

Estate of Dorothy Prinzler vs. Lake Hospital System, Inc., et al.  
Telephone Deposition of Bruce D. Janiak, M.D.

1	2	3
1	IN THE UNITED STATES DISTRICT COURT	1 APPEARANCES, CONT.
2	FOR THE NORTHERN DISTRICT OF OHIO	2
3	EASTERN DIVISION	3 On behalf of the Defendant Dr. Austria:
4		4 Leslie M. Jenny, Attorney at Law
5	ESTATE OF DOROTHY PRINZLER, ) CASE NO. 1:00CV0342	5 Reminger & Reminger
6	Plaintiff, ) JUDGE D'MALLEY	6 1400 Midland Building
7	versus )	7 101 Prospect Avenue West
8	LAKE HOSPITAL SYSTEM, INC., ) TELEPHONE DEPOSITION OF	8 Cleveland, Ohio 44115
9	et al., ) BRUCE D. JANIAK, M.D.	9 216-687-1311
10	Defendants. )	10 INDEX
11		11 EXAMINATION BY PAGE
12		12 Mr. Kulwicksi 6
13	TELEPHONE DEPOSITION OF BRUCE D. JANIAK, M.D.,	13 PLAINTIFF'S EXHIBITS
14	a Witness herein, called by the Plaintiff for	14 None
15	Cross-Examination, pursuant to the Federal Rules of	15 DEFENDANT'S EXHIBITS
16	Civil Procedure, taken by the undersigned, Lisa A.	16 None
17	Naiman, Registered Professional Reporter and Notary	17
18	Public in and for the State of Ohio, at the offices of	18
19	Reminger & Reminger, 101 Prospect Avenue West,	19
20	Cleveland, Ohio, on Friday, October 10, 2003, at 1:07	20
21	p.m.	21
22		22
23		23
24		24
25		25

  

1	2	4
1 APPEARANCES:	1	1 MR. KULWICKI: I guess at the outset I
2	2	2 had agreed to make a record with regard to the
3 On behalf of the Plaintiff:	3	3 scheduling foul-up today. I am coming out of a
4 David A. Kulwicksi, Attorney at Law	4	4 trial that lasted two-and-a-half weeks and ended
5 Becker & Mishkind Co., L.P.A.	5	5 on Wednesday of this week. I learned late
6 Skylight Office Tower	6	6 yesterday that there was a possibility that there
7 1660 West Second Street, Suite 660	7	7 was a deposition scheduled for today, and I
8 Cleveland, Ohio 44113	8	8 learned that via looking at my secretary's
9 216-241-2600	9	9 calendar, a secretary that I terminated
10 On behalf of the Defendant Lake Hospital System,	10	10 immediately before going into this two-and-a-half
11 Inc.:	11	11 week trial for reasons that might become apparent
12 Kathleen A. Atkinson, Attorney at Law	12	12 during the course of this record that I'm making
13 Reminger & Reminger	13	13 right now.
14 1400 Midland Building	14	14 But I saw penciled into her calendar
15 101 Prospect Avenue West	15	15 that there was a tentative date for Dr. Janiak's
16 Cleveland, Ohio 44115	16	16 deposition today, and I made some phone calls
17 216-687-1311	17	17 late yesterday and learned that in fact it was
18 On behalf of the Defendants John Bosch, M.D. and	18	18 on. We got a court reporter scheduled, and then
19 University MedNet, Inc. (by phone):	19	19 this morning it dawned on me that there may not
20 Darlene White, Attorney at Law	20	20 have been notice given to the various Reminger
21 Gallagher, Sharp, Fulton & Norman	21	21 firm attorneys that were involved, and I
22 7th Floor, Bulkley Building	22	22 confirmed that in fact there was no notice
23 1501 Euclid Avenue	23	23 provided to them. I told them that in light of
24 Cleveland, Ohio 44115	24	24 Attorney White traveling to Atlanta for the
25 216-241-5310	25	25 deposition that I intended to proceed with it,

