**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

APPEARANCES OF COUNSEL (Via Telephone)

**On behalf of the Plaintiffs:**

DONNA J. TAYLOR KOLIS, ATTORNEY AT LAW
FRIEDMAN, DOMIANO & SMITH
600 Standard Building
Cleveland, Ohio 44114
(216) 621-0070
(216) 621-4008 (facsimile)
donnakolis@fdslaw.com

**On behalf of the Defendants Sonia Kirk, MD, John Novak, PAC, and Lake Emergency Services:**

INGRID ZAJAC, ATTORNEY AT LAW
ROETZEL & ANDRESS
9th Flor, One Cleveland Center
1375 East Ninth Street
Cleveland, Ohio 44114
(216) 623-0150
(216) 623-0134 (facsimile)
ikinkopf-zajac@ralaw.com

APPEARANCES OF COUNSEL (CONTINUED) (Via Telephone)

**On behalf of the Defendant Sandeep Kotak, MD:**

ERIN HESS, ATTORNEY AT LAW
REMINGER & REMINGER
1400 Midland Building
101 Prospect Avenue, West
Cleveland, Ohio 44115
(216) 687-1311
(216) 687-1841 (facsimile)
ehess@reminger.com

Deposition of Bruce Janiak, M.D.

July 30, 2004

***BRUCE JANIAK, 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.

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

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

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

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

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

A. I do.

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

A. Okay. I have the Lake West

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

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

A. Yes.

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

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

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

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

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

Q. Okay.

A. I did find a tenth one.

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

A. I have no problem with it.

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

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

Q. Okay.

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

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

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

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

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

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

Q. Okay.

A. Yes, I did.

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

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

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

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

Q. Okay.

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

Q. And what do those mean?

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

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

A. Correct.

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

A. That's fine with me.

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

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

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

Q. And why was that significant to you?

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

Q. I understand.

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

THE WITNESS: Twenty two.

MS. KOLIS: Thanks.

THE WITNESS: Line fifteen.

Q. (By Ms. Zajac) Okay.

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

Q. Okay.

A. And the next was page thirty two.

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

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

A. That is true.

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

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

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

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

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

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

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

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

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

Q. Okay. And how about Dr. Kirk?

A. On Kirk, I have two references.

Page twenty nine --

Q. Okay.

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

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

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

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

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

A. That's it.

Q. How about Mr. Paolella?

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

Q. Okay.

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

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

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

Q. Okay.

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

Q. Okay.

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

Q. Okay.

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

Q. Okay.

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

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

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

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

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

A. Oh, I'm sorry.

Q. That's okay.

A. No, nothing. That's it.

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

A. I do not.

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

A. No.

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

A. No.

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

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

Q. Okay. Anything else?

A. That's it.

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

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

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

A. Yes, that is true.

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

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

A. I think I can. Hold on.

Q. Sure.

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

Q. That would be great. Thank you.

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

Q. Doctor, have you reviewed any films?

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

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

A. That is, indeed, correct.

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

A. No.

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

A. No.

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

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

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

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

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

A. That is correct.

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

A. That is true.

Q. And then pediatric emergency medicine?

A. That is true.

Q. Did you say yes?

A. Yes.

Q. Okay. Any additional board certifications?

A. No.

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

A. That is correct.

Q. And did you do any fellowships?

A. No.

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

A. That is right.

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

A. Yes.

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

department?

A. I was.

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

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

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

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

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

A. Right.

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

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

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

A. That's correct.

Q. Okay. Why did you leave?

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

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

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

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

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

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

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

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

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

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

Q. Twenty four?

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

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

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

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

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

Q. Is that true of both facilities?

A. No.

Q. Okay.

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

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

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

Q. Okay. What's new?

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

Q. Okay. Any additional publications?

A. No.

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

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

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

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

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

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

A. No.

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

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

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

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

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

Q. Okay.

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

Q. Sure. Go ahead.

(Whereupon, a recess was taken.)

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

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

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

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

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

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

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

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

Q. Thank you. We appreciate that.

A. I got it.

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

A. I do not.

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

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

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

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

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

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

A. That's right.

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

A. I believe that's correct.

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

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

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

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

Q. Are you the only employee?

A. That is right.

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

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

Q. What do you mean by hospital consulting?

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

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

A. Probably twenty five years now.

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

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

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

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

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

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

A. No.

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

A. Not to my knowledge.

Q. Okay.

A. Although I did get a call from a

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

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

A. It was probably about fifteen percent.

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

A. One five.

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

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

Q. Have you worked with Ms. Kolis before?

A. I have.

Q. On how many occasions?

A. No more than two I would say.

Q. Okay. And do you have any

recollection of what those cases involved?

