IN THE COURT OF COMMON PLEAS

RICHLAND COUNTY, OHIO

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Amy L. Parr, et al., Plaintiffs,	)	
vs.	)	Case No. 91-247-D
Joel E. Kaye, M.D., et al., Defendants.	)	

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Deposition of Bruce D. Janiak, M.D. a Witness herein, called by the Plaintiffs for examination under the statute, taken before me, Cynthia L. (Advent) Cunningham, Registered Professional Reporter and Notary Public in and for the State of Ohio, pursuant to attached notice, at the Toledo Hospital, Department of Emergency Medicine, 2142 North Cove Boulevard, Toledo, Ohio, on Monday, September 28, 1992, beginning at 3:18 o'clock p.m. and concluding on the same day.

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APPEARANCES:

ON BEHALF OF THE PLAINTIFFS:

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Monday Afternoon Session

September 28, 1992

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STIPULATIONS

It is stipulated by and among counsel for the respective parties herein that the deposition of Bruce D. Janiak, M.D., a witness herein, called by the Plaintiffs for examination under the statute, may be taken at this time by the Notary by agreement of counsel without notice or other legal formality; that said deposition may be reduced to writing in stenotype by the Notary, whose notes may thereafter be transcribed out of the presence of the Witness; that proof of the official character and qualification of the Notary is waived; that the witness may sign the transcript of his deposition before a notary other than the notary taking his deposition; said deposition to have the same force and effect as though the witness had signed the transcript of his deposition before the notary taking it.

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EXHIBITS:

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BRUCE D. JANIAK

of lawful age, being by me first duly sworn to testify to the truth, the whole truth and nothing but the truth, as hereinafter certified, deposed and testified as follows:

EXAMINATION

BY MR. SCHERNER:

Q. Dr. Janiak, we were introduced. My name is Hans Scherner. I represent Amy Parr and the estate of Ronald Parr. Please state your full name.

A. Bruce David Janiak.

Q. Is it Janiak? It's pronounced long? I was saying Janiak.

A. Well, we all pronounce it differently. I've been pronouncing it Janiak.

Q. Since it's your name, I think you ought to have the right to chose how it's pronounced.

A. I'll respond to most anything.

Q. Dr. Janiak, it is my understanding that you've been asked to be an expert on behalf of one or more of the Defendants in this action which has been brought in Richland County, Court of Common Pleas, it's my understanding, correct?

A. Yes, sir.

Q. Pursuant to that understanding, we have arranged

for your deposition here today pursuant to Rule 26 of the Ohio Rules of Civil Procedure. We also submitted a notice to take your deposition and a request to produce. Have you seen a copy of that notice and request to produce?

MS. HIRSHMAN: No.

THE WITNESS: I guess not.

BY MR. SCHERNER:

Q. Within that request, we requested for you to bring a complete file regarding this matter. Do you have a file regarding this case that has been brought here?

A. Yes, I do.

Q. Have you brought that with you?

A. It's right here.

Q. Your entire file is right in front of you?

A. It doesn't include the depositions. It's just my file. It includes the emergency record, and then my "file," autopsy report, records of Dr. Kautz and a coroner's verdict. That's what I brought with me.

Q. May I see those, please?

I'm looking at your file that you just handed to me, Dr. Janiak, and part of that file consists of an emergency room record and subsequent records for Ronald Parr's admission to Mansfield General Hospital on

September 20th, 1990, that's correct; is it not?

A. Yes.

Q. Then there is an autopsy report. Is that in your handwriting, the little yellow note on top of that?

A. No.

Q. Do you know whose handwriting that is?

A. I have no idea.

Q. And that is the autopsy report that you reviewed regarding the autopsy that was performed on Mr. Parr on September 20th, 1990?

A. Yes. I don't remember the date, but --

Q. There are also Dr. Kautz's record. Again, there is a yellow tag with some writing. Is that in your handwriting?

A. No.

Q. Do you recognize whose handwriting that is?

A. I have no idea.

Q. There is an EKG with a date of September 20th and a time of 7:18 apparently performed at Mansfield General Hospital, and that is part of your record?

A. Correct.

Q. And then there is a coroner's verdict which I believe is essentially the same as the autopsy report that you previously identified, plus a sheet for the verdict?

A. Yes.

Q. And then another transmittal from W.P. Hohenberger dated July 15, 1991 to a Thomas Terry from Jacobson, Maynard, Tuschman and Kalur with an autopsy report. That was also part of your record; was it not?

A. It was part of the materials I handed to you.

MS. HIRSHMAN: He had a copy of the Autopsy Clinical Summary. The face sheet reflects that there was a fax transmittal from Mr. Hohenberger to Tom Terry on July 15, 1991.

BY MR. SCHERNER:

Q. And I'm also looking at a manila folder that you just handed me, and inside is a blue colored sheet on which there is some typewritten notes. Are those notes generated by your office?

A. Yes.

Q. And the first one indicates that there's an initial letter enclosure, January 9, 1992, representing Gary Greer, M.D. and Arun Acharekar, M.D. and depo transcripts. Is that part of this file, Doctor?

A. I can't tell you unless I have the file to look through myself, but it probably is in there.

Q. I'm sorry?

A. It probably is in there, but I don't know.

Q. Do you have any other file?

A. No, that is the file.
Q. I do see a letter dated January 9th, 1992 which apparently was written to you by Ellen H. Hirshman.
(Pause.)
Q. I have now read that letter, Doctor. There is also file notes, January 20th, 1992. Are those your file notes that you made after reviewing portions or whatever records you had available to you?
A. I would assume so. My secretary puts that in there, so I would assume that's what she was referring to.
Q. Doctor, if you could, I'd like to just take a little bit of time to look at these since I haven't had a chance to see them before.
(Discussion held off the record.)
BY MR. SCHERNER:
Q. I'd like to have this marked as Dr. Janiak Deposition Exhibit No. A. And then within that, I'd like to have the notations, file notes, Parr versus Kaye dated 1-20-92 marked as A-1; notes dated on Parr versus Kaye dated April 30, 1992 as A-2; notes dated May 4th, 1992 as A-3; and notes which are called "File Copy" which contains the date of May 13th within a brief statement as A-4.
MS. HIRSHMAN: Just so we're clear,

A-1, A-2, A-3, you referred to individually as notes. Are they each really just one sheet of paper?

MR. SCHERNER: Right, they are listed as "File Notes" at the top.

MS. HIRSHMAN: It's one sheet of paper for each, correct?

MR. SCHERNER: That's correct, just one sheet of paper for each.

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Thereupon, Dr. Janiak Deposition Exhibits A, A-1, A-2, A-3 and A-4 were marked for purposes of identification.

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MR. SCHERNER: In addition to that which we have marked at this point, there is also a record dated January 9th, 1992 to which we previously made a reference already from Ellen H. Hirshman to Dr. Janiak; another letter from Ellen H. Hirshman to Dr. Janiak dated January 21st, 1992; a third letter from Ellen H. Hirshman dated March 10th, 1992, again, to Dr. Janiak; another letter from Ellen H. Hirshman dated April 21st, 1992; a letter from Ellen H. Hirshman to Dr. Janiak dated September 16th, 1992; and a file copy of a letter addressed to Miss Hirshman from Bruce D. Janiak, M.D. dated May 13th, 1992.

BY MR. SCHERNER:

Q. Dr. Janiak, at this point, you heard me identify the various documents which you gave to me a few moments ago. Are you aware of any other document that is contained anywhere other than the depositions which you might have reviewed?

A. No, none other than the depositions, that's it.

Q. Are there any handwritten notes which may have been used by you to generate any of the file notes that I have?

A. No, not to generate the file notes. I was thinking of a -- I do a numbering on the front of the deposition about the number of minutes or hours that I do to read it, but that wouldn't be what you're referring to, I don't think.

Q. The depositions that you have, do you make any comments within the depositions themselves?

Do you make any notations within them?

A. No, I don't. I do nothing. Occasionally, I have circled a paragraph, but I've not ever made a note or highlighted anything in a deposition.

Q. Is there any voice transcript of any of the information; in other words, the actual tape that you have for any of the notations that you made?

Do you save those?

A. No, I do not.
Q. I notice on the various documents which we identified as A-1 through A-4, there's a "BDJ." I presume that refers to your name?
A. Correct.
Q. And then there is a "csb." Is that the person that's transcribing?
A. Correct.
Q. Is there any other record either by computer or any other form which contains any information regarding your notations, your impressions in this case?
A. There is not.
Q. Have you had the opportunity to review the records regarding the care that was provided by Dr. Lowery?
A. No, I don't believe I've seen anything from Dr. Lowery.
Q. Have you reviewed the records from Dr. Kautz that you have as part of the stack which is in front of you?
A. I think at one time, I looked at this stack (indicating). I don't remember when I did.
Q. Have you reviewed any records from Dr. Denton's office?
A. No, I'm not familiar with Dr. Denton.
Q. Have you reviewed any records from Dr. Bell's

office?