<p>5</p> <p>1 but I wanted to make clear on the record that 2 this is proceeding under protest, that proper 3 notice was not provided to three of the 4 defendants, or at least all of the defendants 5 represented by Reminger attorneys, and that if 6 they feel as though they need to come back and 7 depose Dr. Janiak in greater detail later that I 8 will pay for the cost of Dr. Janiak's time in 9 doing that.</p> <p>10 I suspect that that will not be 11 necessary given the limited focus of Dr. Janiak's 12 opinions and what I anticipate he's going to tell 13 me with regard to the care of the other 14 physicians, and I assume he's not going to have 15 any complaints about that care, so I don't think 16 that's going to be necessary, but I certainly 17 think that in fairness I should hold that open.</p> <p>18 I did speak with Sue Seacrist this 19 morning and told her of the problem, and she 20 indicated to me that neither she, nor Tom 21 Kilbane, nor Tracey McGurk, the other Reminger 22 lawyers of record, were available for the 23 deposition today. Kathleen Atkinson and Brad 24 Longbrake have come in to cover, but they have 25 assured me that they have not had adequate time</p>	<p>7</p> <p>1 A. Bruce A. Janiak, J-A-N-I-A-K, 405 Bradford Point, 2 Peachtree City, Georgia 30269.</p> <p>3 Q. Doctor, I note on the report that I've been 4 provided in this case that your address as of 5 February 2003 was a Perrysburg, Ohio address. 6 Did you recently move to the Atlanta area?</p> <p>7 A. Yes. First week in July, I think.</p> <p>8 Q. Okay. And can you tell me what occasioned your 9 move from Toledo to Atlanta?</p> <p>10 A. Sure. I was Director of the Emergency Department 11 at the Toledo Hospital in Toledo, Ohio. I had 12 sold that contract a couple months before I 13 moved, spent some time staying in the Toledo area 14 working at hospitals in Michigan, had some 15 surgery on my ankle which needed to be done, and 16 at the same time commenced work at the Medical 17 College of Georgia in Augusta, commuting from 18 Toledo actually for several months before I moved 19 down here.</p> <p>20 So I relinquished my position in Toledo 21 because the politics were horrible and the 22 economics were getting worse than horrible, and 23 decided to go into a more partly academic 24 setting.</p> <p>25 Q. Okay. Can you tell me roughly how your</p>
<p>6</p> <p>1 to prepare, and I certainly understand and 2 appreciate that.</p> <p>3 But with that being said, I want to 4 begin the deposition with Dr. Janiak. Does 5 anyone else want to add anything to the record at 6 this point in time?</p> <p>7 MR. LONGBRAKE: We would just add that 8 we appreciate David's candor and professional 9 handling of this matter throughout the issue, and 10 it certainly isn't something that we believe was 11 in any way intentional, and wanted that to be 12 part of the record.</p> <p>13 MR. KULWICKI: Okay. Doctor, we're 14 going to swear you in from this end, so please 15 raise your right hand, and Lisa Naiman, the court 16 reporter, will swear you in.</p> <p>17 WHEREUPON,</p> <p>18 <b>BRUCE D. JANIAK, M.D.,</b> 19 after being first duly sworn, as hereinafter 20 certified, testified as follows:</p> <p>21 <b>CROSS-EXAMINATION</b></p> <p>22 BY MR. KULWICKI:</p> <p>23 Q. Doctor, why don't you state your full name and 24 spell your last name for us and give us your 25 current business address.</p>	<p>8</p> <p>1 professional time breaks down currently?</p> <p>2 A. Currently I work eight shifts a month at the 3 Medical College of Georgia in Augusta, and if the 4 medical staff office at Fayette Community 5 Hospital which is six miles from my house gets 6 its act together, I will be on the staff there 7 next month and will be able to work extra shifts 8 there. They've just been fooling around with it 9 now for six months.</p> <p>10 Q. When you say eight shifts a month, what are we 11 talking about; how long are each of the shifts?</p> <p>12 A. Eight hours, eight-and-a-half hours, depending on 13 how soon you can get out of there.</p> <p>14 Q. Okay. So you're working roughly 64 hours a month 15 in the clinical practice of emergency room 16 medicine?</p> <p>17 A. Well, I teach. I see the patients, but I also 18 work with the residents, because they see the 19 patients also. So it's a professorship.</p> <p>20 Q. Okay. And that's about 64 hours a month?</p> <p>21 A. Right.</p> <p>22 Q. And then besides that, what other sort of 23 professional activities are you engaged in?</p> <p>24 A. Well, this month really is nothing until I get on 25 the staff at Fayette Community Hospital. So the</p>

<p style="text-align: right;">9</p> <p>1 only two things I'm doing right now is some 2 medical legal reviews and the Medical College of 3 Georgia. I'm just waiting to get on staff at 4 Fayette Community. 5 Q. Okay. If you could, tell me what sort of time 6 you spend with medical legal review. 7 A. Oh, gosh. I never really calculated the hours. 8 I can tell you that I probably get -- in the last 9 year I've probably been asked to review 30 cases 10 I would think. 11 Q. Okay. And you review those through Janiak 12 Consulting, Inc.; is that correct? 13 A. Yes. 14 Q. Is that company set up solely for the purposes of 15 your own medical legal activities? 16 A. No, it also is I do some consulting also which is 17 a little bit different from medical legal. It's 18 just going to a hospital if they call me and 19 doing site reviews. That probably is a, to put 20 it in perspective, a once-a-year activity, so 90 21 percent of the Janiak Consulting income derives 22 from medical legal review. 23 Q. Are there any employees of Janiak Consulting 24 besides yourself? 25 A. Not today, no.</p>	<p style="text-align: right;">11</p> <p>1 A. Sure. Review is 300, meetings are 300, 2 depositions and trial are 400. Obviously the 3 expenses for deposition and trial will vary 4 depending on the location where I have to go. 5 Q. Now, besides practice of medicine and your duties 6 as a professor of medicine and your medical legal 7 review, do you have any other income generating 8 activities that you're currently engaged in? 9 A. Well, part of my income at the Medical College of 10 Georgia is attributable to I guess what they call 11 an outreach coordinator, something like that, 12 where I do some meetings with small hospitals. 13 To put that in perspective, I have spent I think 14 three full days in the last six months doing 15 that, and that would be it. In terms of 16 generating income any other way, I don't think 17 there's anything else I do currently. 18 Q. Doctor, have you ever sat down and calculated the 19 amount of time that you spend in the active 20 clinical practice of medicine or teaching 21 medicine versus the time you spend in any 22 administrative activities or as an outreach 23 coordinator or in medical legal review? 24 A. No, I never have, but the vast majority of my 25 time is clinical because the medical legal stuff</p>
<p style="text-align: right;">10</p> <p>1 Q. Have there been in the past? 2 A. No. We were just talking to my accountant about 3 whether my wife should be an employee, so I don't 4 know that yet. 5 Q. And the 30 cases or so, are you saying that 6 you've reviewed that many this year, meaning from 7 January until October of 2003? 8 A. I'm saying from twelve months prior to today. 9 Q. Are all of those cases on behalf of defendants in 10 lawsuits? 11 A. No. 12 Q. What's your percentage breakdown between 13 defendant's and plaintiff's work? 14 A. Well, it used to be 85/15, and I've been saying 15 it's 80/20, but I would think it's getting closer 16 to 75/25 now with the 25 being plaintiffs. 17 Q. Okay. Have you reviewed a plaintiff's case 18 involving emergency care of a patient with 19 pulmonary embolism or deep vein thrombosis ever? 20 A. Oh, man. I can't tell you for sure. I would 21 think so, but I just can't tell you for sure. 22 Q. What do you charge per hour, Doctor? And if it 23 varies between activities like review versus 24 deposition versus trial testimony, if you could 25 lay that out for me.</p>	<p style="text-align: right;">12</p> <p>1 I just do while I'm either flying or on the 2 weekends. The rest of my work is seeing 3 patients, and I actually would be well over a 4 hundred hours a month if I could get on the staff 5 here. I was always over a hundred hours a month, 6 but it's just been two months since I moved and 7 it just takes awhile to get on the medical staff. 8 Q. Doctor, I have a report dated February 23, 2003. 9 I understand that to be your one and only report 10 in this matter; is that correct? 11 A. Certainly it's -- I'm trying to find it in front 12 of me, but there was only one report, that is 13 correct. 14 Q. Okay. And it's very brief. I'm going to read it 15 just to make sure that I have the right one. 16 A. All right. 17 Q. It says, "At your request I have reviewed the 18 University MedNet files for Dorothy Prinzler for 19 January 27, 1999. This was a 59-year-old patient 20 with foot pain and swelling. She had normal 21 vital signs. Her history and physical were 22 appropriate. It was appropriate to order and 23 review the x-rays. The diagnosis was consistent 24 with the physical findings. I find absolutely no 25 deviation from the standard of care in this</p>

