

State of Ohio)

County of Lorain)

IN THE COURT OF COMMON PLEAS

Case No. 96 CV 1156 89

HUBERT PORTER, Administrator of
the ESTATE of BRAD PORTER,
Deceased,
Plaintiff,

Volume I
Pages 1-53

vs.

MANHAL A. GHANMA, M.D., et al.,
Defendants.

* * * * *

DEPOSITION of J. ROBERT KIRKWOOD, M.D.,
F.A.C.R., called as a witness by counsel for the
Plaintiff, pursuant to the applicable provisions
of the Ohio Rules of Civil Procedure, before
Jennifer A. Doherty, Certified Shorthand Reporter
and Notary Public in and for the Commonwealth of
Massachusetts, taken at the Holiday Inn, Room
1111, Dwight Street, Springfield, Massachusetts on
Wednesday, August 18, 1999, commencing at 10:05
a.m.

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15 I N D E X

16 Testimony of: Direct Cross Redirect Recross

17 J. ROBERT KIRKWOOD, M.D.
 by Mr. Madden 3
 18 by Mr. Travis 48

19 E X H I B I T S

20 <u>No.</u>	<u>Description</u>	<u>For I.D.</u>
21 1	File	13
22 1A	Chest X-ray	13
23 2	July 7, 1999 Report	14

P R O C E E D I N G S

MR. MADDEN: This is Justin Madden, counsel for the plaintiff in this case. I would like to make a record that approximately 12 noon yesterday, Plaintiff's counsel received a copy of Dr. Kirkwood's supplemental report. This is the first notice or indication that we had that we would be receiving a supplemental report. We have not had an opportunity to have the report reviewed by any of our experts. As a matter of fact, neither counsel for the Plaintiff even saw the report until 6 p.m. last night when we returned from being out of town on another matter.

This report is approximately three pages long, compared to the initial report of the witness, which was about a half page long and written more than two years ago.

This supplemental report contains a number of new materials reviewed by the witness, expresses a bunch of new findings of fact, and expresses a number of new medical opinions which, quite frankly, we are simply not prepared to address or discuss in this proceeding.

John, for your benefit, we have filed a

1 motion for protective order with Judge McGuff this
2 morning concerning the supplemental report. I
3 have faxed a copy to your office and personally
4 hand-delivered copies of the motion of protective
5 order to Mr. Fogarty and Ms. Masse.

6 We contacted the Court to try to address
7 this matter before the deposition proceeds, and we
8 have been told that Judge McGuff is not in today,
9 nor is her law clerk.

10 So we object to this supplemental
11 report, and given the pending motion for
12 protective order which the Judge is not going to
13 be able to rule on today, we're simply going to
14 ask the doctor some preliminary questions, and
15 we're going to address the matters presented in
16 his initial report, dated July 1997.

17 Quite frankly, the supplemental report
18 is two years beyond the report deadline for the
19 experts' reports to begin with, and given this
20 situation, we have no alternative but to take this
21 course. So at the conclusion of my preliminary
22 questions of the doctor, pending the Court's
23 ruling, we will reserve our right to continue
24 deposing the doctor on any other matters that the

1 Court might permit him to address.

2 I'm not sure when **we** are going to do
3 that, but it's certainly not going to happen in
4 this proceeding, not since I got this report less
5 than 12 hours before his deposition. I'm just not
6 prepared to go forward on that.

7 MR. TRAVIS: Are you done, Justin?

8 MR. MADDEN: I am. I'm looking to
9 see if either counsel for the defendants in this
10 room have anything to add or not, and then I'll
11 turn it over to you.

12 MR. FOGARTY: I have nothing to
13 say.

14 MS. MASSE: Me neither.

15 MR. MADDEN: It's your floor, John.

16 MR. TRAVIS: Justin, I would point
17 out that the Plaintiff supplemented the expert
18 reports, or the expert opinions, rather, of Dr.
19 Shapiro in response to a motion for summary
20 judgment filed by the hospital.

21 So clearly, the Plaintiff in this case
22 has taken the opportunity to supplement the expert
23 opinions of the experts by way of affidavit and in
24 effect the report. And the supplemental report of

1 Dr. Kirkwood is really directed to just one issue,
2 whether he believes that there was a pulmonary
3 embolism or not.

4 And the last paragraph of the report is
5 the sum and substance of the additional issue, I
6 asked Dr. Kirkwood to take a look at, and the
7 balance of the report really just is background
8 information, but the true substance of his
9 opinions simply are set forth in that last
10 paragraph and the basis for the opinions. So I
11 believe it's appropriate for the doctor to express
12 all of those opinions, and if you choose not to
13 do, so I can't compel you to.