A. It doesn't --

Q. -- ring a bell? That went right by.

A. You couldn't miss it, and of course, there's a joke about that, but we don't have time.

Q. I won't touch that one either.

A. Maybe after the deposition.

Q. Doctor, have you reviewed any deposition of Dr. Jeffrey, the pathologist?

A. No, that's not familiar to me either.

Q. Have you reviewed all of the experts who have been deposed on behalf of the Plaintiffs?

A. I don't need to get up. Let me tell you that there's a handwritten list on the front of that manila folder which is the names of the depositions I've read --

Q. Would you read them, please?

A. -- because there's a long list. And I notice right away, Denton is on there. Paris, Goldhaber, Taylor, it looks like Gordon (sic).

MS. HIRSHMAN: Golden.

THE WITNESS: Harden, Denton, Roemer, Greer, Acharekar.

MS. HIRSHMAN: A-C-H-A-R-E-K-A-R, Herron, Gardner, Kaye, O'Sullivan.

BY MR. SCHERNER:

Q. Have you reviewed any of the depositions of the nurses?

A. The list I read you is the whole list of depositions that I have. I have no other depositions.

Q. Have you reviewed any of the x-ray reports or other reports that were obtained in January or from January until September of 1990?

A. No. You mean prior to the emergency visit, are you referring to?

Q. Yes.

A. No, I have not.

Q. Have you reviewed the deposition of Dr. Baker, and I'm only trying to see if I can either refresh your memory or perhaps you may not have recorded it there or perhaps I missed it as you read it.

A. What I did, I went through the stack of depositions that I have that pertained to the case and wrote down the names of deponents. So Baker was not on there.

Q. And if I name Rebecca E. Banks, that doesn't mean anything to you?

A. No, sir.

Q. How about Lynn W. Smith?

A. Not familiar.

Q. So all of the documents which you reviewed are either in front of you here and we have identified them as the hospital records and other portions of records such as the coroner's records, reports or autopsy reports, and the depositions which you just identified a few moments ago when you read the list in front of your manila folder?

A. Yes, sir.

Q. Was there any document that you wished you'd had which you did not have available to you?

Did you ever request any documents?

A. I did not.

Q. Did you feel that you had all the documents that you needed in order to render an opinion in this case?

A. Yes, I did.

Q. Did you actually review any of the x-rays themselves?

A. No, I don't believe I've seen any films in this case.

Q. Did you request any films?

A. I did not.

Q. Did you review the VQ scan?

A. I did not.

Q. Did you request the VQ scan?

A. I did not.

Q. Do you consider yourself to have expertise in reviewing VQ scans?
A. I do not.
Q. Do you consider yourself having expertise in viewing x-rays?
A. I do.
Q. Did you feel there was any information on any of the x-rays which might assist you in any way in rendering an opinion here?
A. I did not.
Q. You rendered opinions to Miss Hirshman?
A. That is correct.
Q. And you formulated those on the basis of the documents that you had available to you at various stages during the last year-and-a-half; is that correct?
A. Yes.
Q. When was it that you were first contacted? January of '92?
A. You've reviewed that file much more recently than I have, so --
Q. I think it's in front of you.
A. Let me look it up. January 9th, 1992.
Q. When did you first render an opinion to Miss Hirshman?

A. I cannot tell you. I don't know.
Q. Did you ever render a written opinion to her?
A. I did not.
Q. Did you ever provide her with an oral opinion?
A. Yes.
Q. Do you remember what that oral opinion was?
A. Boy, it's hard to remember what one said months and months ago, but in general, it was that I felt this was a defendible case. I thought the emergency physicians met the standard of care with regards to a patient like this patient and specifically this patient.
Q. Any other opinions that you have rendered?
A. I believe I said something with regard to the fact that I thought it was unfortunate that the VQ scan report in retrospect led their thinking in a different direction, but I certainly understood that.
Q. Anything else that you recall that you expressed to Miss Hirshman?
A. I can't think of anything else.
Q. You've indicated that you never gave her a written report. Have you at any time provided her with any document whatsoever, any journal articles, any textbook references, any document of any type?
A. No.

Q. Have you at any time made those references to her orally as opposed to providing her with those documents?

A. I did not.

Q. Have you reviewed any journal articles or any textbooks at any time while you were reviewing this case and in regards to either testifying or rendering opinions in this case?

A. I have not.

Q. Do you in the course of your practice utilize journal articles of textbooks?

A. Yes.

Q. Which textbooks do you utilize?

A. Study Guide in Emergency Medicine by Tintinalli, I have used.

Q. For what purpose?

A. Primarily to look up individual facts with regard to specific patient problems. I can't give you an example right now, but textbooks to me are valuable for that reason.

If they give one a clue as to what a particular drug -- what particular drug might be appropriate or what particular percentage of incidence of findings might occur in a certain entity, that it might be valuable from that standpoint.

Q. Have you reviewed any other or do you consider any other textbooks?

I understood you haven't reviewed any, so let me withdraw that portion of the question. Do you consider any other textbooks in the course of your practice?

A. There are probably 30 textbooks in our department, and on occasion, I will look at any of those if there's a case which seems to be appropriate.

Q. How about Rosen's text?

A. I don't -- I think we may have a Rosen's. I don't believe I've looked at it for several years, but we have one.

Q. But the Tintinalli text, you have referred to?

A. Yes, I have. I don't remember looking at Rosen's.

Q. Have you referred to any journal articles?

A. Well, I reviewed the Annals of Emergency Room Medicine, The Archives of Emergency Medicine, The American Journal of Emergency Medicine, and The Journal of Emergency Medicine.

Q. You consider those kind of texts valuable?

A. Valuable is a relative term. I think there are articles in there that intrigue me quite a bit, not necessarily from any one particular journal at any one time, but there are certainly lots of articles that are

very interesting.

Q. I presume that you do not consider any of those standard textbooks or journal articles as authoritative without having read them or looked at them specifically with a particular problem in mind?

A. That's correct. I don't think any articles or textbooks are authoritative. I'll look at what I want to look at and then make a decision whether I agree with that.

Q. And so in order for you to tell us whether you agree or disagree with a particular perspective from a writer, you would have to review it?

A. Absolutely.

Q. But you have not reviewed any such articles or textbooks in preparation for rendering any opinion here or in giving this deposition; is that true?

A. That is correct.

Q. Doctor, you indicated that, in your opinion, the care that was provided by the emergency room physicians was acceptable, and did I understand that correctly?

A. Yes, you did.

Q. Did they function the way you would have functioned on that day?

Would you have done anything differently?

A. That is an excellent question because I looked at

this case before the deposition today with that in mind and concluded that I probably would not have done anything differently.

Q. You based your opinion on the facts, is that correct, in this case?

A. I based my opinion on the records and depositions that I've reviewed.

Q. What is your understanding of the facts in this case that led you to your opinion?

A. Well, I assume you'd like me to summarize; otherwise, I'd have to read back over all these documents.

Q. Well, you formulated an opinion?

A. Right.

Q. And I understand that your opinion is based upon all of the records and documents that you had available, but my question to you at this point is, what is your understanding of what you consider to be the relevant facts in formulating your opinion?

A. In general, a patient presented into the emergency department who had a chief complaint of shortness of breath. This was a gentleman who was 43 and who had been having shortness of breath for a couple of days.

His physical examination was really not

remarkable except for the fact that his heart rate was slightly elevated and there was noted some swelling in his left leg.

The patient, after the evaluation by the emergency physician, received some testing. That testing consisted initially of a chest x-ray and an electrocardiogram.

I believe at that point, there was also some blood work ordered. In the course of the early evaluation of the patient, there was a transfer, a change of shift in the emergency department, and a second emergency physician came in.

The first emergency physician, who I believe is Dr. Greer, went home. The second emergency physician continued the evaluation and ordered a VQ scan of the patient's lungs based on a clinical suspicion of the possibility of pulmonary embolism.

That was recorded as either consistent with COPD or from the emergency physician's perspective as not consistent with pulmonary embolism.

The emergency physician went back to the patient to re-evaluate and focussed in on other disease processes which included chronic obstructive lung disease secondary to the patient's smoking history.

He treated the patient with an aerosol therapy;

contacted a private physician to admit the patient since the diagnosis was still not clear.

The patient was seen by the private physician, was admitted to the hospital with some orders being written; and prior to actually being transferred to the floor, suffered a sudden onset of cardiorespiratory arrest from which he could not be resuscitated.

Q. Doctor, you said that the significant findings upon physical examination were the fact that he had a heart beat of 120 or above; in other words, he was tachycardiac?

A. That's correct.

Q. What was the other significant finding?

A. Some swelling in the left lower leg.

Q. I notice that you didn't mention the fact that he had a TED hose. Would that have had any significance to you?

A. This is a different question from the first question? I'm asking. I'm not sure I understand the question.

The first question you asked, I thought, was what did I think was -- what was my understanding of the case. The second question, I think, is asking what is significant to me.

I'm not sure whether you mean -- See, I'm a

little confused. Maybe I'm just not understanding you correctly or being too picky.

Q. I want to apologize if I'm making my questions unclear.

A. That's all right.

Q. Doctor, let me go back. You summarized for us what you considered to be the significant facts on which you based your opinion, that the care which was rendered by the physicians in the emergency room was acceptable; did I understand that correctly?

