm assuming
18 that's from Ms. Kolis' office; correct?

19 A. Yes.

20 Q. Okay. Can you give me an indication
21 of how many letters that you have?

22 A. I sure can. I'm counting. Hold on
23 a second. It looks like nine.

24 Q. Okay. Perhaps the easiest way to do
25 this if we could is just to have the court



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1 reporter label each one of those letters as
2 exhibits. So that would be what, A threw I?

3 A. Maybe I found a tenth one. Hang on
4 a second.

5 Q. Okay.

6 A. I did find a tenth one.

7 Q. Okay. So that would be A through
8 J. And we'll make sure that you get your
9 originals back to you, but I think that would
10 be the easiest way to do it considering we're
11 all doing this by phone. Is that okay with
12 you?

13 A. I have no problem with it.

14 Q. Okay. Do you have any personal
15 notes with regard to your review in this case?

16 A. I have some notations on the -- page
17 references on the front of depositions.

18 Q. Okay.

19 A. And then in my packet, just to be
20 fair, there's a billing letter from me.

21 Q. Okay. We'll go ahead and have the
22 court reporter mark the billing letter as well.

23 (Defendant's Exhibit-A, Exhibit-B,
24 Exhibit-C, Exhibit-D, Exhibit-E, Exhibit-F,
25 Exhibit-G, Exhibit-H, Exhibit-I, Exhibit-J,



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1 Exhibit-K, Exhibit-L, Exhibit-M, and Exhibit-N
2 were marked for identification.)

3 Q. (By Ms. Zajac) With regard to the
4 notations that you made, you made notations on
5 the front of each person's deposition?

6 A. I don't know that yet. I'll tell
7 you in just a second.

8 Q. Okay.

9 A. Yes, I did.

10 Q. Are there notations throughout the
11 deposition or do you just basically summarize it
12 on the first page?

13 A. Well, there's no summary. There are
14 page references on the first page.

15 Q. Okay. So if you would, just so I
16 make sure I'm understanding, for Mr. Novak can
17 you read what you have for me just so I can
18 understand what it is that you're referring to?

19 A. Sure. If you look at the front
20 page of the deposition of Mr. Novak, you will
21 see a 0.4 with a circle around it. That means
22 it was four tenths of an hour to read it.
23 Then you'll see 8 May '04, which means I
24 finished reading it on the 8th of May.

25 Q. Okay.



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1 A. And then you will see the numbers
2 nineteen, twenty, twenty two, twenty four and
3 thirty two.

4 Q. And what do those mean?

5 A. Those means that -- those means, gee
6 -- those numbers mean that as I was reading the
7 deposition, there was something at that time
8 that interested me on those pages.

9 Q. I see. So those are just kind of
10 little reminders for yourself?

11 A. Correct.

12 Q. Well, why don't we go through and
13 then you can tell me for each of the
14 depositions what was significant -- what pages
15 were significant to you and why they were
16 significant? How does that sound?

17 A. That's fine with me.

18 Q. Okay. We started with Mr. Novak.
19 Why don't you go ahead and tell me the pages
20 again that you identified and what was
21 significant about those to you?

22 A. The first page was page nineteen,
23 and it just indicates that he reviewed the X-ray
24 with the physician, Dr. Kirk. The next was
25 page twenty, which just reiterates the same



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1 thing, that he wouldn't have written down
2 pneumonia if he hadn't discussed it with Dr.
3 Kirk. Next was page twenty two in which there
4 was a conversation about admitting the patient
5 to the hospital.

6 Q. And why was that significant to you?

7 A. I didn't say it was significant
8 ever. I just said it interested me at the
9 time I reviewed it.

10 Q. I understand.

11 MS. KOLIS: Doctor, what page did
12 you say that was?

13 THE WITNESS: Twenty two.

14 MS. KOLIS: Thanks.

15 THE WITNESS: Line fifteen.

16 Q. (By Ms. Zajac) Okay.

17 A. Next was page twenty four, where on
18 line twenty three it says patient wanted to try
19 out-patient therapy and returned for admission if
20 she, I guess -- oh, I'm sorry. It says
21 patient felt that she would want to try
22 out-patient therapy and returns now for
23 admission. That refers to the patient's return.

24 Q. Okay.

25 A. And the next was page thirty two.



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1 There was just some discussion about how long
2 she had been taking medication. I guess it was
3 the antibiotic. And that's it.

4 Q. That's it for Mr. Novak's deposition?

5 A. That is true.

6 Q. Okay. And how about Dr. Kotak's
7 deposition?

8 A. All right. You just want to go
9 over the pages I assume; right?

10 Q. Whatever you have identified there as
11 far as something that was of interest to you or
12 of significance to you.

13 A. Okay. Page eighteen, it just says
14 when he was initially contacted about the case,
15 August 22nd at 4:20 p.m.; page twenty three in
16 which he said he would come and examine the
17 patient; page twenty four in which the question
18 is -- I guess it's referring to the radiology
19 report which is, quote, CHF with edema and/or an
20 unusual pneumonia, unquote; page thirty one, it's
21 just a general comment about how -- the way the
22 case played out with the patient sent home from
23 the emergency department then coming back because
24 of nausea and vomiting. Page thirty two is just
25 a continuation of that narrative; page thirty



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1 eight in which he explains that -- I think he's
2 trying to say that he is using clinical
3 correlation to decide whether this is infection
4 or failure; and page forty eight, that that's
5 when he was first told the patient while she
6 was in the hospital had an episode of either
7 unresponsiveness or shortness of breath or
8 something, some acute event. And that's all on
9 Kotak's depo.

10 Q. And, again, let me just repeat.
11 These are things that you found interesting as
12 opposed to having any specific significance to
13 you?

14 A. Right. Remember, I'm doing this
15 prospectively. So as I go through, I put page
16 references on what's interesting to me. It's
17 not until after I'm done with all that that I
18 synthesize everything.

19 Q. Okay. And do you have any notations
20 on the deposition of Dr. Gujral?

21 A. I do not. I just have the date and
22 the amount of time it took me to read it.
23 Otherwise nothing.

24 Q. Okay. And how about Dr. Kirk?

25 A. On Kirk, I have two references.



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1 Page twenty nine --

2 Q. Okay.

3 A. -- in which she says she was aware
4 of the fact that the patient -- that the
5 radiologist thought it was congestive heart
6 failure and/or unusual pneumonia. When she
7 looked at the film, she was aware of that.
8 And page thirty one is where she says she was
9 speaking with the patient, offered the patient
10 admission, and it was in response to whether or
11 not she did blood cultures or not. And she
12 said since she sent the patient home, she didn't
13 do blood cultures because the patient was being
14 discharged and apparently either that's her
15 policy or the hospital's policy that they don't
16 do blood cultures on discharged patients.

17 Q. And, again, were these just items of
18 interest for you or do you have any disagreement
19 with her testimony in some way?

20 A. Oh, on this one, yeah, I don't think
21 a discharge or an admission is -- is the
22 indicator for doing blood cultures. And then
23 she says -- the final part of this is the
24 question why don't you do that, that is, do
25 blood cultures, and she says because one is



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1 afraid of a lawsuit if one doesn't track the
2 particular blood culture down. So that doesn't
3 -- I mean, that doesn't make any sense. I
4 never -- I don't agree with practicing medicine
5 and eliminating a test that might be necessary
6 because you're afraid you might get sued if you
7 don't follow up on the test. That doesn't make
8 sense. So I certainly would disagree with that
9 attitude.

10 Q. Okay. Any other notations on Dr.
11 Kirk's deposition?

12 A. That's it.

13 Q. How about Mr. Paolella?

14 A. I have, it looks like, four or five.

15 Q. Okay.

16 A. Page fifty eight -- that's my other
17 line ringing, which means somebody probably wants
18 to sell me something.

19 Q. Go ahead and take the time to answer
20 that.

21 A. Oh, no. No, I don't need to.

22 Q. Okay.

23 A. If my family wants me, they can find
24 me on the cell phone. They don't need to --
25 it's off. See?



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1 Q. Okay.

2 A. Now, I'm reviewing page fifty eight.
3 Just a second.

4 Q. Okay.

5 A. This is where he indicates that they
6 -- they were told that she had a mild case of
7 pneumonia and there was no need for her to be
8 -- to stay, that she could be treated at home.
9 That was just obviously his opinion of that
10 conversation.

11 Q. Okay.

12 A. And then on page fifty nine -- oh
13 -- just the top line where she was assured that
14 -- they were assured that the patient didn't
15 have to stay. Next is page sixty seven in
16 which he relates that he called Dr. Gupta and
17 his comment was, quote, why the hell did they
18 release her, unquote, and they went back to the
19 hospital. I guess that's because she was
20 getting worse. The next was page seventy two
21 where he indicates the patient was home for
22 about two and a half hours. The next was page
23 seventy three in which he indicates that there
24 was some chest tightness. And last is page
25 eighty seven to eighty eight. This just relates



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1 a story about discussing with the doctor the
2 autopsy and the confusion over whether the
3 patient smoked or did not smoke. It looks like
4 it was sort of an irritating conversation.
5 That's all. It was just interesting.

6 Q. Was there any other significance to
7 any of these pages that you noted?

8 A. Actually, the most significant one is
9 where Dr. Kirk says she knows that the
10 radiologist thought it was congestive heart
11 failure. That one was pretty important to me.

12 Q. How about from Mr. Paolella's
13 deposition?

14 A. Oh, I'm sorry.

15 Q. That's okay.

16 A. No, nothing. That's it.

17 Q. Okay. Do you have any other notes
18 other than what we've already discussed in your
19 file?

20 A. I do not.

21 Q. Okay. Have you done any research,
22 Doctor, as a part of your work on this case?

23 A. No.

24 Q. Okay. Have you reviewed any
25 literature at all as a part of your review?



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1 A. No.

2 Q. Did you receive any summaries from
3 plaintiff's counsel about any of the records or
4 depositions or anything along those lines?

5 A. Well, I don't know. Hang on a
6 second. The reason I don't know is I wouldn't
7 read them if I got them. So I'll see. The
8 original letter references just a brief synopsis,
9 that she was admitted to the emergency
10 department and was diagnosed with pneumonia and
11 then came back and eventually passed away.