A. None at all.

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

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

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

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

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

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

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

as needed. Fair enough?

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

Q. Please.

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

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

Q. Okay. Anything else?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A. Absolutely.

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

A. Well, I suppose that is a general true, although sometimes some of that information needs to be acquired by the initial physician. But I wouldn't -- for instance, if someone came to me with chest pain and there was a failure to do an electrocardiogram in a patient with significant risk for coronary artery disease, you wouldn't judge him on the failure to read the cardiogram. You'd judge him on the failure to order the cardiogram.

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

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

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

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

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

A. That's right.

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

A. Of course.

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

A. Say that again. I missed it.

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

A. I did.

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

A. I do.

Q. Okay. And what was his

interpretation?

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

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

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

Q. Okay. So is that your interpretation?

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

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

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

legal hedge. They never really admit to anything.

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

A. That's correct.

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

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

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

A. Absolutely.

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

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

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

A. You are correct.

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

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

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

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

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

A. Sure.

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

A. Correct.

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

A. Correct.

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

A. Right.

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

A. Yes.

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

A. No. It's not correct.

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

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

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

A. Sure.

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

A. That's right.

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

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

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

A. Sure.

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

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

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

A. Correct.

Q. Okay. And did you happen to note

that the patient actually reported a history of a fever?

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

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

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

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

A. It probably would be 50/50.

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

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

Q. Okay.

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

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

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

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

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

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

A. Yes. It would do that.

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

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

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

Q. Is that with regard to the fever?

A. Or anything else.

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

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

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

A. No. Hang on just a minute.

(Whereupon, a recess was taken.)

THE WITNESS: Sorry.

Q. (By Ms. Zajac) All done?

A. Yeah. Somebody's selling something again.

Q. You're a popular guy today.

A. I guess.

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

A. Right. Right.

Q. Right?

A. And, actually, beyond that. The

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

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

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

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

A. And/or unusual pneumonia. Exactly.

Q. Okay. And do you disagree with that?

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

treatment for CHF.

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

A. Right.

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

A. Absolutely.

Q. And is that consistent with CHF as well?

A. Sure.

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

A. I did see that somewhere. Right.

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

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

Q. Okay. Doctor, do patients that have

pneumonia always present with a fever?

A. Of course not.

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

A. Absolutely not.

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

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

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

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

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

A. I believe that's correct.

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

A. Right.

Q. And demonstrated some improvement from that; correct?

A. That is correct.

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

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

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

A. No.

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

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

Q. And we know that the patient

demonstrated some improvement after the Albuterol is administered; correct?

A. Right. Right.

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

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

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

A. Yeah. Absolutely.

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

A. Sure.

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

A. Correct.

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

A. Once you know this is the initial

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

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

Is that a fair summary?

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

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

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

specific. That's in general.

Q. Okay.

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

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

A. Of course.

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

A. No.

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

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

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

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

A. That's correct.

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

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

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

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

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

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

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

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

A. Correct.

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

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

A. Absolutely.

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

A. Absolutely.

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

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

Q. No. No.

A. Okay.

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

A. All right.

Q. -- the math in my mind.

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

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

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

A. No.

Q. Yes or no?

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

See? That's it.

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

A. Certainly.

Q. Why?

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

Q. Okay.

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

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

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

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

Q. Okay. Now --

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

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

A. I did.

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

A. All right.

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

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

A. Sure.

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

A. No.

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

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

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

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

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

MS. HESS: Okay.

**EXAMINATION**

**BY-MS.HESS:**

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

A. Okay.

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

A. I think that's right.

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

A. Not familiar with that.

Q. Okay. How about Dr. Wayne?

A. Spell it.

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

A. No.

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

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

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

A. No.

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

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

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

A. Cardiac and diabetic as I understood it.

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

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

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

A. The failure to comply?

Q. Yes.

A. Oh, yes. Absolutely.

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

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

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

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

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

A. During the emergency visits?

Q. Correct.

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

Q. Or during the inpatient stay?

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

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

A. Right. It was part of the record.

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

A. Sure. Absolutely.

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

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

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

A. That's correct.

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

A. I said yes. I'm sorry.

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

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

with many things.