A. That's right.

Q. Are there any other facts which, in your opinion, are relevant as to that question?

A. Certainly. And to specifically reference your question about the TED hose, yes, I think that is also a factor. It has relative significance. It would lend one to more credence to the fact that the physician wanted to do the VQ scan.

Q. How about the fact that he was diaphoretic?

A. Well, that is more -- a more nonspecific finding. It has relative significance in terms of presence or absence of illness. I don't think it has as much significance in terms of what was done for the patient.

Q. Doctor, you also, I believe, saw the EKG that was performed?

A. Yes.

Q. Does that have any significance to you?

A. Well, yes, it does. It's significant in that it does not show an acute myocardial infarction.

Q. Is it significant insofar as it shows an S1-T3-Q3 or Q3-T3 configuration?

A. Well, the answer to that is I'm not sure if that has very much significance. That is something that is seen occasionally.

When I looked at that cardiogram myself, my feeling was that that might be consistent with an old myocardial infarction. The depth of the Q wave in V3, to me, was more consistent with an old myocardial infarction.

The depth of the S wave in standard lead 1 was not particularly impressive to me. Excuse me, I may have misspoke. I think I said the depth of the Q wave in V3. I meant the depth of the Q wave in standard lead 3.

Q. Would you defer to a cardiologist on the EKG and its interpretation?

MS. HIRSHMAN: In terms of his workup as an ER physician?

MR. SCHERNER: Well, sure.

BY MR. SCHERNER:

Q. In other words, Doctor, do you ever have the occasion to consult a cardiologist in the emergency room?

A. A technical answer to that is yes, but the numbers are once in the last five years.

Q. Do you consider cardiologists to have more experience and education and training in interpreting EKGs?

A. In the strict technical interpretation of EKGs, yes.

Q. And would you, to that extent, defer to a cardiologist in interpreting this particular EKG?

A. For the interpretive part?

Q. Yes.

A. Yes.

Q. If a cardiologist interpreted that as being a typical S1-Q3-T3 EKG, would you disagree with that cardiologist?

A. I would not.

Q. What does an S1-Q3-T3 EKG demonstrate?

A. A rare finding.

Q. And is it the kind of rare finding that is consistent with pulmonary emboli?

A. Yes, but not as inconsistent with a normal cardiogram.

Q. Now, would you agree that on the basis of the physical findings, and on the basis of the history, and on the basis of this EKG, that an emergency room physician should have been highly suspicious of pulmonary emboli in the morning of September 20th, 1990 when Mr. Parr presented to the emergency room?

A. Let me characterize my answer in this way: I believe that an emergency room physician, based on the constellation of events you just related, should have had a significant suspicion for the possibility of pulmonary embolism such that the physician would take steps to order further testing to look for that pulmonary embolism or the possibility thereof.

Q. In your opinion, once those findings that we have just summarized, that you've summarized and I believe I also summarized in my question, were known by the emergency room physician, and once the PO2 came back at approximately 8:44 that morning, I believe the PO2 at that time was 67; was it not?

A. I would have to look that back up. I think you're right, but I don't have that in my head.

Q. That is abnormally low, would you agree?

A. I'm not sure -- It's low. It's -- We use normals for patients with different problems, and we expect certain results on certain kinds of patients.

So a healthy athlete may be abnormally low at 79, and an obese patient may be abnormally low at 69. An obese smoker may be abnormally low at 60. So actually, it's impossible to answer your question unless you just look at the whole population. Then I would say abnormally low.

Q. In your opinion, was it low for this gentleman?

A. No.

Q. In your opinion, Dr. Janiak, should Heparin therapy have been started even before the VQ scan in view of the clinical suspicion, clinical symptoms, clinical suspicion, and in view of the PO2 that was returned?

A. I would not fault someone who did it. I would not fault someone who did not do it. It's strictly a judgment.

Q. Under what circumstances, Doctor, would you start Heparin before a VQ scan?

A. If I saw a patient that had a history of something, some leg problem, and I don't want to characterize it any more specifically than that, who had a sudden onset of difficulty breathing, who had tenderness in the leg, who had pain with breathing, and who was coughing up blood, I would start Heparin on that patient.

Q. Would all of those factors have to be present in order for you to start Heparin?
A. I believe if the patient -- I would not have to have the injury to the leg if that was one of the subsets. I could have just the pain in the leg and no history of leg problems, and I might still start Heparin.
Q. Would coughing up blood be a factor which would have to be present in order for you to start Heparin?
A. No, I believe that I could characterize the patient in another way with a cough that was not productive of blood and still may start Heparin.
Q. Once again, that gets us into the "may" area. I'm asking you what, in your opinion, would be required before you would start Heparin prior to the results of a VQ scan coming back?
A. I can describe another patient. Is that what you'd like me to do?
Q. Sure.
A. The same patient we had before not coughing up blood but who had a PO2 in the 50 range without any underlying significant history of smoking or chest disease who appeared to be in very significant respiratory distress, that one, I might start Heparin on.

Q. What factors are absent from Mr. Parr?

In other words, what additional factors, in your opinion, would have to have been present with Mr. Parr on the morning of September 20th, 1990 before you would have started Heparin prior to the VQ scan?

A. I'm to add other factors to this patient's reported history and physical to make him into a patient that myself would start Heparin on?

Q. Yes, please.

A. I would produce significant calf pain in this patient, that is, a positive Homans', H-O-M-A-N-S, sign and tenderness, the coughing up of blood and pleuritic pain with each deep breath.

Q. Would, in your opinion, the coughing up of blood be a contraindication for Heparin?

A. No.

Q. Was there any indication in the record that the Homans' sign was looked for?

A. Yes.

Q. What were the results?

A. "No particular calf tenderness."

Q. You indicated, I believe, earlier that the VQ scan came back, and it came back as either being interpreted by the radiologist as COPD, or from the perspective of the emergency room physicians, as

negative for pulmonary emboli?

A. Yes, sir.

Q. If the VQ scan had come back with a reading of high probability, in your opinion, should Heparin have been administered at that point?

A. Yes.

Q. What would appropriate treatment have demanded of the physicians -- That's an awkward way of putting it.

Assume with me for a moment that the VQ scan had, in fact, come back with a high probability for pulmonary emboli.

A. All right.

Q. What would, under those circumstances, have been required of the physicians in order for them to have met the appropriate standard of care?

A. I believe the patient would have blood drawn for clotting studies followed by an embolus injection of Heparin, and either an intravenous line could have been started or what's called a Heparin lock for intermittent therapy could have been inserted in his vein.

Immediate contact with a private physician, and depending on the institution, perhaps a pulmonologist. It really is who you call is specific to each institution, but what I'm saying is a telephone

communication with a consultant.

Q. Anything else?

A. That's all I can think of.

Q. Do you think bedrest under these circumstances would have been required?

A. My feeling is that patients in the emergency department are usually on a stretcher. I wouldn't make any other restriction to the patient. I wouldn't write down, "Don't let him go to the bathroom," or that kind of order.

Q. Would you write an order that would permit ambulatory privileges?

A. No, I would not write an order. Normally you don't write an order that allows a patient to do something. You write orders that are restrictive.

Q. In your opinion, when the VQ scan came back indicating COPD, given the whole history of the patient and the whole constellation of signs and symptoms, do you believe that COPD was likely?

A. I believe that at that point, COPD then changed in its likelihood. When the patient came in, I believe I wrote that note down somewhere that I thought that COPD would have been a less likely event or cause of the patient's problems.

As soon as the VQ scan was reported back, then

pulmonary embolism drops down to the bottom of the long list and COPD and perhaps even silent myocardial infarction come back up to the top of that list.

Q. What should have been done pursuant to applicable standards of care under those circumstances?

A. All right, once the scan came back as being not consistent with pulmonary embolism, the first event that should occur is re-evaluation of the patient by the emergency room physician.

In this case, an aerosol treatment was given because it was thought that the patient was having some bronchus spasm from COPD. It was reported, by the way, that the patient did improve some, probably more subjectively than objectively.

The second event which should occur is a questioning of what is really wrong with the patient; can I send him home or not.

In this case, I agreed with the thought that there was not enough evidence to send the patient home, and the patient wasn't objectively better, and as far as the emergency room physician was concerned, at least significantly better.

And a decision was made to call a physician to admit the patient for further evaluation to try to explain the constellation of symptoms. That's what

occurred, and that is what I think should have occurred.

Q. Doctor, I have been looking at your notes here which we have marked as A-1 through A-4, and periodically, let me give you an example, you make the following notation, "The question in this case should go like this" --

MS. HIRSHMAN: What are we reading from, please?

MR. SCHERNER: From notes which were apparently dictated by you on April 30th, 1992.

BY MR. SCHERNER:

Q. "The question in this case should go like this: Do you agree that normal lung scan rules out the possibility of a pulmonary embolus?" Are you directing that to Miss Hirshman?

Were you directing that kind of question to Miss Hirshman?

A. No, I've never asked her or told her that. I think I was trying to take information from my brain and put it on a piece of paper. That was not a question to her.

MS. HIRSHMAN: Do you want to see this so you can see it in full context?

THE WITNESS: Yeah. I don't

remember even saying that.