12 Q. Okay. Anything else?

13 A. That's it.

14 Q. Okay. And we know that you authored
15 a report in this case dated August 13th of
16 2003.

17 A. That's right. That's in my file
18 somewhere, too.

19 Q. Okay. Was that the only report that
20 you authored in this case, Doctor?

21 A. Yes, that is true.

22 Q. Okay. Now, I just want to get an
23 understanding -- because I know obviously some
24 of these materials you received subsequent to
25 authoring your report. So I'd just like to get



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1 a feel of what you reviewed prior to authoring
2 your report if you're able to tell me.

3 A. I think I can. Hold on.

4 Q. Sure.

5 A. I have it, but it's all in -- in
6 the letter -- original letter I received. If
7 you want me to read it, I'll read it.

8 Q. That would be great. Thank you.

9 A. Lake West emergency department,
10 8/22/02, 7:30 a.m. presentation; Lake West
11 Hospital emergency department 8/22/02, 3:40 p.m.
12 presentation; Lake West Hospital admission
13 records, 8/22/02 through 8/23/02; MetroHealth
14 Life Flight records from 8/23/02; autopsy report;
15 Dr. Gupta medical records; Dr. Long medical
16 records.

17 Q. Doctor, have you reviewed any films?

18 A. I believe I did. You know, now
19 that you mention it, I think that I may even
20 have it here. I didn't even think to look in
21 the other room to see if it's there, but I'm
22 quite certain I looked at the X-ray.

23 Q. And that's the chest X-ray from
24 8/22/02?

25 A. That is, indeed, correct.



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1 Q. Okay. And we know you reviewed a
2 number of materials after you authored your
3 report. And based upon those additional
4 materials, is there any additions or changes
5 that you'd like to make to your report?

6 A. No.

7 Q. Okay. Did you mark the film in any
8 way?

9 A. No.

10 Q. I have your CV in front of me. And
11 I'm not going to, you know, go line by line
12 here, although I must comment on the number of
13 children that you have. God bless you.

14 A. Last week when we had three
15 grandkids and three cousins over, we had in the
16 house fourteen kids again. And after four days,
17 my wife was in tears. So thanks for your
18 sympathy.

19 Q. What are their ages, just out of
20 curiosity?

21 A. My youngest is eleven and my oldest
22 is thirty seven.

23 Q. God bless you. I see that you did
24 most of your training down in Cincinnati;
25 correct?



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1 A. That is correct.

2 Q. Okay. And then you are board
3 certified in emergency medicine?

4 A. That is true.

5 Q. And then pediatric emergency medicine?

6 A. That is true.

7 Q. Did you say yes?

8 A. Yes.

9 Q. Okay. Any additional board
10 certifications?

11 A. No.

12 Q. Okay. The focus of your residency
13 was in emergency medicine?

14 A. That is correct.

15 Q. And did you do any fellowships?

16 A. No.

17 Q. Okay. I know that you -- I see
18 here that you worked in Toledo for a good chunk
19 of your career.

20 A. That is right.

21 Q. Okay. And that was in the Toledo
22 Hospital?

23 A. Yes.

24 Q. And the entire time you were in
25 Toledo, were you the director of the emergency



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1 department?

2 A. I was.

3 Q. Okay. And give me a basic
4 understanding of what your responsibilities were
5 in that position.

6 A. The primary responsibility was
7 professional staffing and the quality thereof.
8 Other responsibilities were committee service on
9 the executive committee, credentials committee,
10 taking care of individual problems, issues,
11 complaints, preparation of -- for the joint
12 commission surveys, and then some brainstorming
13 on improvements in overall operations.

14 Q. Were you also involved in actually
15 caring for patients in the emergency department
16 during that time?

17 A. I actually saw patients every day I
18 was at the hospital for probably the whole
19 twenty eight years.

20 Q. So part of your responsibilities
21 included actual hands-on practice?

22 A. Right.

23 Q. How would you split your time
24 between administrative versus clinical
25 responsibilities?

1 A. Probably at my busiest, I was
2 seventy five -- seventy to seventy five percent
3 clinical and twenty five administrative.

4 Q. Okay. And then you left Toledo in
5 June of 2002?

6 A. That's correct.

7 Q. Okay. Why did you leave?

8 A. The political situation at the
9 hospital -- and read political as financial --
10 was becoming almost impossible to survive. I
11 couldn't pay the doctors what I wanted to or
12 what they wanted to be paid. And rather than
13 argue about it, I figured after twenty eight
14 years it was time to go do something else. So
15 I sold the contract.

16 Q. Where did you go? Up to Michigan;
17 is that correct?

18 A. Well, I'll try to synopsize this.
19 When I left in June, I worked part time in
20 Michigan at Monroe, Michigan, and also in Bixby
21 -- Bixby Hospital in Adrian, Michigan, while I
22 was also working part time in Augusta, Georgia,
23 flying back and forth as a professor of
24 emergency medicine. Since I liked that, we
25 decided we would move to Georgia and took some



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1 time, of course, to accomplish that. And now
2 I'm half time at the Medical College of Georgia
3 at Augusta and half time at Fayetteville
4 Community Hospital in Fayetteville, Georgia.

5 Q. And what is your position there with
6 both of those facilities?

7 A. Well, at the Medical College of
8 Georgia, I'm an emergency medicine professor.
9 My job is to see patients every day with the
10 residents and do one-on-one bedside teaching.
11 And at the Fayetteville Hospital, I'm a staff
12 emergency physician. So I just see patients.

13 Q. And how do you split your time
14 between the two of them? Do you work certain
15 days at the Medical College of Georgia or
16 certain weeks there or how does it work?

17 A. It's variable every month, but
18 there's eight shifts a month at each place.

19 Q. So in a given week, how many hours
20 would you be working?

21 A. Well, eight -- sixteen times eight.
22 What's that? A hundred and twenty eight hours
23 a month divided by four, if you want it by
24 week, which would be forty two I guess. Is
25 that right? No, it would be twenty something.



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1 Q. Twenty four?

2 A. Yeah. In essence, it's a full-time
3 emergency medicine position.

4 Q. Do you perform any teaching outside
5 of the clinical work that you do at the Medical
6 College of Georgia?

7 A. Well, I've given grand rounds
8 lectures there since I've started, and I've also
9 given a couple of lectures at small community
10 hospitals. Because I'm also the director of
11 outreach for the Medical College of Georgia.
12 I'm not sure yet exactly what that means, but
13 part of it is relating to the small hospitals
14 that send patients to the Medical College of
15 Georgia. As part of that job, I've given some
16 lectures on airway management to the nursing
17 staffs at the smaller hospitals.

18 Q. And just because this isn't written
19 on your CV, at least I don't see it here, when
20 did you actually start in Georgia?

21 A. I started working there -- I think
22 it was November or December of 2002.

23 Q. Is that true of both facilities?

24 A. No.

25 Q. Okay.



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1 A. Fayetteville Hospital, it took me
2 until -- I think it was December of 2003 before
3 I finally got through the application process
4 there. Do me a favor. What's the revision
5 date on the last page of the CV?

6 Q. Let's see. December of '03.

7 A. Okay. There's an updated one which
8 doesn't have much more in it, but there is an
9 updated one as of last month.

10 Q. Okay. What's new?

11 A. Well, I made sure that I put in
12 what you just found was missing, the fact that
13 I'm on the Fayetteville Hospital. I put in the
14 -- I wasn't sure that the director of outreach
15 was in there. I think I put in that I am no
16 longer president of the Emergency Department
17 Benchmarking Alliance. I think that's the main
18 things.

19 Q. Okay. Any additional publications?

20 A. No.

21 Q. Okay. I see here that you're also
22 privileged at the Children's Hospital in Georgia.

23 A. That's correct. I work half shifts
24 when I'm there in the Children's Hospital
25 emergency department. It's really the same



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1 building as the main hospital. It's just
2 detached.

3 Q. Okay. So what percent of your
4 practice involves adults versus children?

5 A. Right now, I'm probably working eight
6 hours a month on the Children's side. So it
7 would be what? One sixteenth. That would be
8 exclusively children. Of course, when you work
9 the night -- when you work the night shifts at
10 both hospitals and the day shift in
11 Fayetteville, you see kids all the time.

12 Q. I understand. I'm just flipping
13 through your CV here. Do you have any
14 publications, Doctor, that are relevant to the
15 issues in this particular case?

16 A. No.

17 Q. There was one of your publications
18 that caught my eye entitled Human Error in
19 Medicine: Promise and Pitfalls, Part 2. Tell me
20 a little bit about that if you would.

21 A. That was a letter to the editor of
22 the American -- of the -- what's the name of
23 it now -- the Annals of Emergency Medicine. I
24 was asked to edit that letter by the gentleman
25 who authored it first, whose name I can't



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1 remember right now. It was a -- basically
2 emergency medicine's -- or, my thoughts on
3 emergency medicine's response to the Institute of
4 Medicine's report on errors.

5 Q. Okay. And I notice that the title
6 says part two. Is there a part one that you
7 were involved with as well?

8 A. No. I think the author of the
9 letter did part one. I don't remember doing
10 anything with part one.

11 Q. Okay.

12 A. Hang on a second because my real
13 phone is ringing.

14 Q. Sure. Go ahead.

15 (Whereupon, a recess was taken.)

16 THE WITNESS: I shouldn't have
17 answered the phone. Now I'm mad.

18 Q. (By Ms. Zajac) Sorry about that.
19 Are you all set?

20 A. I won't take it you out on you. Go
21 ahead.

22 Q. Thank you. I appreciate that. Do
23 you have a copy of your updated CV there with
24 you, Doctor?

25 A. I do. It's in the computer. If



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1 you want me to e-mail it to you or if Ms.
2 Kolis wants me to e-mail it to her, tell me
3 what you want me to do.

4 Q. If you would be kind enough to send
5 an updated version to Donna and she'll get it
6 to us, that would be fine.

7 A. All right. I'm writing myself a
8 note.

9 Q. Thank you. We appreciate that.

10 A. I got it.

11 Q. Okay. Doctor, do you know any of
12 the treating physicians that are involved in
13 this case?

14 A. I do not.

15 Q. Okay. Do you know any of the
16 experts?

17 A. Yes, I do. I know Dr. Brickman.

18 Q. Okay. How is it that you know Dr.
19 Brickman?

20 A. Well, he was the director of the
21 medical -- he probably still is -- director of
22 the emergency department at the Medical College
23 of Ohio at Toledo. And he also was a resident
24 in emergency medicine. So I had interacted with
25 him on a number of occasions over various



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1 administrative issues. I specifically remember
2 talking to him about medical transcription at
3 the medical college when I was medical director
4 for a transcription company. Other than that,
5 I've never been out to dinner with him.