<p style="text-align: right;">13</p> <p>1 case."</p> <p>2 Is that your report in this matter?</p> <p>3 A. Yes, sir.</p> <p>4 Q. And does that contain all of your opinions in</p> <p>5 this matter?</p> <p>6 A. That was all of my opinions with regards to the</p> <p>7 University MedNet files.</p> <p>8 Q. Okay. Now, you understand that there are a</p> <p>9 variety of other defendants in this case and</p> <p>10 other care providers besides Dr. Datta,</p> <p>11 D-A-T-T-A, who saw Mrs. Prinzler on January 27,</p> <p>12 1999; correct?</p> <p>13 A. Yes, sir.</p> <p>14 Q. And is it fair for me to conclude that you have</p> <p>15 no legal criticisms of any of these other care</p> <p>16 providers or defendants in this matter?</p> <p>17 A. That's right.</p> <p>18 Q. Okay. With regard to your opinion that you find</p> <p>19 no deviation from the standard of care in this</p> <p>20 case as to Dr. Datta, can I conclude that you</p> <p>21 base that in part on your review of the January</p> <p>22 27, 1999, University MedNet records?</p> <p>23 A. That is correct.</p> <p>24 Q. And as I look at those records I see three pages,</p> <p>25 the first one being a sheet that's signed by Dr.</p>	<p style="text-align: right;">15</p> <p>1 A. I would say probably 20.</p> <p>2 Q. And how many times have you testified at trial</p> <p>3 total in your career as a medical legal</p> <p>4 consultant?</p> <p>5 A. I would say that's probably at least 20.</p> <p>6 Q. Have you ever testified at trial on behalf of a</p> <p>7 plaintiff?</p> <p>8 A. Oh, yes.</p> <p>9 Q. How many times?</p> <p>10 A. At least five or six I would think.</p> <p>11 Q. Did any of those cases involve pulmonary</p> <p>12 embolism?</p> <p>13 A. Same answer as I had before, I don't remember for</p> <p>14 sure whether they did or they didn't. I mean and</p> <p>15 that went to trial. I mean you would think it</p> <p>16 must be, but I just don't remember specific ones.</p> <p>17 Q. Okay. Doctor, while we're still dealing with</p> <p>18 background here and waiting to locate this report</p> <p>19 or these records, can you just define for us the</p> <p>20 term deep vein thrombosis?</p> <p>21 A. Well, it's a blood clot, it's in a vein which is</p> <p>22 regarded as deep, which means it is not a vein</p> <p>23 that is subcutaneous, and it results -- well, I</p> <p>24 guess that's the definition, not result. But</p> <p>25 it's just a clot in a deep vein, a vein that is</p>
<p style="text-align: right;">14</p> <p>1 Datta at the bottom and timed out at 4:15 in the</p> <p>2 afternoon on January 27, 1999?</p> <p>3 MS. WHITE: (Inaudible.)</p> <p>4 MR. KULWICKI: Say that again, Darlene.</p> <p>5 MS. WHITE: He's looking for it.</p> <p>6 MR. KULWICKI: Okay.</p> <p>7 A. We're getting there. Hang on a second. It's</p> <p>8 underneath all the potato chips and sandwich</p> <p>9 debris.</p> <p>10 MS. WHITE: Hold on. I thought I just</p> <p>11 saw it.</p> <p>12 Q. Doctor?</p> <p>13 A. Yes.</p> <p>14 Q. Are you looking for it or is Darlene, because I'm</p> <p>15 thinking I can ask you a few questions if Darlene</p> <p>16 is looking for it?</p> <p>17 A. We're both looking for it, but why don't you go</p> <p>18 ahead.</p> <p>19 Q. Okay. Doctor, have you been retained in the past</p> <p>20 by the Gallagher, Sharp law firm?</p> <p>21 A. Yes, I have.</p> <p>22 Q. How many times?</p> <p>23 A. Probably half a dozen at least.</p> <p>24 Q. And how many times have you been retained by the</p> <p>25 Reminger &amp; Reminger law firm?</p>	<p style="text-align: right;">16</p> <p>1 not just under the skin but within the muscle</p> <p>2 tissue or deeper.</p> <p>3 Q. What are the signs or symptoms of DVT?</p> <p>4 A. Well, a small DVT may have no signs or symptoms.</p> <p>5 The most common signs or symptoms are pain,</p> <p>6 tenderness, and swelling. Sometimes there's</p> <p>7 redness depending on a lot of, many, many</p> <p>8 factors.</p> <p>9 Q. And where might one see or find pain, tenderness,</p> <p>10 swelling, and/or redness associated with DVT?</p> <p>11 A. It would be in the tissues that surround the</p> <p>12 involved vein.</p> <p>13 Q. Might you find pain, tenderness, swelling, and/or</p> <p>14 redness in the calf?</p> <p>15 A. Sure, if that's where the vein is, you might.</p> <p>16 Q. And might you find these signs or symptoms in the</p> <p>17 area of the ankle?</p> <p>18 A. That would be unusual to have all those signs and</p> <p>19 symptoms in the ankle, but if you had a vein that</p> <p>20 was way down distal in the calf, you could have</p> <p>21 those signs in the ankle, that's correct.</p> <p>22 Q. Okay. And I didn't mean to say that all of these</p> <p>23 at the same time, but I mean one or the other,</p> <p>24 might you find them in the ankle associated with</p> <p>25 DVT?</p>