BY MR. SCHERNER:

Q. Have you ever had a discussion with Miss Hirshman regarding the questions she might ask of the experts for the Plaintiffs?

A. No, I have not.

Q. In A-3, dated May 4th, 1992, you again have, "The question should be asked in the other direction of what can prevent the clot from becoming loose."

Again, is that just your recording of your reflections, or was that a question that you proposed that might be asked by the attorneys for the Defendants?

A. To take your question in reverse order, it was not any information that I passed along to an attorney about what questions to ask. I don't do that.

Secondly, I believe I was referring -- probably doing some role playing in my own head when I read the depositions. I think I would have asked the question in this particular way, but I have no idea who was asking the question at the time.

Q. Doctor, let me ask that question that you proposed here as a question that ought to be asked.

A. Read it.

Q. "The question should be asked in the other

direction of what can prevent the clot from becoming loose." Can you answer that question?

A. No, I can't. I think the answer to that, as far as I'm concerned, is that there probably isn't anything that will prevent that.

Q. What's your understanding of how Heparin works?

A. It is an anticoagulant which has a relative onset of action which prevents the formation -- which prevents the clotting mechanism from occurring, but what part, I just don't remember.

There's this cascade of events that are biochemical in nature that occur. And which part of those events Heparin interferes with, I just don't remember.

Q. Do you consider yourself an expert in the utilization of Heparin?

A. No, I don't.

Q. Do you consider yourself an expert in how Heparin works?

A. No, I don't.

Q. Do you consider yourself in having any expertise in utilizing Heparin in the treatment of patients?

A. Yes.

Q. Would you please describe for us the extent of your expertise.

A. Yes, I would say my expertise is moderate to minimal, and it relates pretty much to making a decision as to when it could be useful and to when it might be harmful.

Q. In this case, let's start with the latter point. Do you see any contraindications for utilizing Heparin with this patient?

A. I see no specific contraindications, no.

Q. And would it be fair to say that there's nothing in the record which you say which would have prevented you from utilizing Heparin if you had thought it advisable?

A. I think that's fair.

Q. You said that you also make the decisions as to when Heparin would be useful. You recall earlier in response to my question, you said that you would not disagree with anyone starting Heparin prior to the VQ scan coming back; did I understand that correctly?

A. I think you did.

Q. But you also indicated that you, in retrospect, probably would not have started the Heparin prior to the VQ scan?

A. That is correct.

Q. But you would not have disagreed with a physician who feels that that is what he, under these

circumstances, should do?

A. I would not.

Q. Doctor, your answer a few moments ago indicates that Heparin works almost immediately; did I understand that correctly?

A. I think I said within a short time, but I didn't characterize it as to immediate or not.

Q. Can you give us any parameters as to what you mean by "short time"?

A. From my memory of pharmacology, I believe Heparin will interrupt the clotting process within five minutes or less.

Q. Would you agree that Heparin stops a clot from getting bigger?

A. I think that makes sense. I would.

Q. That's what you mean by interrupting the clotting?

A. Preventing blood from clotting the process.

Q. That is only accomplished once a therapeutic level of Heparin is introduced; isn't that right?

A. Well, it's not a black and white event. There is some interference of clotting at subtherapeutic levels. There is complete absence of clotting at hyper therapeutic levels. And it's a gradual process, but a gradual process is accomplished within a few minutes if

one gives it correctly.

Q. If the Heparin had been given the way you indicated you would have given it in this case, had the VQ scan come back with a high probability for pulmonary emboli, would it have stopped the clotting process within a matter of minutes?

MS. HIRSHMAN: I'm going to just let you know we're not going to ask him opinions regarding the effects of Heparin on the patient. He won't be rendering any opinions at the time of trial. I think he already stated --

MR. SCHERNER: He has --

MS. HIRSHMAN: I want to finish my statement. I believe he's already stated that he is not an expert regarding Heparin and has already identified for us the extent of expertise he has with the use of Heparin. And obviously, we're getting beyond that expertise at this point in time.

BY MR. SCHERNER:

Q. Doctor, my question, had it been given the way you said it should have been given, in your opinion, would the interruption of the clotting process have taken place within minutes?

A. I have no reason to believe this patient would react differently to Heparin than any other patient.

Q. We're talking about interfering with the clotting process. We're talking about a clot getting bigger or any clot being formed?

A. Any clot just getting bigger.

Q. But it certainly would include a clot getting bigger?

A. Any clot.

Q. In this particular case, Doctor, your notes indicate that you do not believe that the administration of Heparin would have prevented the clot from coming loose; do I understand that correctly?

A. I think that's what I said, yes.

Q. Do you make a distinction between a clot coming loose and a clot getting bigger?

A. Oh, yes.

Q. What is the distinction that you make?

A. A clot that is getting bigger is one in which its volume increases if someone could measure it somewhere. A clot becoming loose is a clot which is no longer adherent to the inner side of a vessel, whether a vein or artery.

Q. And Heparin accomplishes the former but does not accomplish the latter, is that true, in your opinion?

A. I -- It accomplishes the former. I don't know whether Heparin has ever been studied to see whether it

loosens anything.

Q. Would it prevent the clot from becoming loose?

A. I just don't know.

Q. But you've rendered an opinion that in this case, it would not have prevented the clot from becoming loose. If you don't know the answer to that question, how can you render the opinion that Heparin would not have prevented a clot from becoming loose?

A. Maybe I misunderstood your question because you asked three in a row. Start again. We'll try it again.

Q. Good, I appreciate you giving me that opportunity.

On the first case, we indicated that Heparin, in a matter of minutes, stops a clot from getting bigger, correct?

A. All right.

Q. In the second case, we're talking about a clot getting loose.

A. Right.

Q. And according to your note here, in your opinion, Heparin would not have stopped this clot from becoming loose.

A. Correct, okay.

Q. What I'm asking you is, what is that opinion

based on?

A. Right, and that's what I thought my answer was. I'm not aware of any studies that analyze clots to see whether or not Heparin loses their adherence to the inside of the wall of a vessel.

My opinion is based on experience and probably what I've been taught in medical school and beyond, that we don't use Heparin for that, and there's no evidence that Heparin is going to be the thing that loosens the clot.

Q. Is it your understanding, Doctor, that the clot which killed Mr. Parr was a clot that was somehow located in the venous system --

A. Yes.

Q. -- of Mr. Parr?

A. Yes.

Q. Did you have an opinion on the basis of your review of the record as to where that clot was located when Mr. Parr presented to the emergency room at 6:44 in the morning?

A. I have no opinion.

Q. Could it have been located in the pulmonary arteries close to the lungs?

MS. HIRSHMAN: What you know and probably what happened are two different things. He

already stated he doesn't have an opinion.

MR. SCHERNER: Miss Hirshman, I understand, but the Doctor has probably testified at least on 100 different cases. I'm sure he understands the distinction between probability and possibility.

BY MR. SCHERNER:

Q. Don't you understand that?

MR. HIRSHMAN: Objection to comments of counsel. Do you want to ask him another question?

BY MR. SCHERNER:

Q. Don't you understand the distinction, Doctor, between probability and possibility or could be and would be?

A. I think in legal terms, probability is greater than 50 percent and possibility is just could happen or not regardless of percentage.

Q. So, you can answer my question, Doctor. Do you know where the clot was located?

Do you have an opinion as to where the clot was located, the clot that killed Mr. Parr?

A. Right, and I --

MS. HIRSHMAN: Let him finish asking the question. I haven't heard a complete question yet.

BY MR. SCHERNER:

Q. Do you have an opinion as to where it was

located?

MS HIRSHMAN: When?

MS. SPIRITO: When?

BY MR. SCHERNER:

Q. On the morning when he presented to the emergency room. That was my original question.

A. Now maybe I'm confused. I thought I said I didn't have an opinion.

Q. Do you have any opinion as to whether the clot was located in the pulmonary tree or in the pulmonary arteries or the pulmonary venous system, however that works down close to the heart, prior to the time of his death?

Let me rephrase the question. Doctor, you've read the coroner's report?

A. Yes, a long time ago.

Q. And does the coroner's report indicate as to where that clot was when he found it?

A. Let me refer to the coroner's report.

Q. Would you, please?

A. "Sections through the pulmonary vasculature that the bifurcation," I assume that means the bifurcation of the pulmonary artery, "show inflamed lymph nodes, decreased" -- I think it's caliber not caliver (sic), but it may be a mistype error -- "and a displaced

antemortem comprised of thrombus and masses."

Q. Do you have any opinion based upon a reasonable degree of medical probability as to how long that clot had been present at that location?

A. I'm not sure I know how to answer that because I don't do pathology, and I'm not an expert in that, and that description doesn't tell me. I don't know.

Q. If we assume that that clot had been located at that general place where the coroner found it in the morning of September 20th at approximately 6:44 when Mr. Parr presented to the emergency room, if we assume that it was already there, and subsequently, according to the coroner, built up and grew in size to finally then occlude the lungs, would, in your opinion, Heparin have been effective in preventing that kind of buildup?

MS. HIRSHMAN: Objection.

MS. SPIRITO: Objection.

MS. HIRSHMAN: He can't answer that question. He's not an expert on Heparin. He already stated that. Secondly, the assumption of those facts is not supported by any of the evidence in this case.