6 Q. Okay. So basically just kind of a
7 professional relationship?

8 A. That's right.

9 Q. Okay. And I just -- I just want to
10 make sure. The only expert reports you've
11 reviewed in this case are Dr. Friedlander and
12 Dr. Brickman?

13 A. I believe that's correct.

14 Q. Okay. Tell me, what is Janiak
15 Consulting, Incorporated?

16 A. That is the entity into which the
17 moneys I earn from this kind of activity and
18 actually from working at Fayetteville Community
19 Hospital are deposited. Because those are
20 pretax dollars and heaven forbid I should not
21 pay my fair share of taxes. Messrs. Kerry and
22 Edwards would probably have a hernia if they
23 didn't get more of my money.

24 Q. And how long has this corporation
25 been in existence?



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1 A. Gosh. It must be fifteen,
2 seventeen, twenty years. Something like that.

3 Q. Are you the only employee?

4 A. That is right.

5 Q. And prior to your relocation to
6 Georgia, was this basically done for your
7 consulting work?

8 A. Right. Before I came down to
9 Georgia and started working at Fayetteville,
10 ninety-some percent of the income came from
11 medical legal review and eight to ten percent
12 came from hospital consulting.

13 Q. What do you mean by hospital
14 consulting?

15 A. Visiting a hospital or being hired
16 by a hospital to help troubleshoot administrative
17 issues within the emergency department.

18 Q. Okay. How long have you been
19 reviewing cases, Doctor?

20 A. Probably twenty five years now.

21 Q. And how many cases would you say you
22 review per year?

23 A. Well, let me give it to you this
24 way. I believe I've reviewed, in twenty five
25 years, about eight hundred cases, eight hundred



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1 files. Some of them have been just from
2 insurance companies, but the majority have been
3 from attorneys. Of those, somewhere between
4 eighty and eighty five percent are defense and
5 somewhere between fifteen and twenty percent are
6 plaintiff.

7 Q. Has the number of cases that you've
8 reviewed per year increased, decreased, or
9 roughly stayed the same over that period of
10 time?

11 A. Well, obviously, from the first --
12 maybe not obviously, but initially it was very
13 few, and now it's been pretty steady over the
14 last, I'd say, seven or eight years, which must
15 be -- I must receive probably twenty five files
16 a year I would say.

17 Q. And do you advertise your services
18 in any way?

19 A. No.

20 Q. Do you know if you're listed with
21 any of the professional expert brokers or people
22 out there who find experts for attorneys?

23 A. Not to my knowledge.

24 Q. Okay.

25 A. Although I did get a call from a



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1 nurse once who asked me -- said she was such a
2 person and asked me if I'd review such a case
3 and I said yes. I have no idea whether I'm,
4 quote, listed, unquote.

5 Q. Okay. What percent of your
6 professional time do you spend reviewing medical
7 legal matters?

8 A. It was probably about fifteen
9 percent.

10 Q. Fifty, five zero, or fifteen, one
11 five?

12 A. One five.

13 Q. And what percent of your income
14 would you say comes from medical legal review?

15 A. Let me think. I would say during
16 the transition, it was about twenty five
17 percent. But now that I'm getting basically
18 full-time emergency medicine income, it's
19 probably back down to fifteen percent.

20 Q. Have you worked with Ms. Kolis
21 before?

22 A. I have.

23 Q. On how many occasions?

24 A. No more than two I would say.

25 Q. Okay. And do you have any



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1 recollection of what those cases involved?

2 A. None at all.

3 Q. Okay. Do you know how long ago it
4 was?

5 A. Just within the last probably seven
6 years I would say.

7 Q. And I note that your report is
8 actually addressed to Tom Conway who used to
9 work with Ms. Kolis. Have you ever worked with
10 Mr. Conway before?

11 A. I would say that's the way this case
12 started, but that's the only one I remember with
13 him.

14 Q. Okay. How about anyone else from
15 Kolis' firm of Friedman, Domiano and Smith? Any
16 prior experience with them?

17 A. Let me look at the letterhead to see
18 if any names sound familiar to me. Nothing
19 strikes a bell. I may have, but I just don't
20 remember.

21 Q. Fair enough. In a nutshell, Doctor,
22 I'd like to get a listing of all of your
23 criticisms of Dr. Kirk, Dr. -- or, Mr. Novak
24 and Lake Emergency Services. And then we can,
25 you know, talk about each of them individually



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1 as needed. Fair enough?

2 A. Sure. That's pretty simple. Do you
3 want me to go ahead?

4 Q. Please.

5 A. Essentially, when this patient
6 presented on the -- gosh, I've forgot the date
7 now -- in August. The 22nd I guess it was.
8 She presented with signs and symptoms that were
9 much more consistent with congestive failure than
10 they were with pneumonia. So my criticism is
11 the failure to synthesize the chest auscultation,
12 that is, the rales, the history of a cough, the
13 lack of a fever, and the lack of an elevated
14 white count, and the radiologist's report which
15 said it looked like congestive failure. The
16 failure to put those together to make it
17 congestive failure was an error. That error,
18 which I believe was a deviation from standard --
19 I would expect the average, competent emergency
20 physician to be able to decide that either was
21 certainly failure or most likely was failure.
22 And because the patient was a diabetic with
23 failure and this was the first onset of failure,
24 then those patients -- the standard of care is
25 to admit those patients. So it would be a



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1 failure to make the diagnosis and the failure to
2 admit for the appropriate diagnosis.

3 Q. Okay. Anything else?

4 A. Well, obviously, if you had that
5 diagnosis, you'd probably call it -- either
6 communicate that diagnosis to the physician or
7 you would call a cardiologist or you would
8 institute some treatment. But everything derives
9 from that main error.

10 Q. Okay. Doctor, are you rendering any
11 opinions with regard to the care that was
12 rendered by Dr. Kotak in this case?

13 A. No, not really. I'm just focusing
14 on the emergency department. I don't practice
15 the other kind of medicine.

16 Q. Okay. And the criticisms that you
17 set forth for me, do those pertain to the first
18 emergency room visit?

19 A. Well, no. The patient comes back.
20 And when a patient returns, it's incumbent upon
21 the emergency physician, whether it's the same
22 one or a different one, to review the reason
23 for return and to make some effort to confirm
24 that there's not something else going on. In
25 this case, if you reviewed the fact that the



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1 patient had no fever and no white count and
2 that the X-ray was read as congestive failure,
3 it would be pretty easy to come up with the
4 idea that it was congestive failure. So the
5 second emergency physician committed the same
6 error.

7 Q. What is your understanding of what
8 transpires in the second emergency room visit?

9 A. Hang on a second while I take a
10 look at that. You know, I'm not sure what
11 page that's on. My understanding is the patient
12 came back to the hospital and basically they
13 just said, well, do you want to be admitted
14 now. You're taking Dr. Kirk up on her offer
15 and we'll just go ahead and admit you. I don't
16 think there was much more done.

17 Q. Okay. So just so I understand, are
18 you saying that she should have been reevaluated
19 at that point in time and additional testing
20 performed?

21 A. No, I mean -- I found Dr. Kirk's
22 second -- second note. Yeah, you would
23 reevaluate the patient. The patient actually
24 was reevaluated. Dr. Kirk says, quote, lungs
25 sound -- lung sounds show basilar crackles as



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1 they did earlier, unquote. Hearing the crackles
2 would make you think that maybe this wasn't
3 pneumonia and you'd go back and look at the
4 other components of your initial evaluation,
5 which Dr. Kirk didn't have to do. She already
6 knew. So basically she's getting a second shot
7 at it and missed the ball the second time.

8 Q. Is it your opinion that any
9 additional testing should have been done upon
10 her representation?

11 A. I don't think you'd have to do any
12 additional tests. You could just make the
13 diagnosis of probably congestive failure. You
14 could meet the standard by notifying someone
15 that that's what you thought it was and then
16 they could proceed with focusing in on the heart
17 during the admission.

18 Q. Okay. Just some general concepts
19 that I wanted to ask you about. Would you
20 agree, Doctor, that physicians and personnel have
21 to rely upon the history provided by the
22 patient?

23 A. Sure. Yeah, it's part of the
24 picture. I mean, sometimes you rely on it a
25 hundred percent. Sometimes it's -- it may not be



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1 accurate because the patient is either by nature
2 a poor historian or is impaired in some way.
3 So you can't always rely on that. Sometimes
4 you have to rely on other information.

5 Q. Okay. Would you agree that
6 physicians in general must use their judgment in
7 evaluating the care and treatment of patients
8 based on the information they have at that time?

9 A. Absolutely.

10 Q. Okay. So physicians should not be
11 judged based on information that's acquired
12 obviously after the care they've rendered; true?

13 A. Well, I suppose that is a general
14 true, although sometimes some of that information
15 needs to be acquired by the initial physician.

16 But I wouldn't -- for instance, if someone came
17 to me with chest pain and there was a failure
18 to do an electrocardiogram in a patient with
19 significant risk for coronary artery disease, you
20 wouldn't judge him on the failure to read the
21 cardiogram. You'd judge him on the failure to
22 order the cardiogram.

23 Q. Fair enough. But a physician should
24 be judged based on the information they have at
25 the time, correct, or should have at the time?



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1 A. There. That's good. I like that
2 one.

3 Q. Fair enough. But it's not
4 information that came after the fact?

5 A. Correct. We're not doing a
6 retrospective analysis here.

7 Q. Okay. At the time of your review,
8 Doctor, I believe you've indicated that you were
9 aware of what her subsequent course and outcome
10 was.

11 A. That's right.

12 Q. And Dr. Kirk and Mr. Novak obviously
13 did not have the benefit of that at the time
14 they cared for Mrs. Paolella; correct?