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

A. Same answer as with nausea and vomiting.

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

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

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

A. Upper respiratory infection.

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

A. No.

Q. I'm just taking a look through my

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

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

Q. Anytime leading up to her death?

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

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

A. I don't know.

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

A. I can't.

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

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

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

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

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

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

A. Exactly.

Q. Do you see at the bottom?

A. Yes, I see. I agree.

Q. Do you disagree with the death certificate?

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

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

A. Oh. No.

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

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

Q. Okay. Have you spoken with any of

the parties in this case, the plaintiffs included?

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

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

A. I did not.

Q. I didn't hear what you said.

A. I did not.

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

THE WITNESS: You're welcome.

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

**FURTHER EXAMINATION**

**BY-MS.ZAJAC:**

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

A. Yes, I would agree it can be

difficult.

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

A. It can be. I agree.

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

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

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

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

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

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

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

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

MS. KOLIS: He's been prepaid.

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

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

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

MS. KOLIS: We'll figure it out.

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

A. Okay. No problem.

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

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

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

THE WITNESS: I'm looking forward to it.

MS. ZAJAC: Yeah. Likewise.

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

MS. ZAJAC: I'm done.

**FURTHER EXAMINATION**

**BY-MS.HESS:**

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

A. I don't believe so.

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

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

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

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 transcript.)

STATE OF GEORGIA:

COUNTY OF FULTON:

I hereby certify that the foregoing transcript was reported, as stated in the caption, and the questions and answers thereto were reduced to typewriting under my direction; that the foregoing pages represent a true, complete, and correct transcript of the evidence given upon said hearing, and I further certify that I am not of kin or counsel to the parties in the case; am not in the employ of counsel for any of said parties; nor am I in any way interested in the result of said case.

Disclosure Pursuant to Article 8(B) of the Rules and Regulations of the Board of Court Reporting of the Judicial Council of Georgia, I make the following disclosure:

I am a Georgia Certified Court Reporter, here as a representative of Setdepo, Inc., to report the foregoing matter. Setdepo, Inc., is not taking this deposition under any contract that is prohibited by O.C.G.A. 5-14-37 (a) and (b).

Setdepo, Inc., will be charging its usual and customary rates for this transcript.

Bonnie L. Smith

BONNIE L. SMITH, RPR CCR-B-2432

CAPTION

The Deposition of **Bruce Janiak, M.D.**, taken in the matter, on the date, and at the time and place set out on the title page hereof.

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.

CERTIFICATE

STATE 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 Michael Stephen Marciano

My Commission Expires Notary Public

OFFICIAL SEAL
Notary Public, Georgia
Fayette County
MICHAEL STEPHEN MARCIANO
My Commission Expires March 28, 2005

☐ No changes made to the Errata Sheet; therefore, I am returning only this signed, notarized certificate.

☐ I am returning this signed, notarized certificate and Errata Sheet with changes noted.

# DEPOSITION ERRATA SHEET

RE: Setdepo, Inc.,
File No. 4627
Case Caption: Michael Paolella, Etc. vs. Sonia Kirk, M.D., et al.

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

To the Reporter:
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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Deposition of Bruce Janiak, M.D.

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SIGNATURE: _____ DATE: _____

**Bruce Janiak, M.D.**

S

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CLEVELAND, OHIO 44113-1704
(216) 621-0070
FAX (216) 621-4008
TOLL FREE 1-800-280-0070
E-MAIL: fds@fdslaw.com

JEFFREY H. FRIEDMAN ♦*+
JOSEPH C. DOMIANO
M. DAVID SMITH ♦
STEPHEN S. VANEK
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MARK S. MILLER
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DAINA B. VANDERVORT•

JULIE M. THOMAS
EXECUTIVE DIRECTOR

OF COUNSEL
PERRY R. SILVERMAN#
JAMES T. WALTHER

* ALSO MEMBER OF DISTRICT OF COLUMBIA BAR
♦ ALSO MEMBER OF FLORIDA BAR
+ CERTIFIED CIVIL TRIAL SPECIALIST BY THE NATIONAL BOARD OF TRIAL ADVOCACY
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SUITE 704
CANTON, OHIO 44718-2508
(330) 493-9242