MR. SCHERNER: Then you obviously won't have any problem with it later on. So let me ask the question again.

BY MR. SCHERNER:

Q. Doctor, you're going to testify, are you not, that in your opinion, the administration of Heparin probably would not have prevented this man's death?

MS. HIRSHMAN: Objection. I've already stated he's not going to be asked an opinion as to whether or not the initiation of Heparin therapy in this patient at any time would have prevented or not have prevented his ultimate death, so he is not going to be rendering opinions on that.

MR. SCHERNER: He's not going to be rendering it, but according to these notes, he has already rendered such an opinion.

MS. HIRSHMAN: Let me see what note you're talking about. I don't think it says he has an opinion to a reasonable degree of probability on that subject. I already told you he's not going to be asked those questions. He already told you he doesn't have an opinion on that.

MR. SCHERNER: I want to explore it to the extent of what those opinions are.

MS. HIRSHMAN: Where is it?

MR. SCHERNER: I think it's located in several places: "The answer is that Heparin probably will not and that nothing probably will not because this is such a tenuous situation that is

unpredictable. No one can really make a definitive statement as to how to stop all this short of doing immediate surgery on every single patient who is suspected of having possible blood clot." That obviously addresses the issue. There's one other sheet. There's another sheet. It may be in front of the doctor right there.

(Pause.)

MS. HIRSHMAN: Where does it say "probability"?

MR. SCHERNER: It doesn't say "probability," but so what? If you're not going to ask him about probabilities, I have a right to. I have a right to discover not only the opinions he's rendered but the ones he's written.

MS. HIRSHMAN: He told you he doesn't maintain opinions on those subjects.

MR. SCHERNER: He told me he has an opinion that it would not prevent the loosening. I'm exploring the other aspect. He has already told us that he has an opinion that Heparin probably would have prevented a clot from getting bigger. I'm now exploring that possibility with him.

MS. HIRSHMAN: I don't think he's given that opinion. You asked him what effects it may

have, and I don't think he's giving an opinion.

MR. SCHERNER: Then the record will indicate. Since this is a deposition pursuant to Rule 26, I'd like to explore it further with the doctor.

MS. SPIRITO: I'm going to make a continuing objection to all these questions inasmuch as the doctor already indicated that he's not an expert on the mechanisms of Heparin. I won't interrupt again.

MR. SCHERNER: I'm not limited.

MS. SPIRITO: I'm making my objection, that's all.

MR. SCHERNER: Fine.

BY MR. SCHERNER:

Q. Doctor, if, according to the testimony of Dr. Jeffrey, I'd like you to assume this to be a fact, that the clot was probably already located at the place where he found it, at least by the morning hours of 6:44, in the morning hours -- Let me rephrase it.

That a clot was located at the same location where he found the clot, which was identified as a saddle embolus, at least as early as the morning hours when Mr. Parr was entered into the emergency room at 6:44 on September 20, 1990, and that subsequently, that clot grew in size to the point where it then occluded the pulmonary tree and caused Mr. Parr's death, do you

have an opinion as to whether the administration of Heparin at a time when you said it should have been given or you would have given had the VQ scan come back with a high probability reading, that the administration of Heparin would have prevented that buildup and prevented Mr. Parr's death?

First of all, do you have an opinion about that?

MS. HIRSHMAN: I have an objection to the characterization of the prior testimony of Dr. Jeffrey plus the hypothetical facts.

THE WITNESS: Assuming I understand that long question, I don't have an opinion.

BY MR. SCHERNER:

Q. And that's because you don't know how Heparin works?

A. No, actually, it's because that scenario that you presented to me is not consistent with a sudden -- the suddenness of this patient's demise.

Q. What's your understanding of the suddenness of his demise?

A. I thought he was feeling moderately comfortable and got up off the stretcher and just collapsed, and it was very sudden, probably within seconds.

Q. And then what happened?

A. I think they instituted resuscitative measures,

CPR.

Q. How long after that incident did Mr. Parr die?

A. I don't remember. I'd have to look that back up.

Q. A matter of minutes, hours?

A. I don't remember. I'd have to look it up.

MS. HIRSHMAN: Do you want him to take a look.

MR. SCHERNER: Sure.

BY MR. SCHERNER:

Q. Would it make a difference as to say how long it was?

A. No, it wouldn't make any difference at all, but I'm just trying to answer your question.

(Pause.)

A. It looks like 65 minutes.

Q. Doctor, when you said that you didn't have an answer, it wasn't because you didn't note how Heparin worked but because you disagreed with the facts and thought they were inconsistent with the facts as you understood them; is that right?

MS. SPIRITO: As you stated Dr. Jeffrey stated it? I want to make the record clear.

MR. SCHERNER: Yes.

THE WITNESS: I'm sorry, I didn't

hear what you said.

MS. SPIRITO: I wasn't asking a question. I was just clarifying.

BY MR. SCHERNER:

Q. You told me you didn't have an opinion?

A. Regarding that long, long question that you asked, yeah.

Q. Did you understand my question?

Was there any part of it that you didn't understand?

A. Well, that's a very difficult question because it requires me to play back the question in my mind. It was too long to do that, so I can't answer that question either.

Q. Doctor, you told me, if I understood you correctly, that you couldn't answer it not because you didn't know how Heparin worked but because you disagreed with or you thought that the facts as I summarized them were inconsistent with the facts as you understood them; do you remember saying that?

A. That is correct.

Q. Let me ask you not to evaluate the question, but ask you if, in fact, Dr. Jeffrey's opinion is correct, and if, in fact, a clot was already there at 6:44 in the morning of September 20, and if, in fact, it

subsequently was built up, augmented until finally it got to the size where it occluded the arteries and caused this man's death, given those facts, Doctor, do you have an opinion as to whether the timely and appropriate utilization of Heparin with this patient would have prevented Mr. Parr's death?

MS. HIRSHMAN: First of all, I'm going to object --

MS. SPIRITO: Objection.

MS. HIRSHMAN: -- to the characterization of Dr. Jeffrey's testimony last week.

Secondly, in terms of trying to characterize what timely utilization of Heparin, that has not been defined. It is not his opinion that Heparin was required to have been given to this patient in order to comply with standards of care, so I think it's a very difficult question to answer.

BY MR. SCHERNER:

Q. Doctor, haven't you already testified that if the VQ scan had come back high probability, that you would have at that point instituted Heparin?

A. I believe I said that.

Q. Okay. And wouldn't you agree that the failure at that point to institute Heparin would have been a deviation from acceptable standards of care?

A. Given the hypothetical that the scan came back positive?

Q. Yes.

A. High probability? Yes.

Q. Then let's identify the appropriate and timely administration of Heparin at that point. Sometime around 10:20 or 10:30 in the morning, is it also your understanding, when the results came back from the VQ scan?

A. Well, I would allow a few minutes to hear about the results of the scan, ask the nurse to give the Heparin, start the IV and Heparin, so maybe 15 or 20 minutes more for that, yes.

Q. 10:45.

Doctor, let me ask you again, assume with me for a moment that Dr. Jeffrey will testify, and has, in fact, already testified, that in his opinion, that a clot was present at the location where he found the saddle embolism at least by 6:44 in the morning, okay?

Will you assume that with me?

A. I will.

Q. Second of all, assume with me that it's his opinion that the clot built up and grew to a larger size after 6:44 in the morning.

A. Okay, I'll assume that, too.

Q. Assume with me a new fact, which I will add based upon his testimony, that the clot which eventually killed Mr. Parr was the same clot that caused the findings upon the VQ scan.

A. Assume that, too?

Q. Yes.

A. Sure.

Q. And assume that there was a buildup of a clot at that location.

A. Let me go back one step. The findings you're referring to are the retrospective positive findings rather than the findings of COPD?

Q. That's correct.

A. All right.

Q. I mean, there was never a COPD, though, was there?

The scan hasn't changed. It's just been interpreted more accurately, correct?

A. Fine. Now, the next step?

Q. My final question to you is, given those facts which I have just asked you to assume, do you have an opinion as to whether the administration of Heparin at the time you said it should have been administered pursuant to acceptable standards of care would have, in your opinion, prevented Mr. Parr's death?

MS. HIRSHMAN: Objection.

MS. SPIRITO: Objection.

THE WITNESS: No, I don't.

BY MR. SCHERNER:

Q. You don't have an opinion?

A. I don't have an opinion.

Q. Can you tell me why you don't have an opinion?

MS. HIRSHMAN: Objection. Don't answer the question.

THE WITNESS: Well, I'm not sure I can tell you completely why, but there's a couple of confusing things.

One, I am not -- The whole concept of an occluding saddle clot, which you're describing, and a saddle embolism are two totally different things. So I'm not -- I'm not sure how those two things relate, and I just don't know how they relate, so I have no opinion about how they relate.

BY MR. SCHERNER:

Q. I don't understand. How are they different?

A. You're describing a clot in situ and the word "embolism" means moving, moving from a distal place to a proximal place usually in the body.

In reference to a clot, it's an embolism from the leg -- through the venous system in the legs up through

to the lungs. You're describing a clot sitting right there. That's just not a familiar entity to me, so I don't have an opinion.