15 A. Of course.

16 Q. Now, you did indicate you reviewed
17 some films; correct?

18 A. Say that again. I missed it.

19 Q. You indicated that you reviewed the
20 chest X-ray in this case.

21 A. I did.

22 Q. Okay. And do you agree with the
23 radiologist's interpretation of the chest X-ray?

24 A. I do.

25 Q. Okay. And what was his



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1 interpretation?

2 A. I think he said that it was
3 congestive heart failure and possible unusual
4 pneumonia.

5 Q. Okay. So you agree that it's
6 congestive heart failure or possible pneumonia?
7 He says and/or.

8 A. Yeah, that makes it sound like it's
9 a 50/50 proposition. This X-ray is congestive
10 heart failure, and then a remote possibility of
11 a bizarre pneumonia.

12 Q. Okay. So is that your
13 interpretation?

14 A. I wouldn't have written pneumonia
15 when I looked at it. I would have just said
16 failure.

17 Q. So do you disagree then with the
18 radiologist who said that the pneumonia could
19 be --

20 A. No, it could. It's just that
21 radiologists cover all the bases. They also say
22 clinical correlation recommended. Cannot rule
23 out every disease known to man. Suggest more
24 studies. I want to make more money. So
25 radiologist reports are the ultimate medical



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1 legal hedge. They never really admit to
2 anything.

3 Q. Okay. So in your opinion, the chest
4 X-ray demonstrates congestive heart failure?

5 A. That's correct.

6 Q. There's no -- there's nothing on the
7 chest X-ray that would be consistent with a
8 pneumonia?

9 A. That's how I felt. Now, if -- the
10 way I would get to the pneumonia is if I
11 admitted this patient, which of course I don't
12 do, but if I admitted them and treated them for
13 failure and then they got a temperature and
14 started to cough up green and yellow stuff and
15 got worse. Then I'd say, gee, maybe I'm wrong;
16 I've got to go back; it could be some weird
17 pneumonia. But I wouldn't look at the X-ray
18 and say this is a weird pneumonia.

19 Q. Would you agree, Doctor, that X-ray
20 findings need to be correlated with the clinical
21 picture?

22 A. Absolutely.

23 Q. And that the radiologist in this
24 case actually did not have the clinical
25 information about the patient; correct?



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1 A. Typically they don't. I don't know
2 specifically at this time, but typically they
3 don't have that information.

4 Q. Okay. And Dr. Kirk and Mr. Novak
5 did have that information? They had the benefit
6 of seeing both the patient and the chest X-ray?

7 A. You are correct.

8 Q. Okay. So you can't look at a chest
9 X-ray in isolation?

10 A. Well, you can if you're a
11 radiologist.

12 Q. Well, you can do it, but you can't
13 make any decision with regard to the patient
14 looking at a chest X-ray in isolation; fair?

15 A. I would say that that is true most
16 of the time. Sure.

17 Q. Okay. Doctor, would you agree that
18 the physician who's actually the one examining
19 the patient is in the best position to make a
20 judgment about his or her problem?

21 A. Sure.

22 Q. And that physicians actually have to
23 do that all the time? They have to make
24 judgments based upon the information that's
25 available to them?



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1 A. Correct.

2 Q. Now, when I asked you just a few
3 minutes ago about what your criticisms were, you
4 gave me a listing of different things that you
5 felt were more consistent in this particular
6 patient with CHF; correct?

7 A. Correct.

8 Q. And first would be the rales or
9 rales, however you pronounce that?

10 A. Right.

11 Q. And is that something that also
12 could be seen with pneumonia?

13 A. Yes.

14 Q. So in and of itself, the presence of
15 rales in this patient did not rule out or did
16 not favor congestive heart failure versus
17 pneumonia; is that correct?

18 A. No. It's not correct.

19 Q. Okay. I'm sorry. What's wrong with
20 that statement?

21 A. The rales are on both sides. And
22 so just based on that, it's more likely than
23 not it's failure than it is pneumonia, because
24 it's more common to have one-sided pneumonia
25 than a bilateral pneumonia.



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1 Q. Okay. So the location of the rales,
2 that is of more significance then to you; fair?

3 A. Sure.

4 Q. Okay. The second thing that you
5 mentioned was the history of a cough; correct?

6 A. That's right.

7 Q. And do you view that as being
8 consistent with CHF versus pneumonia?

9 A. I think that she had a cough and
10 some shortness of breath. And I think you
11 can't make that into pneumonia or CHF. It's
12 just the fact that it's there.

13 Q. Okay. So a cough would be
14 consistent with either CHF or pneumonia?

15 A. Sure.

16 Q. Would it be more consistent with one
17 than the other?

18 A. If you look at a cough alone, it's
19 most consistent with an upper respiratory
20 infection or a cold than it is anything else if
21 you're just looking at a cough in isolation.

22 Q. Okay. The next thing that you had
23 listed was the lack of a fever; correct?

24 A. Correct.

25 Q. Okay. And did you happen to note



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1 that the patient actually reported a history of
2 a fever?

3 A. I think she did say that. She said
4 she has felt warm or something like that. I've
5 forgotten the wording.

6 Q. Okay. And is that -- does that --
7 is that of any significance to you?

8 A. Yeah, I guess it's of minor
9 significance. It's something that you would keep
10 in mind.

11 Q. Okay. And would the history of a
12 fever be more consistent with CHF or pneumonia?

13 A. It probably would be 50/50.

14 Q. Okay. And what is it about the CHF
15 that produces a fever?

16 A. Well, we're not talking about an
17 actual fever. We're talking about a patient
18 reporting a fever.

19 Q. Okay.

20 A. So it's just people say that. They
21 say they felt warm, felt hot, felt chills.
22 It's hard to say what they're really talking
23 about. But pretty much a temperature can --
24 or, an elevated temperature above average can be
25 seen with most diseases sometimes.



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1 Q. Okay. Is that something you would
2 typically see with CHF?

3 A. No. If it was just isolated
4 congestive failure, you probably would not
5 typically see it.

6 Q. Okay. Doctor, did you note that the
7 patient was -- reported being on Amoxicillin?

8 A. That's right. That's right.
9 Methotrexate and Amoxicillin.

10 Q. And would the fact that she had been
11 on antibiotics potentially affect whether or not
12 she might have a fever?

13 A. Yes. It would do that.

14 Q. Okay. And how about the
15 Methotrexate? Would that affect the patient's
16 response to some type of an infectious process
17 as well?

18 A. You know, I'm not sure I know that.
19 I know if you have Methotrexate toxicity, you
20 may be immunocompromised. But the level of
21 immunocompromisation, if I can say that word,
22 with Methotrexate is probably dose related. If
23 the patient's been on it for a long time for
24 arthritis, there is a degree of being
25 immunocompromised, but it's probably for most



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1 patients not significant and I think in this
2 patient it has no bearing.

3 Q. Is that with regard to the fever?

4 A. Or anything else.

5 Q. Okay. So the -- it is your opinion
6 that the Methotrexate also wouldn't affect her
7 white blood cell count?

8 A. Well, it can if you take enough of
9 it. But I don't think it did in this case.

10 Q. Okay. Are you aware of what dose
11 she was on?

12 A. No. Hang on just a minute.

13 (Whereupon, a recess was taken.)

14 THE WITNESS: Sorry.

15 Q. (By Ms. Zajac) All done?

16 A. Yeah. Somebody's selling something
17 again.

18 Q. You're a popular guy today.

19 A. I guess.

20 Q. Let's see. The last thing that you
21 mentioned on your list was that there was the
22 report of the radiologist in this case.

23 A. Right. Right.

24 Q. Right?

25 A. And, actually, beyond that. The



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1 report of the radiologist and her deposition
2 comment that she was aware of that.

3 Q. Okay. And as I read the report of
4 the radiologist, which I believe was the
5 preliminary report of the radiologist that Dr.
6 Kirk was referring to -- is that your
7 understanding as well?

8 A. I was not aware that there was a
9 difference between the preliminary and -- the
10 verbal report and the final one. But the
11 preliminary report I have, which is written on
12 what almost looks like prescription paper, is
13 CHF with edema and/or unusual pneumonia. I
14 think that's basically the way the final report
15 came out.

16 Q. Okay. So CHF and/or unusual
17 pneumonia; right?

18 A. And/or unusual pneumonia. Exactly.

19 Q. Okay. And do you disagree with
20 that?

21 A. Well, I'm saying that from an
22 emergency medicine standpoint, when I looked at
23 it, I thought it was CHF. And the only way I
24 would have come to a pneumonia is if the
25 patient did not respond to evaluation and



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1 treatment for CHF.

2 Q. Okay. And we know that the
3 patient's initial presentation and complaint was
4 shortness of breath; right?

5 A. Right.

6 Q. And shortness of breath, is that --
7 can that be consistent with pneumonia?

8 A. Absolutely.

9 Q. And is that consistent with CHF as
10 well?

11 A. Sure.

12 Q. We also know that the patient
13 reported that she was coughing up yellow sputum.
14 Did you see that, Doctor?

15 A. I did see that somewhere. Right.

16 Q. Okay. And would that be more
17 consistent with pneumonia or congestive heart
18 failure?

19 A. If you only have those two choices,
20 it would be more consistent with pneumonia. But
21 the choice of just a viral upper respiratory
22 infection is also on the list. So it could be
23 that, too. But out of those two choices, it's
24 more consistent with pneumonia.

25 Q. Okay. Doctor, do patients that have



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1 pneumonia always present with a fever?

2 A. Of course not.

3 Q. Okay. Do they always present with
4 an elevated white blood cell count?

5 A. Absolutely not.

6 Q. Were there any laboratory
7 abnormalities that you noted that were consistent
8 with congestive heart failure?

9 A. I think -- well, I don't know that
10 there were any laboratory abnormalities. There
11 was a high sugar, but that wouldn't be more
12 consistent with anything one way or another.

13 Q. Do you typically see elevated blood
14 sugars in the presence of infection in
15 diabetics?

16 A. Yeah, I would say if it's an
17 insulin-dependent diabetic and they have a
18 significant infection, usually the sugar goes up.

19 Q. Okay. Now, we know that the patient
20 was rendered treatment in the emergency room;
21 correct?

22 A. I believe that's correct.

23 Q. Okay. She received some antibiotics
24 and some Albuterol?

25 A. Right.



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1 Q. And demonstrated some improvement from
2 that; correct?