IN COLUMBUS:
8800 LYRA DRIVE, SUITE 220
COLUMBUS, OHIO 43240
(614) 433-7331

IN ELYRIA:
SPITZER PARK PLAZA
511 BROAD STREET
ELYRIA, OHIO 44035-5531
(440) 934-0070

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4461 OBERLIN AVENUE
SUITE 102
LORAIN, OHIO 44052
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(239) 642-0252
(888) 256-8454

June 27, 2003

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

Ckd 30 Jun 03 1635

***Re: Beverly Paolella, Deceased***

Dear Dr. Janiak:

Thank you very much for agreeing to review this case. I represent the family of Beverly Paolella, 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

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. Paolella's primary care physician
7. Dr. Bruce Long medical records - Mrs. Paolella's rheumatologist

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

1. Did any of Beverly Paolella'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 Paolella'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 Paolella'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,

Tom Conway

Thomas E. Conway

TEC/jme

# JANIAK CONSULTING, INC.

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

27087 Oakmead Dr.
Perrysburg, OH 43551

374-8949
19-873-0937 Fax


July 12, 2003

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

Re: Beverly Paolella, 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 Janiak /pgs

Bruce D. Janiak, M.D.
President

Invoice #0703-01

Defendant's Exhibit

B

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SIXTH FLOOR - STANDARD BUILDING
1370 ONTARIO STREET
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(216) 621-0070
FAX (216) 621-4008
TOLL FREE 1-800-280-0070
E-MAIL: fds@fdslaw.com

JEFFREY H. FRIEDMAN ♦•★
JOSEPH C. DOMIANO
M. DAVID SMITH ♦
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EXECUTIVE DIRECTOR

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SUITE 102
LORAIN, OHIO 44052
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(239) 642-0252
(888) 256-8454

December 9, 2003

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

Rec'd 17 Dec 03
1528

**RE:** **Michael Paolella, 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
C

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(216) 621-0070
FAX (216) 621-4008
TOLL FREE 1-800-280-0070
E-MAIL: fds@fdslaw.com

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JOSEPH C. DOMIANO
M. DAVID SMITH ♦
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CHRISTINE M. LA SALVIA

JULIE M. THOMAS
EXECUTIVE DIRECTOR

OF COUNSEL
JAMES T. WALTHER

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MARCO ISLAND, FL 34145
(239) 642-0252
(888) 256-8454

January 14, 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 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

Defendant's Exhibit
1

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(216) 621-0070
FAX (216) 621-4008
TOLL FREE 1-800-280-0070
E-MAIL: fds@fdslaw.com

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M. DAVID SMITH ♦
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EXECUTIVE DIRECTOR

OF COUNSEL
JAMES T. WALTHER

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(440) 934-0070

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LORAIN, OHIO 44052
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(440) 946-0101

IN FLORIDA:
COURTYARD TOWERS
1141 SWALLOW AVENUE - PH
MARCO ISLAND, FL 34145
(239) 642-0252
(888) 256-8454

March 19, 2004

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

24 Mar 04

**RE:** **Michael Paolella, 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**
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CLEVELAND, OHIO 44113-1704
(216) 621-0070
FAX (216) 621-4008
TOLL FREE 1-800-280-0070
E-MAIL: fds@fdslaw.com

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JOSEPH C. DOMIANO
M. DAVID SMITH ♦
STEPHEN S. VANEK
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JULIE M. THOMAS
EXECUTIVE DIRECTOR

OF COUNSEL
JAMES T. WALTHER

• ALSO MEMBER OF DISTRICT OF COLUMBIA BAR
♦ ALSO MEMBER OF FLORIDA BAR
★ CERTIFIED CIVIL TRIAL SPECIALIST BY THE NATIONAL BOARD OF TRIAL ADVOCACY
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LORAIN, OHIO 44052
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1141 SWALLOW AVENUE - PH
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(888) 256-8454

February 4, 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 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

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SIXTH FLOOR - STANDARD BUILDING
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(216) 621-0070
FAX (216) 621-4008
TOLL FREE 1-800-280-0070
E-MAIL: fds@fdslaw.com

JEFFREY H. FRIEDMAN ♦*★
JOSEPH C. DOMIANO
M. DAVID SMITH ♦
STEPHEN S. VANEK
MICHAEL L. EISNER
KEVIN L. LENSON
DONNA TAYLOR-KOLIS
DAINA B. VANDERVORT•
CHRISTINE M. LA SALVIA