Q. Let me add an additional fact, that Dr. Jeffrey also testified that originally the clot was a thrombus that started in the venous system in the legs and subsequently moved to the location where he found it prior to 6:44 in the morning of September 20th and then grew at that location. Can you assume that?

A. Sure, whatever.

Q. Do you now have an opinion as to whether the timely administration of Heparin pursuant to your earlier testimony would have prevented Mr. Parr's death?

MS. HIRSHMAN: Objection.

MS. SPIRITO: Objection.

THE WITNESS: No.

BY MR. SCHERNER:

Q. For the same reasons?

A. Same reasons, just unfamiliar to me.

Q. Doctor, are you acquainted with any studies which have been done as to whether Heparin stops clots from becoming larger?

A. I probably have not read anything about that in 15 years. I just don't -- No, I'm not.

Q. Doctor, let me ask you, since we're talking about 15 years, how many patients do you treat with pulmonary emboli in a given year?

A. I don't know.

Q. More than one?

A. I don't know.

Q. More than 100?

A. I don't know.

Q. When was the last time that you treated a patient with pulmonary embolism?

A. I don't know.

Q. Have you ever treated a patient with pulmonary embolism?

A. I believe so.

Q. How many patients have you treated with pulmonary embolisms since 1972?

A. Probably a dozen.

Q. How many of those patients died?

A. Well, that's a long way back; perhaps two. I'm just guessing completely.

Q. Are you aware of the statistics, the mortality statistics of patients with pulmonary emboli?

A. I could not quote them, no.

Q. Do you have any idea what they are?

A. The larger the embolism, proven embolism -- Of

course, there's a difference treating a patient with pulmonary embolism and treating a patient for pulmonary embolism. The statistics indicate the larger the clot or the more massive the embolism, the higher the mortality rate.

There are really not too many studies which take a subset of patients who come into an emergency department and are later documented to have embolism that enlighten us much in that area, as far as I'm concerned, but I can't give you the studies. I can just tell you that the journal -- It is not a topic that one reads about on a monthly basis if you look at all the journals.

Q. In other words, you can't tell us any study that you're aware of at this point?

A. I could not cite you any study. I did not review studies.

Q. The only principle that you can share with us today is that, in your opinion, on your recollection, the larger the embolism, the greater the percentage of mortality; did I understand that?

A. Yes.

Q. But you're not aware as to what those statistics are?

A. I could not quote them for you, no.

Q. Are you aware of any study which indicates -- Let me back up since we're talking about larger. How would you define massive pulmonary embolus?

A. I would say massive to me would be either an entire lung that was lost or both lungs with greater than 50 percent of one, but that's just to me.

Q. Can you put any anatomical dimensions on the embolus?

A. In terms of diameter or length?

Q. Yes.

A. No, I can't.

Q. Can you put any hemodynamic dimensions to the embolus other than what you just said, losing one lung or two?

A. Other than what I said, no.

Q. Are you aware or are you acquainted with any statistics which identify the mortality rates with patients who have pulmonary emboli who were not treated?

A. No. Same answer.

Q. Would you agree that in all probability, patients who are not treated for pulmonary emboli will have a higher rate of mortality than patients who are treated for pulmonary emboli?

A. I don't know.

MS. HIRSHMAN: Just so we're clear, I just want to make sure I stated myself clearly, maybe I didn't, this witness will not be called as an expert for purposes of rendering opinions as to whether or not any claimed failure to administer Heparin therapy to Mr. Parr was a proximate cause of his death.

BY MR. SCHERNER:

Q. Would you agree that this patient never received any appropriate treatment?

A. No.

Q. For the condition which killed him, not care. I'm talking about treatment. I understand that you're saying there was no deviation from acceptable standards of care.

My question is, would you agree that this patient, Mr. Parr, never received any treatment for his pulmonary embolism?

A. Knowing that the treatment for pulmonary embolism is Heparin and knowing that he didn't get Heparin, I would say he didn't get that. There are, you know, other things such as history and physical and et cetera. I don't think you're meaning to say that.

Q. I'm not talking about care. I'm just talking about treatment for the disease entity known as pulmonary embolism.

A. Yes, I agree, with one exception, I think he got oxygen.

Q. Supportive therapy?

A. Which is a treatment.

Q. But supportive therapy?

A. You may characterize it as supportive therapy. I characterize it as treatment.

Q. When did he receive oxygen?

For how long?

A. That, I would have to look up to give you the exact.

Q. Would you, please?

A. There's an initial nurse's note which says, "Oxygen per nasal, 4 liters per minute." It's not timed. I made the assumption that that was -- since it was the initial nurse's note, it was done shortly after the patient's arrival with his chief complaint of shortness of breath.

Q. That was discontinued approximately 8:16 that morning; was it not?

A. I would have to look that back up. We often discontinue it in order to do blood gases, so I would say you're right. At 8:16? I would have to check that.

Q. Or whatever time, 8:20, 8:16, whenever the blood

gases were obtained?

A. Right.

Q. Do you know whether oxygen was subsequently resumed?

A. The treatment plan on one of the progress notes under 9-20-90 says, "Rest; oxygen; evaluate; consult."

Q. I'm sorry, what was that?

A. The treatment plans says, "Rest; oxygen; evaluate and consult," but it doesn't refer right then as to whether oxygen was started. Oh, okay, here's another note when he went to lung scan at 8:30, he had O2.

Q. Did he continue to have oxygen after that?

A. It does not refer to whether or not it was discontinued, but it does refer to aerosol treatments, and those are powered usually by the oxygen on the wall. So during an aerosol treatment, one would continue to get oxygen.

Q. Would you agree that Mr. Parr presented with some significant risk factors for pulmonary emboli?

A. Yes.

Q. Would you agree that he presented with a history consistent with pulmonary emboli?

A. As consistent as with other things, but yes.

Q. Wouldn't DVTs, a history of DVTs make pulmonary emboli more likely than other things?

A. I don't know.

Q. Would you agree that having a history of DVTs ought to raise a clinician's suspicion that there might be pulmonary emboli when a patient presents with shortness of breath, tachycardia, diaphoresis and legs swelling?

A. Yes.

Q. Doctor, do you think that Mr. Parr in any way was negligent or in any way contributed to his demise --

A. Well --

Q. -- on September 20th, 1990?

A. I don't know that it's possible to answer that question.

Q. What do you mean?

A. The man was obese and had a history of smoking. When he came in on September 20th, he was obese. What I don't know is how much of his lifestyle contributed to that obesity. Some people have a harder time controlling it than others.

He had a history of smoking. He was not smoking then, but there is some irreversible damage that is done by smoking. What percentage of contribution that was, I don't know.

However, because of those two things and because of the possibility of his having some control over each

of those two issues, there is some component of what he did was partly responsible for his death, just like we all have.

Q. But in terms of what happened on September 20, did he do anything which, in your opinion, was negligent or contributed to his demise on September the 20th?

A. I don't believe he did.

Q. Is there anything in which he failed to do on September 20th, 1990 which, in your opinion, contributed in any way to his death on September 20th, 1990?

A. I don't think so.

Q. Doctor, let me look through my notes. Do you know any of the experts who have been identified on behalf of either the Plaintiff or Mrs. Parr or the Defendants in this case?

A. No, I don't.

Q. Do you know Dr. Paris?

A. Yes, but that's for the Plaintiff, isn't it?

Q. Yes. I said do you know either?

A. I'm sorry, I just missed that. Yes, I do know Dr. Paris.

Q. How do you know him?

A. I have run across him nationally on several

occasions. I'm familiar with his name. I have called him to ask for a referral to a rheumatology specialist in the Pittsburgh area.

Q. Has he ever called you?

A. He has written me a letter. I don't know if he has called me.

Q. Do you have any reason to doubt any of his credentials or expertise?

A. No.

Q. Doctor, how about Dr. Goldhaber, do you know him?

A. No, I don't.

Q. Are you acquainted with his book?

A. No.

Q. How about Dr. Taylor, are you acquainted with him?

A. No.

Q. And if I understood your earlier answer, we'll do it by exclusion rather than inclusion, you are not acquainted with anyone other than Dr. Paris?

A. That is correct.

Q. The extent of your knowledge of him is as you've already summarized for us?

A. He gave me a tour once of his EMS unit in Pittsburgh, probably lasted 45 minutes.

Q. Earlier, in response to a statement that was made

by Miss Hirshman, I indicated that I was under the impression that you testified approximately 100 times in one form or another; is that true?

A. It's a little excessive. I probably have testified 60 times, but I don't think it's been 100.

Q. But you've reviewed at least 100 cases; have you not?

A. I would think since -- I started in 1975, and I think it's pretty close to 100 since then.

Q. Have you reviewed any cases in the last year, I'm talking about the last 12 months?

A. Yes.

Q. How many cases have you reviewed?

A. I guess I've seen 8 cases in the last 12 months.

Q. Have you ever reviewed any cases dealing with pulmonary emboli?

A. I specifically went back to think about that. I anticipated your question. And I cannot think of a case that I have done that has dealt with pulmonary embolism.

Q. Have you reviewed any case -- and I'm using that in a broader sense than testified -- have you reviewed a case that dealt with the appropriate utilization of Heparin?