<p style="text-align: right;">17</p> <p>1 A. Sure, it's possible.</p> <p>2 Q. And can you find one or the other of these</p> <p>3 various symptoms, pain, tenderness, swelling,</p> <p>4 and/or redness in the foot as a result of DVT?</p> <p>5 A. I would say the answer to that is it's possible,</p> <p>6 but I have never seen it in the foot myself.</p> <p>7 Q. But certainly you're trained to recognize that</p> <p>8 that's a possibility?</p> <p>9 A. You know what, I think we all recognize it's a</p> <p>10 possibility. I don't remember being trained for</p> <p>11 that, but I suppose it's -- I don't know where</p> <p>12 else you would get that from.</p> <p>13 Q. And, Doctor, what is it physically or physically</p> <p>14 what happens, physiologically what happens to</p> <p>15 cause swelling associated with DVT?</p> <p>16 A. I think that the biggest physiologic change is</p> <p>17 the increase in pressure in the capillaries,</p> <p>18 arterioles, and venules, all of which are in the</p> <p>19 circuit that just precedes the veins. When</p> <p>20 there's increased pressure that fluid, some of</p> <p>21 the serum from the blood tends to be squeezed</p> <p>22 out, so to speak, of the small vessels. That's</p> <p>23 called a transudate, T-R-A-N-S-U-D-A-T-E. And</p> <p>24 that fluid that remains in the tissue is</p> <p>25 associated with swelling.</p>	<p style="text-align: right;">19</p> <p>1 and as far as I can tell, and I want to confirm</p> <p>2 with you, it appears that there are only three</p> <p>3 pages that were generated by University MedNet</p> <p>4 relative to Mrs. Prinzler's January 27, 1999</p> <p>5 visit there. Is that what you have?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And the first one would be a sheet that's</p> <p>8 signed by Dr. Datta at the bottom and timed out</p> <p>9 at 4:15 p.m.; correct?</p> <p>10 A. 4:15, yes, 16:15.</p> <p>11 Q. All right. And then the second one would be</p> <p>12 home-going instructions to Mrs. Prinzler;</p> <p>13 correct?</p> <p>14 A. That's right.</p> <p>15 Q. And then the third one would be the x-ray report</p> <p>16 from the x-ray that was done on that date;</p> <p>17 correct?</p> <p>18 A. Let me see if that's the one -- I have the other</p> <p>19 stuff, but I don't have the x-ray report. I</p> <p>20 don't want to go through this forever, but I have</p> <p>21 those sheets but not the x-ray report.</p> <p>22 Q. Well, while you're looking for that, let me ask</p> <p>23 you is it fair for me to assume that the focus of</p> <p>24 your inquiry and investigation was the workup,</p> <p>25 diagnosis, and treatment plan of Dr. Datta,</p>
<p style="text-align: right;">18</p> <p>1 Q. Now, Doctor, in preparing your February 23, 2003</p> <p>2 report I assume, since you reference them, you</p> <p>3 had the University MedNet records; correct?</p> <p>4 A. Right.</p> <p>5 Q. Did you have the actual films that were taken on</p> <p>6 January 27, 1999?</p> <p>7 A. I do not believe I have seen the x-rays.</p> <p>8 MR. KULWICKI: Okay. We just lost one</p> <p>9 of our lawyers, so if you guys can keep looking</p> <p>10 for those records, we'll go off the record for a</p> <p>11 second.</p> <p>12 MS. WHITE: Actually, Dave, we got them.</p> <p>13 MR. KULWICKI: Okay. Give us two</p> <p>14 seconds. Kathleen has a frog in her throat,</p> <p>15 so --</p> <p>16 (Discussion off the record.)</p> <p>17 MR. KULWICKI: We're back on the record,</p> <p>18 and I should note that we've been joined by</p> <p>19 another attorney.</p> <p>20 MS. JENNY: Yes. Leslie Jenny,</p> <p>21 J-E-N-N-Y. I'm here for Dr. Austria.</p> <p>22 MR. KULWICKI: And everyone else is here</p> <p>23 as previously identified.</p> <p>24 BY MR. KULWICKI:</p> <p>25 Q. Doctor, you now have the records in front of you,</p>	<p style="text-align: right;">20</p> <p>1 D-A-T-T-A, who is a defendant in this litigation?</p> <p>2 A. Right, that was the initial focus, that's</p> <p>3 correct.</p> <p>4 Q. Did the focus expand beyond that initial focus?</p> <p>5 A. Maybe personally it did. I just reviewed the</p> <p>6 records from the emergency visit which was the</p> <p>7 1st of February, I remember, and I thought that</p> <p>8 was okay too.</p> <p>9 Q. Okay. You did not render any opinion or</p> <p>10 written record -- easy for me to say -- written</p> <p>11 report relative to your final findings from that</p> <p>12 day; correct?</p> <p>13 A. That's correct.</p> <p>14 Q. All right. With regard to the January 27, 1999</p> <p>15 visit, you'll agree with me that the patient</p> <p>16 complained of or presented by history the fact</p> <p>17 that she was having right foot pain with edema;</p> <p>18 correct?</p> <p>19 A. Right.</p> <p>20 Q. And she denied any traumatic injury to that part</p> <p>21 of her anatomy; correct?</p> <p>22 A. Yes.</p> <p>23 Q. What do you think was causing her foot pain and</p> <p>24 edema, or do you have an opinion about that?</p> <p>25 MS. JENNY: Objection.</p>