3 A. That is correct.

4 Q. Okay. Is congestive heart failure
5 typically treated with Albuterol?

6 A. Frequently in the emergency
7 department, there's some wheezing and Albuterol
8 is used while we're trying to sort out what's
9 going on and typically the patients will get
10 better.

11 Q. Okay. Did you see any evidence of
12 wheezing in this particular patient?

13 A. No.

14 Q. Would those be the only indications
15 in which you would give Albuterol in the
16 presence of a suspected congestive heart failure?

17 A. Well, let me make sure you
18 understand. At the point you're giving
19 Albuterol, you probably are not, as a physician,
20 comfortable with whether it's congestive heart
21 failure or something else. If you think it's
22 congestive heart failure and there's no wheezing,
23 you frequently would not use Albuterol since it
24 is a cardio-stimulatory drug.

25 Q. And we know that the patient



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1 demonstrated some improvement after the Albuterol
2 is administered; correct?

3 A. Right. Right.

4 Q. Okay. And that would be consistent
5 with a patient who had pneumonia; correct?

6 A. Or congestive failure. It doesn't
7 -- it's pretty much equal.

8 Q. Okay. So you're saying that
9 patients who are given Albuterol with congestive
10 heart failure would also demonstrate some
11 improvement?

12 A. Yeah. Absolutely.

13 Q. Now, I just want to go on to make
14 sure I understand in your opinion what Dr. Kirk
15 and Mr. Novak should have done in this
16 particular case in order to meet the standard of
17 care.

18 A. Sure.

19 Q. Okay. I know you've indicated that
20 -- your opinion that they should have diagnosed
21 the congestive heart failure.

22 A. Correct.

23 Q. Okay. And what are you saying they
24 should have done with that?

25 A. Once you know this is the initial



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1 case of congestive failure in a patient, that
2 is, a patient's first episode of congestive
3 failure, admission is mandated to search for the
4 underlying cause. Because that underlying cause
5 could be complicated and may take some time to
6 find out. And the hospital is the best place
7 to expeditiously do that. You could meet the
8 standard of care by contacting really any one of
9 a number of different specialities. You could
10 call a primary care physician and let them
11 decide if they want further specialists. You
12 could call a pulmonologist. You could call an
13 internist. You could call a cardiologist. The
14 essence of the phone call should be I think --
15 well, quote, I think I have a first instance of
16 congestive failure in this patient; will you
17 admit and work the patient up, unquote. They
18 don't have to do anything more to meet the
19 standard of care.

20 Q. Okay. So, basically, it was the
21 diagnosis, number one, and then, number two,
22 whatever follow-up would have flowed from that
23 diagnosis, either through consulting another
24 physician or arranging for admission if that
25 would be appropriate at that particular hospital.



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1 Is that a fair summary?

2 A. Well, it would be arranging for
3 admission and you could pick the physician. It
4 wouldn't be you could pick the physician and
5 send them to the office. It would be arranging
6 for admission. So you couldn't call a family
7 practitioner and have them say send them to the
8 office; I'll see them tomorrow. You'd have to
9 say, no, this is the first episode of congestive
10 failure; the patient should be admitted. Then
11 the doctor could say, well, I'm going to come
12 in and discharge the patient. In which case,
13 the emergency physician could say fine; you go
14 ahead and do it, but I'm not taking
15 responsibility.

16 Q. Okay. So what makes this -- what
17 makes this patient in your opinion a candidate
18 for admission in this case is because it's a
19 first case of congestive heart failure for her;
20 is that correct?

21 A. Sure. If she had said I've had
22 congestive failure. I see my cardiologist for
23 it and now I'm getting it again, you can send
24 those out because you've already had the patient
25 evaluated. Now, that's in general. That's not

1 specific. That's in general.

2 Q. Okay.

3 A. But the first time they get it, they
4 have to be admitted for a work-up.

5 Q. Okay. So, in essence, you are, in
6 fact, relying upon the history provided by the
7 patient that she hasn't had any prior history of
8 congestive heart failure; is that fair?

9 A. Of course.

10 Q. Doctor, assuming -- and I know you
11 disagree with the diagnosis that was reached by
12 Dr. Kirk and Mr. Novak, but assuming that the
13 diagnosis of pneumonia was, in fact, the correct
14 diagnosis in this case, do you have any issues
15 with regard to the fact that the patient was
16 discharged?

17 A. No.

18 Q. Are you going to offer any opinions
19 about what in particular would have been done as
20 far as evaluating this patient had she been
21 referred for the congestive heart failure?

22 A. Only in general. If you admit them
23 for congestive heart failure, most family
24 practitioners would get a cardiology consult. I
25 can't tell you whether most internists would.



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1 But other than what they specifically are going
2 to do, it would probably be an emergency
3 echocardiogram and then whatever the results of
4 that showed is what would promote further
5 activity.

6 Q. And that's really beyond your area
7 of expertise. You would have just consulted the
8 patient and let the consultants' handle those
9 issues; correct?

10 A. That's correct.

11 Q. Okay. Doctor, are you going to
12 offer any opinions as to whether or not the
13 outcome in this case would have been any
14 different had Mrs. Paolella been diagnosed with
15 congestive heart failure?

16 A. No. I don't know that because I --
17 you know, I'm not -- I don't practice that kind
18 of medicine. I know that she would have had a
19 better chance if she had been admitted and been
20 evaluated because one could assume an
21 echocardiogram would be done that would show
22 severe wall motion abnormality, which would
23 institute an emergency cardiac catheterization
24 and perhaps bypass surgery. But, you know, who
25 would know what the result of that would be?



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1 I certainly wouldn't. So all I can tell you
2 is what I think might have happened and that
3 would be a better chance than what she had
4 going home. But other than that, I can't
5 elaborate.

6 Q. So it's pretty speculative -- that
7 would be speculative on your part; correct?

8 A. Yeah. Because it depends on
9 branching activity and we don't know the results
10 of the different things. So you can't predict
11 it. I can't. I don't practice that kind of
12 medicine.

13 Q. Okay. Are you going to be offering
14 any opinions with regard to the cause of her
15 death?

16 A. None other than what's in the
17 autopsy. I don't disagree with it.

18 Q. You don't have any disagreement with
19 the autopsy?

20 A. Correct.

21 Q. Okay. I just want to go through
22 the second emergency room visit if we could a
23 little bit more. I just want to make sure I
24 have a complete understanding of what it is
25 you're saying. First of all, would you agree



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1 that upon notification that the patient, Mrs.
2 Paolella, was still not feeling well that it was
3 appropriate to ask her to come back?

4 A. Absolutely.

5 Q. And was it appropriate then to
6 expedite her admission?

7 A. Absolutely.

8 Q. Okay. So your criticisms of the
9 second emergency room visit with regard to Dr.
10 Kirk and Mr. Novak are that they did not take
11 a second look at the information and reach what
12 in your opinion was the correct diagnosis?

13 A. On the first visit, they put two and
14 two together and got six. On the second visit,
15 they put two and two together and got eleven.
16 So they did the same thing the second visit.
17 Have we lost you completely?

18 Q. No. No.

19 A. Okay.

20 Q. I had to repeat that in my mind a
21 couple times --

22 A. All right.

23 Q. -- the math in my mind.

24 A. In other words, they didn't connect
25 the dots the first time. And then the second



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1 time, given another shot at the patient, they
2 didn't connect the dots. Now, let me say
3 something else. The -- many times when patients
4 are sent home and then return, they get what's
5 called a direct admission and so they really
6 bypass the emergency department. In that case,
7 if that would have been the case, I wouldn't
8 have had a criticism on the second visit because
9 there wouldn't be one. But in this case, the
10 patient came back to that same emergency
11 physician and there was enough of an evaluation
12 to listen to the lungs again. Dr. Kirk knew
13 that congestive failure was on the list. You
14 know, the rule is to, gee, I'm given another
15 shot of this; maybe I better think about it
16 again. I didn't see that happening.

17 Q. Okay. So if that reevaluation had
18 taken place on the second visit as you -- do
19 you need to get that?

20 A. No.

21 Q. Yes or no?

22 A. The answer is no. It usually rings
23 three times and you pick up the phone and
24 nobody's there, so -- I don't know what it is.
25 There's something about me and phones I guess.



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1 See? That's it.

2 Q. Okay. If the reevaluation had taken
3 place as you indicated and had mentioned and
4 consultations followed, okay, would you still
5 feel that the first emergency room visit was a
6 deviation from the standard of care?

7 A. Certainly.

8 Q. Why?

9 A. Because you have -- in the first
10 emergency visit, the patient had shortness of
11 breath, cough, bilateral rales, normal white
12 count, and no temperature, was a diabetic by the
13 way which you brought up, and the X-ray was
14 consistent with failure. Therefore, it doesn't
15 change -- the first visit -- doing the correct
16 thing on the second visit doesn't change the
17 error on the first visit.

18 Q. Okay.

19 A. And may I point out? On the second
20 visit, the patient -- Dr. Kirk says, quote, the
21 patient was examined, history reviewed,
22 diagnostic studies ordered and analyzed, and
23 management and disposition overseen by the
24 emergency physician. That's Novak saying that.
25 So what they're saying is we went over



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1 everything again. That's why I said they put
2 two and two together and still got the wrong
3 number.

4 Q. So your understanding is Dr. Kirk
5 actually saw the patient during the second
6 emergency room visit and then had the
7 opportunity to reevaluate all of this
8 information; correct?

9 A. Well, that's what it sounds like
10 based on that sentence. Now, whether Dr. Kirk
11 actually did it or not, I don't remember.

12 Q. Okay. Now --

13 A. Actually -- I'm sorry. I missed
14 that. It says the patient was also examined by
15 Dr. Kirk. So, yes, Dr. Kirk examined the
16 patient.

17 Q. Okay. And you reviewed the
18 depositions of Mr. Novak and Dr. Kirk, right, as
19 far as the explanation of what had transpired?