A. No.

Q. You indicated that perhaps you dealt with a dozen cases in the last 20 years with pulmonary emboli; did I understand that correctly?

A. No.

Q. Not as an expert --

A. Oh, I see. Perhaps, yes.

MS. HIRSHMAN: Let him finish the question.

BY MR. SCHERNER:

Q. -- but just as a physician?

A. Yes, sir.

Q. Have you ever been a defendant in any case?

MS. HIRSHMAN: Objection. Go ahead.

THE WITNESS: Yes.

BY MR. SCHERNER:

Q. How many times?

MS. HIRSHMAN: Continuing objection to this line.

THE WITNESS: Perhaps three or four.

BY MR. SCHERNER:

Q. What were the allegations in those cases?

A. Each time, it was a member of my group, and I was named because I'm head of the group.

Q. You're talking about Professional Emergency

Services, Inc.?

A. Yes, sir.

Q. How many physicians are working for that group at this time?

Last year, I believe you said you had seven. How many are full time?

A. There are now 13 full-time emergency physicians.

Q. In addition to that, last year, I believe you were utilizing somewhere around 13 or 15 other physicians?

A. Yes, and I still am.

Q. Are you still the sole owner of that corporation?

A. Yes, I am.

Q. And that corporation supplies emergency room physicians to Toledo Hospital here?

A. Yes, sir.

Q. Does it supply emergency room physicians for any other hospital?

A. Yes, sir.

Q. What other hospitals?

A. Just one, Fremont Memorial Hospital in Fremont, Ohio.

Q. Have any of the physicians, more specifically I'll ask for each physician, has Dr. Greer ever worked for you in any capacity?

A. I don't remember, although there is a doctor by the name of Gary Geary, but I thought it was G-E-A-R-Y, but I believe he practices in Cincinnati. I don't believe this is the same physician.

Q. How about Dr. Arun Acharekar?

A. No.

Q. How about Dr. Lowery?

A. No.

Q. Do you know any of the other doctors, Dr. Kaye or Dr. Roemer?

A. I do not.

Q. You also have a group called Janiak Consulting, Inc.?

A. Yes, sir.

Q. Are you the sole owner of that?

A. That is -- Yes.

Q. Is that the group through which you provide medical legal consulting?

A. Not just medical legal. I also do site surveys for emergency departments.

Q. Where do you do those site surveys?

A. Wherever someone will ask me to come and do such a survey.

Q. What is involved in the site survey?

A. Each one is tremendously different. There

usually are difficulties in the organization of the emergency department or problems with the relationship between the emergency department and the medical staff or perhaps with the administration, and I'm usually called in to evaluate, trouble shoot and give suggestions for solving the problems.

Q. Have you ever provided such advice for Mansfield General Hospital?

A. I have not.

Q. Have you ever been asked by anyone at Mansfield General Hospital to provide those services?

A. I have not.

Q. How long has Janiak Consulting, Inc. been incorporated?

A. I want to say ten years. Sounds about right.

Q. You also had a group called Emergency Management Consultants?

A. Correct.

Q. Does that group still exist?

A. It does not. As a matter of fact, that terminated, and then Janiak Consulting emerged.

Q. Is Michael Irvine involved with you in any of your corporations, Dr. Irvine?

A. Yes.

Q. Is he with EMD?

A. Yes.
Q. He owns 40 percent of that corporation?
A. Yes, he does.
Q. I believe you own 40 percent of that corporation?
A. That is correct.
Q. And a Marty Gillespie owns 20 percent of that organization?
A. That's correct.
Q. And that's a price billing service for various emergency room hospitals in the state?
A. Yes.
Q. Does it provide any services for Mansfield General Hospital?
A. It does not.
Q. Has it provided at any time emergency room services of any type, and I don't mean medical services, but of any type for Mansfield General Hospital?
A. No.
Q. Do you have any other corporations other than the corporations that I've identified?
A. No.
Q. Do you have any other partnerships other than your associations with Dr. Irvine and not doctor but Miss Gillespie?

A. No, but let me go back one question. There was one other thing. There was a doughnut business that is now bankrupt and defunct. I just wanted to add that in there.

Q. There's also an emergency foundation?

A. Yes.

Q. Is that an incorporated entity?

A. I think it is.

Q. So in addition to the ones that we've identified, you also have an interest in that foundation for --

A. The Emergency Medical Foundation is a 401-C-3 corporation that has been set up by the American College of Emergency Physicians. It's in Dallas, Texas. And anyone who has served as the president of the American College of Emergency Physicians also serves a year serving as chairman of the Emergency Medical Foundation.

I have served as president of the College, therefore I was chairman of the EMF for one year, I believe '85, and that's the last time I had anything to do with that.

Q. Doctor, would it be fair to say that most of the writing that you have done has been in the area of management of medical services?

A. Yes.

Q. And you have written nothing in the area of pulmonary emboli?

A. That is correct.

Q. And the other documents which you have participated in producing, one I believe was in the area of the gastrointestinal system?

A. Right.

Q. Most of that was actually done by the residents of yours that provided some comment or critique; is that fair?

A. Yes, that is fair.

Q. The other article you wrote dealt with a CPR method that was instituted by you but has never gained general acceptance; is that right?

A. That is correct.

Q. Doctor, have you ever at any time provided any kind of assistance to the firm of Jacobson, Maynard Tuschman and Kalur other than the assistance you provided here in this case?

A. Yes, I have.

Q. How many times have you reviewed cases for that firm?

MS. HIRSHMAN: I'm going to object to the term "assistance."

MR. SCHERNER: I don't think the

doctor had any problem with it.

BY MR. SCHERNER:

Q. What was your understanding of the term "assistance"?

A. I didn't take the time to formulate it.

Q. Have you ever reviewed any other cases for that firm?

A. Yes.

Q. How many cases have you reviewed for them?

A. I would say six.

Q. Are those for attorneys here in Toledo?

A. I believe I reviewed one in Toledo, I think one in Cleveland, two in Columbus, and two in Kentucky. I think that's how it breaks down.

Q. Have you ever reviewed any case for Miss Hirshman other than this case?

A. Yes.

Q. And what case was that?

A. I don't remember. I don't keep that in my head.

Q. Have you ever reviewed any other cases for Mr. Kalur?

A. I don't know if I've ever reviewed one specifically. I know his name is on the list, but I don't remember reviewing one for him or talking to him.

Q. Have you reviewed a case for Gayle Arnold in

Columbus?

A. I think so, yes.

Q. Was it involving a physician who practiced in the Columbus area?

A. I don't remember the location of the practice, but I would guess that's true.

Q. Have you ever reviewed any case on behalf of any physician that practiced at Mansfield General Hospital?

A. I don't think so. I've never listed them by hospital, but I could be wrong, but that doesn't ring a bell with me.

Q. You identified six that you have reviewed. Have all of those been cases which you provided testimony?

A. No.

Q. How many cases have you provided testimony of those six, and how many cases have you provided testimony?

A. One case. I want to say one case went to trial, and I think there were two with testimony.

Q. Are you expected to or are you expecting to testify in any of the other three cases?

A. In all of them if asked.

Q. So they're all cases which are currently going on?

A. That's right.

Q. In addition to having reviewed any cases for Jacobson, Maynard, Tuschman and Kalur, where do you have your insurance?

A. You mean our group's insurance, liability insurance?

Q. Yes.

A. They're with P.I.E.

Q. Is it your understanding that Jacobson, Maynard, Tuschman and Kalur is the law firm that does the work for P.I.E.?

A. Yes.

Q. And in the cases where you have personally been a defendant, have you been defended in any of those cases by attorneys of Jacobson, Maynard, Tuschman and Kalur?

MS. HIRSHMAN: Show a continuing objection to the insurance issue.

THE WITNESS: I'm not sure I understand the question because I don't know that I was personally a defendant in any of those. I think I was named because I'm president of the group, but I did not see the patients.

BY MR. SCHERNER:

Q. In those cases, whatever your role was, were either you or your group defended by attorneys from Jacobson, Maynard, Tuschman and Kalur?

A. I think in two of them for sure. The other two may have been when we were insured with P.I.C.O.
Q. Who was the attorney who represented you or the group from Jacobson, Maynard, Tuschman and Kalur?
A. I can't tell you. I don't know.
Q. Have you ever participated in any review for any groups other than the review of these six cases?
A. Yes.
Q. Do you have any official role in any of those groups?
A. Do I have one? No.
Q. Is it an ad hoc committee that you would be appointed to?
A. I participated in the past. I don't participate or am not appointed to anything at present.
Q. In what capacity did you participate in the past?
A. There is a -- what's called a local board, and the local board is comprised of physicians from various specialties and attorneys from the firm.
Q. And when you're talking about the firm, you're talking about Jacobson, Maynard, Tuschman and Kalur?
A. Yes.
Q. How long did you serve on that board?
A. I believe two years.
Q. And during that period of time, on how many

occasions did you review cases involving P.I.E. and attorneys from Jacobson, Maynard, Tuschman and Kalur?