JULIE M. THOMAS
EXECUTIVE DIRECTOR

* ALSO MEMBER OF DISTRICT OF COLUMBIA BAR
♦ ALSO MEMBER OF FLORIDA BAR
★ CERTIFIED CIVIL TRIAL SPECIALIST BY THE NATIONAL BOARD OF TRIAL ADVOCACY
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SUITE 704
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(330) 493-9242

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ELYRIA, OHIO 44035-5531
(440) 934-0070

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SUITE 102
LORAIN, OHIO 44052
(440) 960-2525

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(440) 946-0101

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1141 SWALLOW AVENUE - PH
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(239) 642-0252
(888) 256-8454

May 4, 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 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**

G

Alexander Gallo & Associates, Inc.
COURT REPORTING VIDEO SERVICES TRIAL PRESENTATIONS

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1370 ONTARIO STREET
CLEVELAND, OHIO 44113-1704
**(216) 621-0070**
FAX (216) 621-4008
TOLL FREE 1-800-280-0070
E-MAIL: fds@fdslaw.com

JEFFREY H. FRIEDMAN ♦•★
JOSEPH C. DOMIANO
M. DAVID SMITH ♦
STEPHEN S. VANEK
MICHAEL L. EISNER
KEVIN L. LENSON
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EXECUTIVE DIRECTOR

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♦ ALSO MEMBER OF FLORIDA BAR
★ CERTIFIED CIVIL TRIAL SPECIALIST BY THE NATIONAL BOARD OF TRIAL ADVOCACY
• ALSO MEMBER OF COLORADO & ILLINOIS BARS

IN CANTON:
BELDEN VILLAGE TOWER
4450 BELDEN VILLAGE STREET, NW
SUITE 704
CANTON, OHIO 44718-2508
(330) 493-9242

IN ELYRIA:
SPITZER PARK PLAZA
511 BROAD STREET
ELYRIA, OHIO 44035-5531
(440) 934-0070

IN LORAIN:
4461 OBERLIN AVENUE
SUITE 102
LORAIN, OHIO 44052
(440) 960-2525

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7784 REYNOLDS ROAD
MENTOR, OHIO 44060-5321
(440) 946-0101

IN FLORIDA:
COURTYARD TOWERS
1141 SWALLOW AVENUE - PH
MARCO ISLAND, FL 34145
(239) 642-0252
(888) 256-8454

May 13, 2004

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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 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

DTK:cjz

Defendant's Exhibit
H

LAW OFFICES OF

FRIEDMAN, DOMIANO & SMITH CO., L.P.A.

SIXTH FLOOR - STANDARD BUILDING
1370 ONTARIO STREET
CLEVELAND, OHIO 44113-1704
(216) 621-0070
FAX (216) 621-4008
TOLL FREE 1-800-280-0070
E-MAIL: fds@fdslaw.com

JEFFREY H. FRIEDMAN ♦*★
JOSEPH C. DOMIANO
M. DAVID SMITH ♦
STEPHEN S. VANEK
MICHAEL L. EISNER
KEVIN L. LENSON
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DAINA B. VANDERVORT•
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JULIE M. THOMAS
EXECUTIVE DIRECTOR

OF COUNSEL
JAMES T. WALTHER

* ALSO MEMBER OF DISTRICT OF COLUMBIA BAR
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1141 SWALLOW AVENUE - PH
MARCO ISLAND, FL 34145
(239) 642-0252
(888) 256-8454

June 25, 2004

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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 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**

I

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1141 SWALLOW AVENUE - PH
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June 28, 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:

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

Defendant's Exhibit
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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 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 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

Defendant's Exhibit
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SIXTH FLOOR - STANDARD BUILDING
1370 ONTARIO STREET
CLEVELAND, OHIO 44113-1704
(216) 621-0070
FAX (216) 621-4008
TOLL FREE 1-800-280-0070
E-MAIL: fds@fdslaw.com

JEFFREY H. FRIEDMAN ♦* ⋆
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JAMES T. WALTHER

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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:

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~~

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LAW OFFICES OF
FRIEDMAN, DOMIANO & SMITH CO., L.P.A.
SIXTH FLOOR - STANDARD BUILDING
1370 ONTARIO STREET
CLEVELAND, OHIO 44113-1704
(216) 621-0070
FAX (216) 621-4008
TOLL FREE 1-800-280-0070
E-MAIL: fds@fdslaw.com

JEFFREY H. FRIEDMAN ♦*★
JOSEPH C. DOMIANO
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July 13, 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 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

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