20 A. I did.

21 Q. Okay. I'm just flipping through my
22 notes real quick.

23 A. All right.

24 MS. ZAJAC: Erin, do you have --
25 oh. I'm sorry.



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1 Q. (By Ms. Zajac) With regard to Dr.
2 Gujral --

3 A. Sure.

4 Q. -- did you have any criticisms of
5 the care that he rendered?

6 A. No.

7 Q. Okay. Any criticisms of the care
8 rendered to her beyond -- or, following the
9 admission?

10 A. No. I did not look at it from that
11 standpoint. I just looked at the emergency
12 department. So I have no comment.

13 MS. ZAJAC: Okay. Erin, do you
14 have any questions?

15 MS. HESS: I just have a couple. I
16 can go now or I can wait until you read
17 through your notes. Whatever you want to do.

18 MS. ZAJAC: Why don't you go ahead
19 and jump in?

20 MS. HESS: Okay.

21 **EXAMINATION**

22 **BY-MS. HESS:**

23 Q. Dr. Janiak, this is Erin Hess, and I
24 represent Dr. Kotak with Steve Walters. I just
25 have a couple questions for you.



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1 A. Okay.

2 Q. As you told Ms. Zajac, the report
3 that you provided to Mr. Conway, I think it was
4 about a year ago now, contains all of the
5 opinions that you have as it relates to the
6 standard of care in this case; correct?

7 A. I think that's right.

8 Q. Okay. And I apologize if I jump
9 around a little bit. In terms of the review
10 that you did either before writing your report
11 or since then, have you reviewed the report of
12 a Dr. Cirino?

13 A. Not familiar with that.

14 Q. Okay. How about Dr. Wayne?

15 A. Spell it.

16 Q. I think its W-A-Y-N-E.

17 A. No.

18 Q. You did review the records of Dr.
19 Gupta; correct?

20 A. Yes, I am -- yes, I did.

21 Q. Doctor, are you going to be
22 providing any opinions as to whether or not Mrs.
23 Paolella's behavior contributed to her ultimate
24 outcome in this case?

25 A. No.



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1 Q. Did you note whether or not Mrs.
2 Paolella was a compliant patient with regard to
3 her treatment with Dr. Gupta?

4 A. I think there's some mention of
5 noncompliance in there.

6 Q. And that would be noncompliance with
7 some cardiac issues; correct?

8 A. Cardiac and diabetic as I understood
9 it.

10 Q. Do you have an opinion to a
11 reasonable degree of medical certainty as to if
12 Mrs. Paolella had gotten stress testing and
13 other cardiac testing as recommended by Dr.
14 Gupta -- if whether or not that would have
15 changed her outcome in this case?

16 A. No. I just haven't even looked at
17 that. I have no opinion.

18 Q. Assume for me hypothetically that a
19 patient has been instructed for about ten years
20 to get a stress test, to take anti-hypertensives
21 and to take anti -- or, cholesterol-lowering
22 medications and does not do those things. Would
23 that increase their risk for a cardiac event?

24 A. The failure to comply?

25 Q. Yes.



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1 A. Oh, yes. Absolutely.

2 Q. Do you believe that a patient who
3 fails to comply with their doctor's wishes or
4 recommendations would be negligent?

5 A. Gee, I never thought of the word
6 negligent. I guess -- I guess it would be a
7 relative negligence, just like if somebody tells
8 you not to smoke and you continue to do so,
9 that would be a relative negligence. That
10 doesn't mean that you're evil. You might like
11 to smoke.

12 Q. Okay. But in any event, you should
13 follow the instructions that your physicians give
14 you; correct?

15 A. All other things being equal, I
16 agree completely.

17 Q. And, Doctor, you didn't note anywhere
18 in the Lake records that that information was
19 provided to any of the care givers; correct?

20 A. During the emergency visits?

21 Q. Correct.

22 A. No. I don't think they knew that.

23 Q. Or during the inpatient stay?

24 A. I didn't even look for that. I
25 don't know.



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1 Q. Okay. I think you told Ingrid
2 earlier that when you were contacted by Mr.
3 Conway to review this case you knew what Mrs.
4 Paolella's ultimate outcome was; correct?

5 A. Right. It was part of the record.

6 Q. So, in essence, you had the benefit
7 of hindsight when you looked through the
8 records, although you tried your best to do a
9 prospective analysis; correct?

10 A. Sure. Absolutely.

11 Q. And you may have already been asked
12 this and I apologize if you were. Would nausea
13 and vomiting be more consistent with congestive
14 heart failure or pneumonia?

15 A. I don't know. I don't know if
16 anybody's ever studied that. I have no idea.

17 Q. You don't have an opinion one way or
18 the other?

19 A. That's correct.

20 Q. I'm sorry. Did you say yes or no?

21 A. I said yes. I'm sorry.

22 Q. So, yes, you don't have an opinion
23 one way or the other?

24 A. I do not have an opinion one way or
25 the other. Nausea and vomiting are consistent



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1 with many things.

2 Q. How about nasal congestion? Which
3 would that be more consistent with?

4 A. Same answer as with nausea and
5 vomiting.

6 Q. Do patients with congestive heart
7 failure typically present with nasal congestion?

8 A. They -- when you say present with, I
9 have to equate that as an emergency physician
10 with a chief complaint. So I would say that
11 neither pneumonia nor congestive heart failure
12 patients typically present with a chief complaint
13 of nasal congestion.

14 Q. How about this? Would nasal
15 congestion be more consistent with an upper
16 respiratory infection or congestive heart
17 failure?

18 A. Upper respiratory infection.

19 Q. Are you going to be providing any
20 opinions at trial as to what Mrs. Paoletta's
21 life expectancy would have been had she been
22 treated the way that you have opined that she
23 should have in 2002?

24 A. No.

25 Q. I'm just taking a look through my



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1 notes as well. Are you going to be providing
2 any opinions as to what a cardiac work-up would
3 have demonstrated starting in 1992?

4 A. Oh, no. Not in '92. Absolutely
5 not.

6 Q. Anytime leading up to her death?

7 A. I believe it's more likely than not
8 that had an echocardiogram been done right after
9 admission it would have showed abnormal wall
10 function of the heart.

11 Q. How about if that were done in the
12 five years before her death?

13 A. I don't know.

14 Q. How far back can you go that you
15 believe it would be abnormal other than during
16 her admission?

17 A. I can't.

18 Q. You can't state that if she came in
19 the week before that that it would have been
20 abnormal?

21 A. That's correct. Because I'm assuming
22 the week before that she didn't have the rales
23 and the shortness of breath.

24 Q. Okay. Did you -- I know you didn't
25 mention this, but I just want to make sure it's



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1 not something you forgot. Did you see the
2 death certificate in this case?

3 A. Yeah, I did. I don't remember what
4 it said, but I have it now in front of me.
5 It says myocardial infarction, arteriosclerotic
6 heart disease and arteriosclerosis.

7 Q. And the other significant conditions
8 listed are diabetes and hypertension; correct?

9 A. Exactly.

10 Q. Do you see at the bottom?

11 A. Yes, I see. I agree.

12 Q. Do you disagree with the death
13 certificate?

14 A. Why? I mean, I don't understand the
15 question. Why would I disagree with it?

16 Q. Do you disagree with the cause of
17 death as listed on the death certificate?

18 A. Oh. No.

19 Q. Okay. And then you don't have any
20 disagreement with the causes of death and the
21 amount of time listed on the death certificate;
22 correct?

23 A. No. I'm not an expert in that, so
24 I have no basis on which to disagree.

25 Q. Okay. Have you spoken with any of



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1 the parties in this case, the plaintiffs
2 included?

3 A. No, I haven't. I hesitated because
4 I saw the death certificate was signed by Bob
5 Golubski and he's the guy who -- they took care
6 of my dad when he died. So that was kind of
7 funny. But other than that, no, I haven't
8 spoken with anybody.

9 Q. Okay. Did you talk with any other
10 physicians about the case?

11 A. I did not.

12 Q. I didn't hear what you said.

13 A. I did not.

14 MS. HESS: Okay. I think those are
15 all the questions I have for you. Thank you.

16 THE WITNESS: You're welcome.

17 MS. ZAJAC: Just a couple follow-up,
18 Doctor, and then we'll get you on your way.

19 **FURTHER EXAMINATION**

20 **BY-MS. ZAJAC:**

21 Q. Would you agree that it can be
22 difficult to make a distinction between pneumonia
23 and congestive heart failure in the emergency
24 room?

25 A. Yes, I would agree it can be



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1 difficult.

2 Q. Would you agree that a chest X-ray
3 -- strike that. Would you agree that it can
4 be difficult to make a distinction between
5 congestive heart failure and pneumonia on a
6 chest X-ray?

7 A. It can be. I agree.

8 Q. I would ask, Doctor, that if you
9 review any additional materials and you have any
10 additional opinions in this particular case that
11 you communicate those to Ms. Kolis so that we
12 can be made aware of those. Okay? And as far
13 as your CV, if you would be kind enough to
14 provide that to her, I'd appreciate it. And
15 then the court reporter, I believe, is going to
16 take the exhibits A through J we decided from
17 your file and we'll make sure that you get your
18 originals back to you.

19 A. We may go beyond J. I think I
20 found another one. But whatever they are,
21 they'll be there.

22 Q. Okay. Yeah. Or if it's easier for
23 you, if you have access to a copy machine and
24 perhaps, you know, you can just -- we can get
25 copies of those made for her before she leaves



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1 so that you can then hang on to your originals.
2 Whatever your preference is and whatever's easier
3 for you.

4 A. My preference is to copy them myself
5 because I charge a hundred dollars a sheet.

6 Q. And Donna will be happy to take care
7 of that bill.

8 A. No, I'll copy them for you right
9 now.

10 Q. That would be great. Thank you.
11 And if you want to go ahead and send your bill
12 -- I don't know if --

13 MS. KOLIS: He's been prepaid.

14 Q. (By Ms. Zajac) Okay. So I don't
15 have to worry about that.

16 A. No, I'm not -- no, no. I think
17 you've prepaid for one hour. It's gone an hour
18 and a half.

19 Q. Okay. Well, if there's any
20 remaining --

21 MS. KOLIS: We'll figure it out.

22 Q. (By Ms. Zajac) If there's some kind
23 of remaining balance, we'll be happy to take
24 care of that. You just need to communicate
25 that to Donna. Okay?



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1 A. Okay. No problem.

2 Q. And thank you so much. Oh. Are
3 you scheduled to come to the trial in this case
4 that's scheduled for August 30th?