<p style="text-align: right;">21</p> <p>1 MR. LONGBRAKE: Objection.</p> <p>2 A. You mean based on that information or based on a</p> <p>3 review of the records?</p> <p>4 Q. Based on your review of the records.</p> <p>5 A. Oh, I thought it was probably a soft tissue</p> <p>6 problem, most likely an inflammatory problem</p> <p>7 which could have been tendinitis.</p> <p>8 Q. What is tendinitis?</p> <p>9 A. It's an inflammation of the structure which</p> <p>10 connects the muscles to the bone.</p> <p>11 Q. And what causes tendinitis?</p> <p>12 A. Tendinitis can be caused by an acute injury or it</p> <p>13 can be caused by a repetitive chronic injury or</p> <p>14 it can be spontaneous. And finally it could be</p> <p>15 associated with actual bacterial infection, which</p> <p>16 would be extremely rare. It could be associated</p> <p>17 with patients who have complaints of chronic pain</p> <p>18 in the muscles and joints. And I characterize it</p> <p>19 that way because some doctors use the word</p> <p>20 fibromyalgia, I don't. But it can be also</p> <p>21 associated with connective tissue disease, which</p> <p>22 is probably the same mechanism that is easily</p> <p>23 strained soft tissues. And finally I suppose it</p> <p>24 could be associated with tumor, which is very</p> <p>25 rare, I've never seen it.</p>	<p style="text-align: right;">23</p> <p>1 care so I wouldn't make it my own, that emergency</p> <p>2 physicians develop a mental list of possibilities</p> <p>3 that are reasonable that could explain the signs</p> <p>4 and symptoms of a patient's presentation. And</p> <p>5 that means that the emergency physician can</p> <p>6 exclude from that list things that are</p> <p>7 significantly unlikely.</p> <p>8 Q. And in developing this mental list of reasonable</p> <p>9 possibilities, is it incumbent upon the emergency</p> <p>10 room physician to take a history from the</p> <p>11 patient?</p> <p>12 A. Even if you don't develop any list, you still</p> <p>13 take a history.</p> <p>14 Q. And likewise it would be incumbent upon the</p> <p>15 emergency room physician to conduct some form of</p> <p>16 physical exam?</p> <p>17 A. Exactly correct.</p> <p>18 Q. And typically in the emergency room setting there</p> <p>19 would be a set of vitals that are taken, as well;</p> <p>20 correct?</p> <p>21 A. That would be typically true.</p> <p>22 Q. Okay. And then based on what sort of list,</p> <p>23 mental list of reasonable possibilities comes up</p> <p>24 from the vitals, the physical exam, and the</p> <p>25 history, there may be an obligation to proceed</p>
<p style="text-align: right;">22</p> <p>1 Q. Doctor, do you agree with the principal that in</p> <p>2 evaluating an emergency room patient the</p> <p>3 emergency room physician has a duty to develop a</p> <p>4 differential of all possibilities that may</p> <p>5 account for the symptoms and historical</p> <p>6 complaints as presented in the emergency room?</p> <p>7 MS. JENNY: Objection.</p> <p>8 MR. LONGBRAKE: Objection.</p> <p>9 A. No, I don't.</p> <p>10 Q. Okay. So in terms of assessing a patient you</p> <p>11 don't use a differential?</p> <p>12 A. No, I didn't say that.</p> <p>13 Q. Okay. Tell me -- well, first of all, tell me how</p> <p>14 you define the term differential.</p> <p>15 A. The differential diagnosis in classic terms is</p> <p>16 defined as a list of possible disease entities</p> <p>17 that can explain the patient's constellation of</p> <p>18 signs and symptoms.</p> <p>19 Q. Okay. And do you utilize a differential in</p> <p>20 evaluating patients in the emergency room</p> <p>21 setting?</p> <p>22 A. Certainly not a classic differential, no.</p> <p>23 Q. Okay. Tell me about the differential according</p> <p>24 to Dr. Janiak.</p> <p>25 A. It would be, and I believe this is a standard of</p>	<p style="text-align: right;">24</p> <p>1 with some additional testing; correct?</p> <p>2 A. That is correct. It depends on the judgment of</p> <p>3 the physician after they put together the</p> <p>4 information they get from the history and</p> <p>5 physical.</p> <p>6 Q. Okay. Well, you suggest a term now, judgment,</p> <p>7 and I want to try to back that out of the</p> <p>8 equation in a fair way; and what I'm going to</p> <p>9 propose to you is that I would like to know from</p> <p>10 your opinions what complies with a minimum</p> <p>11 standard of care. Because obviously you can have</p> <p>12 a judgment that does not comply with accepted</p> <p>13 standards of medical care, and I want to sort of</p> <p>14 remove that possibility from our discussion, if</p> <p>15 we can. Can we do that?</p> <p>16 A. I'll try. Let's move forward, see if we can do</p> <p>17 that.</p> <p>18 Q. Okay. Well, specifically what I want to know is</p> <p>19 about minimum standards of medical care here, and</p> <p>20 in that regard did Dr. Datta have an obligation</p> <p>21 in your opinion to proceed after the history,</p> <p>22 physical, and vitals to obtain an x-ray?</p> <p>23 A. No.</p> <p>24 Q. Okay. So his obtaining an x-ray in your opinion</p> <p>25 was above and beyond the standard of care?</p>