A. Let me make sure I have the question right. How many times was I asked to specifically review a case?

Q. No, how many times did you participate in any review process while you were sitting on that board?

A. Given that I didn't make all the meetings, I would say eight to ten.

Q. These would be in addition to the six cases in which you appeared as an expert for attorneys or reviewed cases as an expert for attorneys for Jacobson, Maynard, Tuschman and Kalur?

A. Right.

Q. Did Miss Hirshman participate in any of those other eight cases, eight to ten other cases?

A. No.

Q. Did Mr. Kalur participate in any of those other eight to ten cases?

A. If he did, I was not aware of it.

Q. Doctor, have you had the occasion to review any other cases either on behalf of P.I.E. or Jacobson, Maynard, Tuschman and Kalur; more specifically, has anyone at P.I.E. contacted you to review any cases?

MS. HIRSHMAN: Just a continuing objection. I believe he already stated that.

THE WITNESS: Is this question in addition to the other question or --

BY MR. SCHERNER:

Q. Yes.

A. Well, the answer to that would be no unless my memory of it being six is wrong, and there are seven, then the answer would be yes; otherwise, I can't characterize it any other way.

Q. Have you ever had any other function or role with either P.I.E. or Jacobson, Maynard, Tuschman and Kalur other than serving on the board which you identified or reviewing cases for the law firm?

A. Yes.

Q. What are those functions?

A. I went to an ad hoc committee meeting once which dealt with the topic of standardization of emergency medical records from the standpoint of transcription services.

Q. Who supported that?

A. Well, you know, I'm not entirely sure. I think P.I.E. may have been partly responsible, but I also am not sure whether or not there was some contribution from whatever hospital we met at.

Q. Did anyone from Jacobson, Maynard, Tuschman and Kalur participate at that function?

A. I would say yes.
Q. Do you remember who it was?
A. No idea.
Q. But you do recall someone from Jacobson, Maynard, Tuschman and Kalur being present?
A. Right. You're characterizing someone, an attorney, or maybe not? I don't know that it wasn't an attorney.
Q. Any other role other than what you identified here for us?
A. No, I can't think of any.
Q. Do you have any ownership interest in P.I.E.?
A. I don't know that. There are times when one -- When you buy a liability insurance policy -- I don't think it's the kind of company, is it, a mutual insurance company? I'm sorry to digress and talk about business law, but I don't think it's a mutual company.

I just don't know the answer to that, but there's been no stock or I didn't purchase anything. I have no interest, but I want to try to be technically correct. It could be that if all purchasers of P.I.E. insurance are in some way part owners, but I don't think that's the way the company works.

Q. When you were participating on this board that reviewed cases, did you receive any remuneration for

that?

A. None -- Oh, that's not correct. Dinner.

Q. Was it good?

Since we're looking for a restaurant, was it Syd and Diane's?

A. It was not at Syd and Diane's, and it was not good.

Q. Any other remuneration other than dinner?

A. Yes, I think that there was some.

Q. What was that?

A. I believe there was another committee that met one time with a specific task of doing a preliminary review of a particular case.

MS. HIRSHMAN: Don't go into the issues of a case review.

THE WITNESS: No, I'm done with that part of it. And I think for that hour or two of time, we received like $75, but I don't know whether that's a correct amount, but there was some kind of honorary or remuneration, something. I don't remember what it was.

BY MR. SCHERNER:

Q. Did you hold any official position with this board?

A. Member of the board.

Q. Is it your understanding that as an insured of P.I.E., that you are either required or expected to serve on a board like this?

A. Not at all.

Q. What elected you to serve on the board?

A. The fact that they needed an emergency physician, and I had an interest to see how these things work.

Q. Doctor, the information that you shared with me indicated that you were billing Miss Hirshman $1,400 for the time that you had spent. I believe it's on the inside of your folder also in a letter from you?

A. Yes.

Q. And that was for seven hours?

A. Yes.

Q. Is that computed on a direct linear basis, $200 per hour?

A. Correct.

Q. Is that also what you're going to be charging me since I'm going to be expected to pay for your time today?

A. Is this another one right down the middle? Yes, the answer is yes, I'm sorry.

Q. And do you expect to do any additional work in this case other than what you've already done?

A. I don't expect to. If someone submits another

deposition for me to review, I would do that, but I have no expectation.

Q. And if I understand you correctly, the only area in which you will testify or in which you will be asked questions are regarding Dr. Acharekar and Dr. Greer and whether they, in your opinion, met acceptable standards of care?

A. I think that's right.

Q. And you will not be testifying as to any causal relationship between the failure to administer Heparin and Mr. Parr's death?

A. Right.

MS. HIRSHMAN: And the term "failure" makes it sound like something was done wrong, and we don't mean to predispose that.

MR. SCHERNER: I understand you don't, but I do.

MS. HIRSHMAN: We don't on this side of the table.

BY MR. SCHERNER:

Q. Dr. Janiak, are you aware of Mr. Parr's visit to Dr. Lowery's office on January 26th, 1990?

A. Yes. I forgot the date, but generally I'm aware of that.

Q. I believe it's right on the front of your file,

but I don't recall whether you mentioned it. I believe you said you reviewed his deposition as well?

A. I did not.

Q. You did not review it?

A. He's not on my list, that's correct.

Q. Do you expect to review that deposition and render any opinions regarding Dr. Lowery's care?

A. No and no.

Q. Is there any other question that you think, since you have so much experience in testifying, that you think I should have asked you today?

MS. HIRSHMAN: We're going to object and move to strike, and I don't think he's going to respond to that so don't respond.

MR. SCHERNER: We can do it off the record.

MS. HIRSHMAN: Are we done?

THE WITNESS: I don't want to touch that one off the record.

BY MR. SCHERNER:

Q. Doctor, is that the extent of the opinions then you will be rendering in this case?

A. Yes.

MS. HIRSHMAN: Just so we're clear, there may be an offshoot of any opinion he discussed

today obviously that I may ask him, I mean basically, but his opinions are standard of care of Dr. Greer and Acharekar, just so we're clear.

And to the extent you want to ask questions about those issues, that's fine, but those are the topics of his opinions, yes.

BY MR. SCHERNER:

Q. And the reason you will not be expressing an opinion regarding the causal relationship between the absence of any treatment for pulmonary emboli in Mr. Parr's death is, if I had understood you correctly earlier, that you're not an expert on Heparin?

A. That is exactly right.

MR. SCHERNER: At this point, unless other persons may be asking questions that prompt a question in my mind, I have no other questions but would reserve the right to open up this deposition in the event you're going to be expressing other opinions than those which you have expressed here and those which Miss Hirshman indicated you would be expressing.

MR. ROMANELLI: I have no questions of the doctor.

MS. HIRSHMAN: You don't have any questions do you, Maryellen?

MS. SPIRITO: No.

BY MR. SCHERNER:

Q. Let me just by follow-up ask, do you expect to express any opinions regarding the care provided by Dr. Roemer?

MS. SPIRITO: Objection.

THE WITNESS: No, I don't expect to.

BY MR. SCHERNER:

Q. Do you have any opinions regarding the care that was provided by him?

A. I have some.

Q. What are those opinions?

MS. SPIRITO: Object.

THE WITNESS: To date, my opinions are that he was called, and he came in to see the patient which right there surprised me. I thought that was wonderful, that a private doctor would come into the emergency department in the middle of the day and see a patient. That frequently isn't seen.

He promptly evaluated the patient and had him admitted. So from that standpoint, I'm not talking technically, I was talking about that part of it, I thought it was good.

BY MR. SCHERNER:

Q. Do you have any criticisms of any of his care?

A. Not at all.

Q. Do you expect to testify -- I mean, are you going to be testifying as to any of those opinions at the time of --

A. No.

MS. SPIRITO: Objection withdrawn.

MR. SCHERNER: It wouldn't jibe if he criticized you.

MS. SPIRITO: Just in case.

(Signature not waived.)

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(Thereupon, the deposition was concluded at 5:15 o'clock p.m. on Monday, September 28, 1992.)

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A F F I D A V I T

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State of Ohio,)
) SS:
County of _____,)

Bruce D. Janiak, M.D., having been duly sworn and cautioned, deposes and says that:

I have read the transcript of my deposition taken on Monday, September 28, 1992, and made all necessary changes and/or corrections as noted on the attached correction sheet, if any.

_____
Bruce D. Janiak, M.D.

Sworn to before me and subscribed in my presence this ____ day of _____, 19___.

_____
Notary Public

My commission expires: _____.

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C E R T I F I C A T E

- - -

The State of Ohio,)
) SS:
County of Franklin,)

I, Cynthia L. (Advent) Cunningham, Registered Professional Reporter and Notary Public within and for the State of Ohio, hereby certify that the foregoing is a true and accurate transcript of the deposition testimony, taken under oath on the date hereinbefore set forth, of

BRUCE D. JANIAK, M.D.

I further certify that I am neither attorney or counsel for, nor related to or employed by any of the parties to the action in which the deposition was taken, and further that I am not a relative or employee of any attorney or counsel employed in this case, nor am I financially interested in the action.

Cynthia L. Advent-Cunningham

Cynthia L. (Advent) Cunningham, Registered Professional Reporter and Notary Public in and for the State of Ohio.

My commission expires:

October 2, 1994.

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