5 A. You know, I -- yes. The answer is
6 yes.

7 MS. ZAJAC: Okay. So I guess we'll
8 see you in Cleveland in about a month.

9 THE WITNESS: I'm looking forward to
10 it.

11 MS. ZAJAC: Yeah. Likewise.

12 MS. CARULAS: Ingrid, I have one
13 more question. I'm sorry. I didn't know if
14 you were done.

15 MS. ZAJAC: I'm done.

16 **FURTHER EXAMINATION**

17 **BY-MS. HESS:**

18 Q. Doctor, have you seen any cardiology
19 records in this case from before she was
20 admitted in August of 2002?

21 A. I don't believe so.

22 MS. HESS: Okay. That's all.
23 Thanks.

24 MS. ZAJAC: Thanks so much for your
25 time, Doctor.



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(Whereupon, the deposition was
concluded at 12:30 p.m.)

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DESCRIPTION OF EXHIBITS

EXHIBIT IDENTIFICATION

A 6/27/03 Letter to Dr. Janiak
B 7/12/03 Letter to Mr. Conway
C 12/9/03 Letter to
D 1/14/04 Letter to Dr. Janiak
E 3/19/04 Letter to Dr. Janiak
F 2/4/04 Letter to Dr. Janiak
G 5/4/04 Letter to Dr. Janiak
H 5/13/04 Letter to Dr. Janiak
I 6/25/04 Letter to Dr. Janiak
J 6/28/04 Letter to Dr. Janiak
K 7/2/04 Letter to Dr. Janiak
L 7/2/04 Letter to Dr. Janiak
M 7/2/04 Letter to Dr. Janiak
N 7/13/04 Letter to Dr. Janiak

(Original Exhibits attached to the Original
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12 in the employ of counsel for any of said
13 parties; nor am I in any way interested in
14 the result of said case.

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CAPTION

The Deposition of **Bruce Janiak, M.D.**,
taken in the matter, on the date, and at the
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It was requested that the deposition
be taken by the reporter and that same be
reduced to typewritten form.

It was agreed by and between counsel
and the parties that the Deponent will read
and sign the transcript of said deposition.



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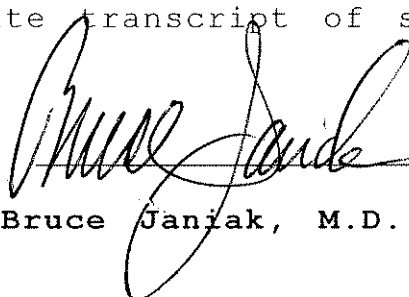
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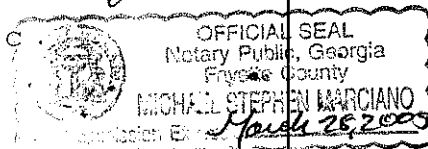
CERTIFICATESTATE OF Georgia :COUNTY/CITY OF Fayette :

Before me, this day, personally
 appeared, **Bruce Janiak, M.D.**, who, being duly
 sworn, states that the foregoing transcript
 of his/her Deposition, taken in the matter,
 on the date, and at the time and place set
 out on the title page hereof, constitutes a
 true and accurate transcript of said
 deposition.


 Bruce Janiak, M.D.

SUBSCRIBED and SWORN to before me this
27th day of August, 2004 in the
 jurisdiction aforesaid.

March 28, 2005 
 My Commission Expires Notary Public


☐ No changes made to the Errata Sheet;

therefore, I am returning only this signed,
 notarized certificate.

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 Case Caption: Michael Paoletta, Etc. vs.
 Sonia Kirk, M.D., et al.

Deponent: **Bruce Janiak, M.D.**
 Deposition Date: July 30, 2004

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I have read the entire transcript of my Deposition taken in the captioned matter or the same has been read to me. I request that the following changes be entered upon the record for the reasons indicated. I have signed my name to the Errata Sheet and the appropriate Certificate and authorize you to attach both to the original transcript.

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June 27, 2003

Bruce Janiak, M.D.
30267 Hickory Hill Drive
Perrysburg, Ohio 43551

Re: Beverly Paoletta, Deceased

OK 30 June 03
1635
Sanding KR

Dear Dr. Janiak:

Thank you very much for agreeing to review this case. I represent the family of Beverly Paoletta, who died on August 23, 2002, at age 59. On August 22, 2002, at approximately 7:30 a.m., Beverly presented to the Lake West Hospital emergency department with a chief complaint of shortness of breath, as well as other symptoms. She had a chest x-ray taken. The chest x-ray was read as showing congestive heart failure with edema, and/or unusual pneumonia. Beverly was given a diagnosis of acute pneumonia by the emergency department physicians, treated with antibiotics, and discharged home. It should be noted that at the time of her discharge, Beverly had a blood sugar of 348.

Later that same day, on August 22, 2002, at approximately 3:40 p.m., Beverly presented again at the Lake West Hospital emergency department, upon advice of her primary care physician. In the emergency department, she was again given a diagnosis of pneumonia, with outpatient therapy failure. She was then admitted to Lake West Hospital by Dr. Sandep Kotak (he was not her primary care physician: he primary care physician did not admit at Lake West Hospital). Dr. Kotak performed a history and physical, and arrived at a differential diagnosis of pneumonia, diabetes, hypertension, and psoriatic arthritis. While hospitalized at Lake West Hospital, in the early morning hours of August 23, 2002, Beverly died from a myocardial infarction. An autopsy was performed.

It should be noted that apparently a decision was made at Lake West Hospital, during her admission, to transfer Beverly to another hospital, to treat her for her evolving cardiac condition. She was transported to the Lake West Hospital emergency department, where members of MetroHealth Life Flight apparently became involved in her care and treatment. It was there that she died, before she could be transported to another hospital.

Defendant's Exhibit

A

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DEVELOPMENT

Bruce Janiak, M.D.

June 27, 2003

Page two

This brief synopsis is but an attempt to orient you to this case. I know that you will not rely upon this recitation of the facts, but rather on the facts as you determine them to be, based upon your independent and objective review of the medical records. Enclosed for your review are the following medical records;

1. Lake West Hospital emergency department - 08/22/02 7:30 a.m. presentation
2. Lake West Hospital emergency department - 08/22/02 3:40 p.m. presentation
3. Lake West Hospital admission records from 08/22/02 through 08/23/02
4. MetroHealth Life Flight records from 08/23/02
5. Autopsy report
6. Dr. Arun Gupta medical records - Mrs. Paoella's primary care physician
7. Dr. Bruce Long medical records - Mrs. Paoella's rheumatologist

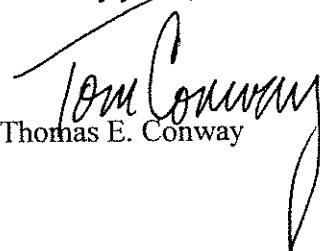
From your perspective as a board-certified emergency medicine physician, please address the following issues;

1. Did any of Beverly Paoella's medical providers deviate from the standard of care during the 08/22/02 7:30 a.m. emergency department presentation
2. Did any of Beverly Paoella's medical providers deviate from the standard of care during the 08/22/02 3:40 p.m. emergency department presentation
3. If you determine that any of the emergency medicine providers deviated from the standard of care, would you determine whether or not that deviation(s) was a proximate cause of Beverly Paoella's death?

If you would call me upon completion of your review of these medical records, I would be greatly appreciative. I would like to discuss your determinations regarding the above issues.

This case has not yet been filed. If a determination is made to file a lawsuit, I will need for you to testify live at trial. Additionally, I will need for you to write an expert witness report setting forth your medical conclusions. Finally, any possible defendants would want to take your deposition. Realizing that this review is an imposition upon your professional time, please chart your time, and bill me in a manner most convenient for your record keeping. Once again, thank you for the expertise, professionalism, and objectivity which you bring to the review of this matter.

Sincerely yours,


Thomas E. Conway

TEC/jme

JANIAK CONSULTING, INC.

Bruce D. Janiak MD F.A.C.E.P. F.A.A.P

374-8949
19-873-0937 Fax

27087 Oakmead Dr.
Perrysburg, OH 43551

July 12, 2003

Mr. Thomas E. Conway
Friedman, Domiano & Smith
6th Floor, Standard Building
1370 Ontario St.
Cleveland, OH 44113-1704

Re: Beverly Paoletta, Deceased

Dear Mr. Conway:

For review of materials, telephone conference with you and preparation of report, I have spent two (2) hours. Please remit Two Hundred Dollars (\$200.00) to Janiak Consulting, Inc., Federal Tax Identification Number: 34-1362979.

My new address as of August 1, 2003 will be:

405 Bradford Point
Peachtree City, GA 30269
Cell: (678) 852-1639
Home: (770) 632-6673

Sincerely,



Bruce D. Janiak, M.D.
President

Invoice #0703-01

Defendant's Exhibit

B



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December 9, 2003

Bruce Janiak, M.D.
405 Bradford Point
Peachtree City, GA 30269

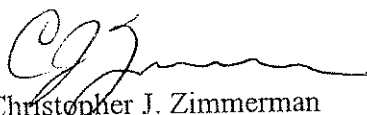
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1528*

RE: Michael Paoella, Administrator, etc. vs. Sonia Kirk, M.D., et al.
Lake County Court of Common Pleas
Judge Parks
Case No. 03-CV-001425

Dear Dr. Janiak:

If you could provide our office with a copy of your most recent C.V., either by regular US mail or by email to chriszimmerman@fdslaw.com, it would be greatly appreciated. Thank you for your kind attention to this matter.

Sincerely yours,


Christopher J. Zimmerman
Medical Malpractice Paralegal

:cjz

Defendant's Exhibit
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January 14, 2004

Bruce Janiak, M.D.
405 Bradford Point
Peachtree City, GA 30269

RE: Michael Paoella, Administrator, etc. vs. Sonia Kirk, M.D., et al.
Lake County Court of Common Pleas
Judge Parks
Case No. 03-CV-001425

Dear Dr. Janiak:

A Pretrial Hearing was held today with the Court. Please note that the Trial on this case has been scheduled for July 27, 2004. I anticipate that the Plaintiff will require your live trial testimony on Wednesday, July 28, 2004. Please contact my office upon receipt and review of this correspondence to let us know that you will in fact be able to attend live for trial testimony on that date.