<p style="text-align: right;">25</p> <p>1 A. Well, I don't know if -- above and beyond implies 2 it might be better. I would have been perfectly 3 happy without the x-ray. 4 Q. Okay. Now, talking about the term differential 5 and using your definition of a mental list of 6 reasonable possibilities, once an emergency room 7 doctor develops a mental list of reasonable 8 possibilities, if that list includes a 9 potentially life threatening condition, does the 10 physician have an obligation to undertake testing 11 to either rule in or rule out that life 12 threatening condition? 13 MR. LONGBRAKE: Objection. 14 MS. JENNY: Objection. 15 MS. ATKINSON: Objection. 16 A. The answer is yes as long as we go back to the 17 term a reasonable possibility. 18 Q. Fair enough. And I guess with respect to deep 19 vein thrombosis, you certainly recognize that 20 that condition has a potential for throwing a 21 clot that lodges in the lung that can kill the 22 patient; correct? 23 MR. LONGBRAKE: Objection. 24 A. Using the generic term, hypothetically anybody 25 with a deep vein thrombosis that could happen.</p>	<p style="text-align: right;">27</p> <p>1 show that DVTs distal to the knee are not that 2 particularly dangerous. However, I will tell you 3 to be very fair that if I thought it was a large 4 DVT and if it involved most of the calf, I would 5 commence treatment. 6 Q. You would as the ER physician commence treatment 7 yourself personally without -- even before you 8 had an internist evaluate the patient? 9 A. As long as I thought it was a large DVT. 10 Q. And what would that treatment consist of? 11 A. Well, in 1999 it would probably be Heparin. 12 Q. And, again, sticking with 1999 and what you feel 13 a reasonably prudent emergency room doctor should 14 do or should have done back at that time, if 15 indeed it was a large DVT and you began treatment 16 with Heparin, would you also proceed with having 17 another physician evaluate the patient and 18 ultimately take over control of care for that 19 patient? 20 MS. JENNY: Objection. 21 MS. ATKINSON: Objection. 22 MR. LONGBRAKE: Objection. 23 MS. WHITE: Objection. 24 A. Sure. Once you start the treatment with Heparin, 25 then you have to pick up the phone and call the</p>
<p style="text-align: right;">26</p> <p>1 Q. So it is indeed potentially a life threatening 2 condition? 3 A. Well, no. A deep vein thrombosis can be 4 potentially a life threatening condition, but a 5 small deep vein thrombosis would not be. So it 6 really depends on the vein and how extensive the 7 involvement. 8 Q. Is DVT a treatable disease? 9 A. In most cases, yes. 10 Q. If you had been standing in Dr. Datta's shoes on 11 January 27, 1999, and you had in your judgment 12 determined that she had in fact had a DVT or you 13 were strongly suspicious that she had a DVT, what 14 would be the prudent thing to do at that point in 15 time or what would you have done? 16 MR. LONGBRAKE: Objection. 17 MS. ATKINSON: Objection. 18 MS. JENNY: Objection. 19 MS. WHITE: Objection. 20 A. Well, now that you give me the patient with the 21 DVT I'd want to know where is it and how big is 22 it. And if it was very small and in the distal 23 calf, I probably would then be calling in 1999 an 24 internist to talk about whether they wanted that 25 treated or not, because there's some data that</p>	<p style="text-align: right;">28</p> <p>1 primary care doctor or internist or whoever is on 2 call and discuss the next step, do they want to 3 admit the patient, do they want them to come to 4 the office for another Heparin injection, those 5 kinds of approaches. 6 Q. Now, let's go back to the patient who has a small 7 DVT. I would assume that you would not 8 necessarily just tell that patient, well, you 9 just have a small DVT, shake it off, head home, 10 forget about it. You would instead give them 11 some advice about the dangers associated with a 12 small DVT progressing to a big DVT; fair enough? 13 MR. LONGBRAKE: Objection. 14 MS. JENNY: Objection. 15 MS. ATKINSON: Objection. 16 A. Yes, that's fair. 17 Q. Okay. Anything else that you think you would do 18 under those circumstances in 1999 with a patient 19 with a small DVT to comply with accepted 20 standards of medical care? 21 A. I would just arrange follow-up. 22 Q. You would nonetheless have them go see a medical 23 doctor? 24 A. Somebody, sure. 25 Q. Okay. Anything else?</p>

<p>29</p> <p>1 A. I might do baseline clotting studies, probably 2 would. 3 Q. PT, PTT? 4 A. Yeah, INR, one of those. 5 Q. And what kind of information would you be looking 6 for there? 7 A. Well, I guess you would want to know if the 8 patient was hypercoagulable, but if not you would 9 at least want to know if somebody eventually 10 wanted to treat them, they would have a baseline 11 lab study that they could measure progress from. 12 Q. Okay. Now, in this patient she comes in 13 complaining of right foot pain with edema, and I 14 want you to assume if you haven't found yet the 15 x-ray report shows that there's ankle soft tissue 16 swelling as well as across the foot dorsum. 17 A. Okay. I haven't found it, but I will assume 18 that. 19 Q. Okay. With that being the case and assuming what 20 else you know about this patient as of January of 21 1999, I assume it's your opinion that DVT would 22 not be in the differential? 23 A. That's correct. 24 Q. And why would you opine that or why would you 25 rule that out of the differential based on the</p>	<p>31</p> <p>1 that would be diagnostic. 2 Q. So I assume you haven't talked to Dr. Datta; 3 correct? 4 A. I wouldn't even know who he is. Or she. 5 Q. If in fact a DVT, even a small one was confirmed 6 via venogram on January 27, 1999, can you give me 7 some sense about how urgent follow-up is with 8 such a patient? In other words, would you make 9 sure that they saw someone that same day, or 10 would it be reasonable to wait, you know, a 11 month, or can you just give me some sense about 12 what you consider to be a reasonable period of 13 time for there to be further evaluation of the 14 patient and follow-up? 15 MR. LONGBRAKE: Objection. 16 A. If you decided that the patient was going to be 17 treated with anticoagulation, then you could 18 delay the follow-up for a couple weeks if you 19 wanted to. If you thought that you were not 20 going to treat, just wanted to follow, then I 21 would suspect within two to three days would be 22 reasonable. 23 Q. And how does an emergency room physician go about 24 making sure that the patient is, you know, handed 25 off, if you will, to another doctor for follow-up</p>
<p>30</p> <p>1 presentation that we have here? 2 A. Because the patient in the exam had tenderness 3 around the ankle, which is extremely -- I mean 4 I've never even seen that with a DVT. I've seen 5 swelling, but no tenderness. So tenderness has 6 to come from something else. In this case 7 inflammation of the soft tissues, tendinitis 8 makes excellent sense. 9 Q. Okay. And how are you able to rule out DVT based 10 on that presentation? 11 MR. LONGBRAKE: Objection. 12 A. By going back to our previous conversation, since 13 I don't think that's a reasonable likelihood, you 14 don't rule it out. But if you wanted to, the 15 foolproof way I suppose that you could actually 16 do a venogram. 17 Q. Is that the same thing as a duplex ultrasound? 18 A. No. 19 Q. Okay. What are you talking about, the injection 20 of dye? 21 A. Right. 22 Q. Now, in confirming a suspicion of tendinitis, is 23 there any definitive test for doing so? 24 A. No. It's a physical finding. There isn't any 25 test I can think of that would be laboratory test</p>	<p>32</p> <p>1 within a reasonable period of time? 2 MR. LONGBRAKE: Objection. 3 MS. ATKINSON: Objection. 4 MS. JENNY: Objection. 5 A. I don't know any way to make sure. I only know 6 what we try to do. 7 Q. What do you try to do? 8 MR. LONGBRAKE: Objection. 9 MS. JENNY: Objection. 10 MS. ATKINSON: Objection. 11 A. Call someone to arrange follow-up and then figure 12 out a method for the patient and that particular 13 follow-up physician to communicate, whether that 14 be by telephone or just by showing up in the 15 office. And then thirdly you make sure the 16 patient knows what you did, "see Dr. Smith on 17 Tuesday," quote/unquote. 18 Q. Okay. Doctor, looking again at the University 19 MedNet records, my copy on the right-hand margin 20 is cut off, and I'm wondering if you can read 21 where it says x-ray, it says right foot and 22 ankle, and then there is a parenthetical or an 23 arrow, whatever you want to call it -- 24 A. Yes. 25 Q. -- pointing to some things in the far right-hand</p>