The Court has also scheduled Plaintiff's expert report cut off date as April 1, 2004. I intend to submit you preliminary report on this case, and forward defendants' deposition transcripts to you for your final expert witness report shortly thereafter.

Once again, thank you for the time, professionalism, and expertise, which you have brought to your review of this case. Thank you.

Sincerely yours,

Donna Taylor-Kolis

DTK:cjz

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DEPOSITION SERVICES

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EXECUTIVE DIRECTOR

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JAMES T. WALTHER

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March 19, 2004

Bruce Janiak, M.D.
405 Bradford Point
Peachtree City, GA 30269

ld 24 Mar 04

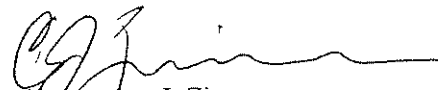
RE: Michael Paoletta, Administrator, etc. vs. Sonia Kirk, M.D., et al.
Lake County Court of Common Pleas
Judge Parks
Case No. 03-CV-001425

Dear Dr. Janiak:

Enclosed please find a copy of Defendant Sandeep Kotak, M.D.'s deposition transcript.

Please review and contact my office with your thoughts regarding the same. Thank you.

Sincerely yours,


Christopher J. Zimmerman
Medical Malpractice Paralegal

DTK:cjz
Enclosure

Defendant's Exhibit

E

Alexander Gallo & Associates, Inc.
COURT REPORTING & VIDEO SERVICES
1645 BUSH ST. #100
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JAMEST. WALTHER

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February 4, 2004

Bruce Janiak, M.D.
405 Bradford Point
Peachtree City, GA 30269

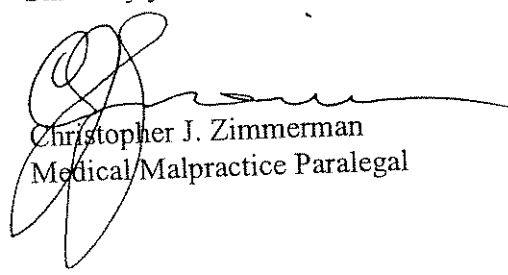
Ed 13 Feb 04
They had wrong cell #

RE: Michael Paoella, Administrator, etc. vs. Sonia Kirl, M.D., et al.
Lake County Court of Common Pleas
Judge Parks
Case No. 03-CV-001425

Dear Dr. Janiak:

Please contact our office as soon as possible upon receipt and review of this message. Thank you for your very kind attention to this matter.

Sincerely yours,


Christopher J. Zimmerman
Medical Malpractice Paralegal

DTK:cjz

Defendant's Exhibit

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May 4, 2004

Bruce Janiak, M.D.
405 Bradford Point
Peachtree City, GA 30269

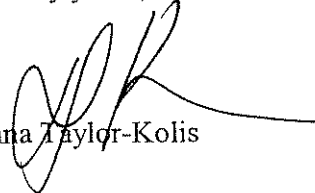
RE: Michael Paoletta, Administrator, etc. vs. Sonia Kirk, M.D., et al.
Lake County Court of Common Pleas
Judge Parks
Case No. 03-CV-001425

Dear Dr. Janiak:

Enclosed please find the deposition transcripts of Defendant Sonia Kirk, M.D. and John Novak, P.A.

Please review and contact my office with your thoughts regarding the same. Thank you.

Sincerely yours,


Donna Taylor-Kolis

DTK:cjz
Enclosure

Defendant's Exhibit

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May 13, 2004

Handwritten: 21 May 04
1045

Bruce Janiak, M.D.
405 Bradford Point
Peachtree City, GA 30269

RE: Michael Paoletta, Administrator, etc. vs. Sonia Kirk, M.D., et al.
Lake County Court of Common Pleas
Judge Parks
Case No. 03-CV-001425

Dear Dr. Janiak:

Please provide my office with your discovery deposition availability for the week of June 28, 2004.

I look forward to hearing from you shortly. Thank you for your very kind attention to this matter.

Sincerely yours,

Donna Taylor-Kolis

Handwritten signature of Donna Taylor-Kolis

DTK:cjz

Defendant's Exhibit

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June 25, 2004

cl'd 1/8/04

Bruce Janiak, M.D.
405 Bradford Point
Peachtree City, GA 30269

RE: Michael Paoletta, Administrator, etc. vs. Sonia Kirk, M.D., et al.
Lake County Court of Common Pleas
Judge Culotta
Case No. 03-CV-001425

Dear Dr. Janiak:

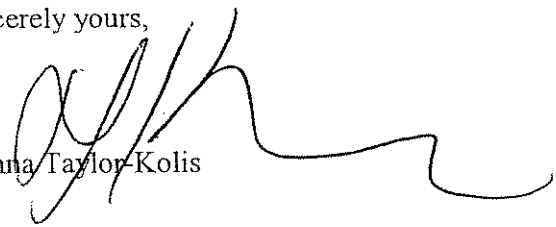
Enclosed please find the following expert witness reports on behalf of Defendant Sandeep Kotak, M.D. relative to the above referenced case:

1. Dr. Richard Friedlander (cardiologist) - expert report dated 06/10/04
2. Dr. Robert Cirino (internist) - expert report dated 06/22/04

Please review the opinions expressed by each of these experts and contact me at your earliest convenience to discuss your thoughts of same.

Once again, thank you for the time, professionalism, and expertise which you have brought to your review of this case.

Sincerely yours,


Donna Taylor-Kolis

DTK:cjz
Enclosure

Defendant's Exhibit

T

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June 28, 2004

Bruce Janiak, M.D.
405 Bradford Point
Peachtree City, GA 30269

RE: Michael Paoella, Administrator, etc. vs. Sonia Kirk, M.D., et al.
Lake County Court of Common Pleas
Judge Culotta
Case No. 03-CV-001425

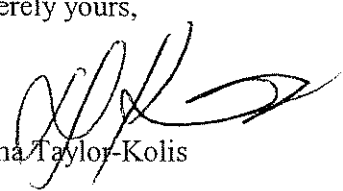
Dear Dr. Janiak:

Please note that the Judge has issued a continuance to the Defendants in the above captioned case, and therefore, the dates have changed a bit.

The Judge has rescheduled the Trial to begin on Monday, August 30, 2004. I anticipate needing your trial testimony on Tuesday, August 31, 2004. My office will be in contact with your office as that date approaches in order to make your travel arrangements.

Once again, thank you for the time, professionalism, and expertise which you have brought to your review of this case.

Sincerely yours,


Donna Taylor-Kolis

DTK:cjz

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✓

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July 2, 2004

Bruce Janiak, M.D.
405 Bradford Point
Peachtree City, GA 30269

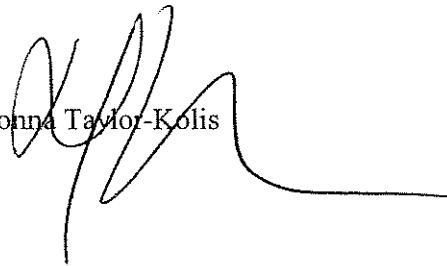
RE: Michael Paolella, Administrator, etc. vs. Sonia Kirk, M.D., et al.
Lake County Court of Common Pleas
Judge Culotta
Case No. 03-CV-001425

Dear Dr. Janiak:

Enclosed for your review is a copy of the Plaintiff, Michael Paolella's discovery deposition transcript.

Please contact me upon receipt and review of this transcript to discuss any thoughts you might have. Thank you.

Sincerely yours,


Donna Taylor-Kolis

DTK:cjz
Enclosure

Defendant's Exhibit

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July 2, 2004

Bruce Janiak, M.D.
405 Bradford Point
Peachtree City, GA 30269

RE: Michael Paoella, Administrator, etc. vs. Sonia Kirk, M.D., et al.
Lake County Court of Common Pleas
Judge Culotta
Case No. 03-CV-001425

Dear Dr. Janiak:

Enclosed for your review is an expert opinion written by Dr. Kristopher Brickman, an emergency medicine physician, for Defendants Dr. Kirk and PA Novak. Defense counsel has also identified cardiologist Dr. Donald Wayne of Cincinnati, Ohio as their cardiology/proximate cause expert. His written expert report will be provided to my office as soon as he returns to the country, and I will immediately forward same to your attention.

Please contact me upon receipt and review of this correspondence to discuss any thoughts you might have. Thank you.

Sincerely yours,

Donna Taylor-Kolis

DTK:cjz
Enclosure

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July 2, 2004

Bruce Janiak, M.D.
405 Bradford Point
Peachtree City, GA 30269

RE: Michael Paoletta, Administrator, etc. vs. Sonia Kirk, M.D., et al.
Lake County Court of Common Pleas
Judge Culotta
Case No. 03-CV-001425

Dear Dr. Janiak:

Please note that we have scheduled your discovery deposition for Friday, July 30, 2004 at 11:00 a.m. at 130 Howell Rd., Ste. D, Tyrone, GA.

If you have any questions or concerns, please do not hesitate to contact my office at once. Thank you.

Sincerely yours,

Donna Taylor-Kolis

DTK:cjz
Enclosure

Defendant's Exhibit

M

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TRIAL PRESENTATIONS

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- ♦ ALSO MEMBER OF FLORIDA BAR
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July 13, 2004

Bruce Janiak, M.D.
405 Bradford Point
Peachtree City, GA 30269

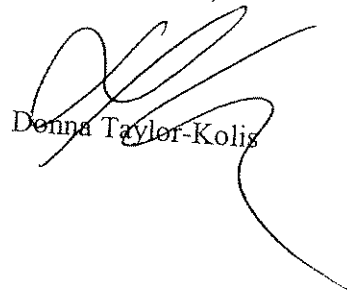
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Lake County Court of Common Pleas
Judge Culotta
Case No. 03-CV-001425

Dear Dr. Janiak:

Enclosed please find a copy of Dr. Rajnish M. Gujral, M.D., the house officer for Lake West Hospital relative to the above referenced case.

Please contact my office upon review of the enclosed transcript to discuss your opinions. Thank you.

Sincerely yours,


Donna Taylor-Kolis

DTK:cjz
Enclosure

Defendant's Exhibit


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