33	35
<p>1 corner. Can you read those on your copy of 2 records?</p> <p>3 A. Mine says 13:55, I think, and then there's 4 initials. That's all I -- what I take that to be 5 is the initials of the person who took the order. 6 The right foot and ankle is the order, and then 7 the time and initials would be the time and the 8 identity of the person who took the order off.</p> <p>9 MS. WHITE: Our portion is partially cut 10 off, too, Dave.</p> <p>11 MR. KULWICKI: Okay.</p> <p>12 Q. Doctor, just so I'm clear, you did not review the 13 films that were taken on January 27, 1999?</p> <p>14 A. That is correct.</p> <p>15 Q. With respect to DVT, what are the risk factors 16 for that condition?</p> <p>17 A. I'll see if I can make up a mental list here. I 18 would say that a history of prior DVTs would be a 19 risk factor, history of serious injury to a lower 20 extremity that would -- for example, a severely 21 fractured lower extremity in the distant past, 22 history of a recent injury or surgery to the 23 lower extremity, taking of birth control pills, a 24 history of hypercoagulability syndrome, and 25 perhaps obesity, although I'm not sure it's as</p>	<p>1 an injury and being wheelchair bound for a week 2 might be. But being a person who is sort of a 3 couch potato I don't think is associated with 4 DVTs.</p> <p>5 Q. Okay. And you mentioned going back to look at 6 some literature with regard to Premarin as a risk 7 factor. What sort of literature would you be 8 looking at?</p> <p>9 A. Oh, if I were going to look it up, I would 10 probably start with --</p> <p>11 Q. I'm sorry, start with what?</p> <p>12 A. The PDR, <u>Physician's Desk Reference</u>.</p> <p>13 Q. Okay. Now, did this patient have any particular 14 risk factors for tendinitis?</p> <p>15 A. Well, she claimed, you know, I'll put in 16 parentheses this history of fibromyalgia. And 17 those patients, whether you believe in 18 fibromyalgia or not, do complain of soft tissue 19 discomfort throughout their bodies on a regular 20 basis. That's the only way I could characterize 21 it. I can't say a risk factor, I could just say 22 it's very common for those people to have those 23 complaints.</p> <p>24 Q. Doctor, where in these records do you see that 25 Dr. Datta was considering fibromyalgia when he</p>
34	36
<p>1 much of a risk factor as we think it is.</p> <p>2 Q. With regard to birth control pills, would 3 Premarin fit within that category?</p> <p>4 A. You know, I don't know. I really don't. I would 5 have to go back and look up the literature. It's 6 a minor risk factor, but it might get in there. 7 I would have to look it up.</p> <p>8 Q. And let me maybe clarify that and ask it a 9 different way. Do you consider the use of 10 Premarin to be a risk factor for DVT, or is that 11 what you're telling me you would have to look up?</p> <p>12 A. That's what I would have to go back and look up. 13 I think it's not exactly the same as taking birth 14 control pills, but it is a hormone, so it may 15 have been associated with an increased risk, and 16 I just as we talk, I would have to look it up.</p> <p>17 Q. Can we agree that age is a risk factor for DVT?</p> <p>18 A. I don't know. I mean my personal experience is 19 that I don't think of it any more in a 20 90-year-old than I do in a 60-year-old, so I 21 would have to look that up too.</p> <p>22 Q. How about a sedentary life-style, is that 23 considered to be a risk factor for DVT?</p> <p>24 A. I don't think a sedentary life-style is. I think 25 being sedentary could be. For instance, having</p>	<p>1 evaluated Mrs. Prinzler?</p> <p>2 A. I don't, but that wasn't your question.</p> <p>3 Q. Okay. That was my question just then though. I 4 guess in looking at this, I don't see that that 5 entered into his thought process, do you?</p> <p>6 A. No, I didn't either, but I was answering your 7 question.</p> <p>8 Q. Fair enough. Okay. Let me see here. That's all 9 the questions I have, Doctor. Thank you for 10 answering them. Have we covered all of your 11 opinions with respect to this January 27, 1999 12 visit?</p> <p>13 A. I believe we have.</p> <p>14 MR. KULWICKI: Okay. Darlene, do you 15 want to advise -- well, does anyone else have any 16 questions? I mean we've obviously made a record 17 that --</p> <p>18 MR. LONGBRAKE: Just for the record, we 19 would say this is an adjournment with a 20 possibility of reopening. On behalf of Mr. 21 Kilbane I would make that comment. But other 22 than that, we'll reserve.</p> <p>23 MR. KULWICKI: Agreed.</p> <p>24 MS. JENNY: And I would also make the 25 same reservation for Ms. McGurk.</p>

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1 MS. ATKINSON: And the same for Susan  
2 Seacrist.  
3 MR. KULWICKI: Agreed. Darlene, do you  
4 want to advise him with regard to signature on  
5 the record and then we'll depart here.  
6 MS. WHITE: Doctor, you have a right to  
7 read the record.  
8 THE WITNESS: I'll read.  
9 MR. KULWICKI: Okay. Take care.  
10 MS. WHITE: Thanks a lot everyone.  
11 -----  
12 (The deposition was concluded at 1:57 p.m.)  
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1 CERTIFICATE  
2  
3 STATE OF OHIO, )  
4 CARROLL COUNTY. ) SS:  
5  
6 I, Lisa A. Naiman, a Registered Professional  
7 Reporter and Notary Public in and for the State of  
8 Ohio, duly commissioned and qualified, do hereby  
9 certify that the within-named witness, BRUCE D.  
10 JANIAK, M.D., was first duly sworn to testify the  
11 truth, the whole truth and nothing but the truth in  
12 the cause aforesaid; that the testimony so given by  
13 him was by me reduced to Stenotype in the presence of  
14 the witness, and that the foregoing is a true and  
15 correct transcription of the testimony so given by him  
16 as aforesaid.  
17  
18 I further certify that this deposition was  
19 taken at the time and place in the foregoing caption  
20 specified.  
21  
22 I further certify that I am not a relative  
23 of, employee of or attorney for any of the parties in  
24 the above-captioned action, that I am not a relative  
25 of or employee of an attorney of any of the parties in  
the above-captioned action, that I am not financially  
interested in this action, and that I am not, nor is  
the court reporting firm with which I am affiliated,  
under a contract as defined by Civil Rule 28(D).  
  
IN WITNESS WHEREOF, I have hereunto set my  
hand and affixed my seal of office at Malvern, Ohio on  
this 27th day of October, 2003.  
  
Lisa A. Naiman, RPR & Notary Public  
My commission expires April 3, 2004.

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1 WITNESS CERTIFICATE  
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3  
4 I, Bruce D. Janiak, M.D., do hereby certify that I  
5 have read the foregoing deposition taken on October  
6 10, 2003 in the case of Estate of Dorothy Prinzler  
7 versus Lake Hospital System, Inc., et al., consisting  
8 of thirty-seven pages, and that said deposition  
9 constitutes a true and correct transcription of my  
10 testimony given at the specified time.  
11  
12  
13 Bruce D. Janiak, M.D.  
14 Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2003.  
15  
16  
17 Sworn to and subscribed before me this \_\_\_\_\_  
18 day of \_\_\_\_\_, 2003.  
19  
20 Notary Public  
21 My commission expires \_\_\_\_\_  
22  
23  
24  
25 LAN

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