14 MR. MADDEN: John, I mean the
15 pragmatic thing is we're not going to agree on
16 these points at all. I don't agree with your
17 summary of the doctor's supplemental report, so
18 it's a matter for the Court's review and ruling.

19 I'm going to proceed, as I've indicated
20 today, and we'll just reconvene his deposition at
21 a later date. So unless you want to put anything
22 else on the record, I'm prepared to go ahead on
23 the limited basis I've described earlier.

24 MR. TRAVIS: That's fine. I would

1 just remind you that the videotape deposition for
2 use at trial is next Thursday because the doctor
3 will be in Europe at the time of the scheduled
4 trial.

5 MR. MADDEN: Again, that's not my
6 problem. I didn't put this supplemental report
7 together. You obviously knew about it weeks
8 before you sent it. You might have let us know it
9 was coming. Instead you're in Springfield. I get
10 this report last night, and I had no intention of
11 dropping my client's right to discover the
12 doctor's opinion that the judge says he's allowed
13 to express, all in an effort to accommodate the
14 August 26th date.

15 Again, let's just be pragmatic. We
16 don't agree on these things. If you want to make
17 any further record, fine. But rather than waste a
18 lot of time talking, let's just cover what we're
19 going to cover today.

23 MR. TRAVIS: Go right ahead.

21 MR. MADDEN: Doctor, are you ready
22 to proceed?

23 THE WITNESS: Yes, I am.

24 MR. MADDEN: Can you hear me all

1 right?

2 THE WITNESS: Yes, I can.

3 J. ROBERT KIRKWOOD, M.D., having
4 been duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. MADDEN:

7 Q. Good morning, Doctor, would you please
8 state your full name for the record?

9 A. Yes, good morning. My name is Dr. John
10 Robert Kirkwood.

11 Q. Dr. Kirkwood, I'm Justin Madden, and I
12 have the privilege to represent the Porter family
13 in this action.

14 You've heard the preliminary remarks
15 between myself and Mr. Travis. I'm going to take
16 your discovery deposition this morning.

17 Have you ever given a deposition before?

18 A. Yes, I have.

19 Q. How many have you given?

20 A. Probably about ten depositions.

21 Q. I'm going to ask you, if you will, just
22 to point out, because we're doing this by
23 telephone, if you don't hear a question that I ask
24 or if it doesn't make sense, just point that out

1 and I'll either repeat the question or rephrase
2 it, or whatever I need to do; is that fair?

3 A. Yes, it is.

4 Q. If you answer a question that I ask you
5 and you don't indicate that you didn't understand
6 it in any way, we're all going to assume you
7 understood the question and gave an answer that
8 was in comprehension of the question put to you;
9 is that fair?

10 A. Yes.

11 Q. Doctor, what materials do you have in
12 front of you?

13 A. I have my two reports; one from July 7,
14 1997, and the one dated August 17, 1999. I have
15 two fax of reports; one from Dr. Mark Shapiro,
16 dated April 28, 1997 and one from Dr. E.F. Klein,
17 Jr., dated April 28, 1997.

18 I also have a copy of the medical
19 records that were forwarded to me and copies in.
20 that binder are the defense expert reports that
21 are listed in my letter of yesterday, except that
22 I have -- in that, is also another copy of the
23 7/7/97 report that I made. This binder includes
24 an autopsy report and pictures and a death

1 certificate.

2 Q. Doctor, do you have anything else in
3 front of you other than what you listed for me
4 there?

5 A. No, I don't.

6 Q. Do you have in front of you what you
7 consider to be your entire file in this case?

8 A. I have the X-rays here at the table.

9 Q. Which X-rays do you have?

10 A. I have X-rays of the chest -- a single
11 X-ray of the chest. There's no date upon the
12 film. It's a portable chest X-ray, it's a copy,
13 so the flasher has not come through on it. But
14 it's the film that I reported on the report of
15 July 7, 1997.

16 Also, I have films which were taken at
17 the hospital, Lorain St. Joseph's Hospital, of the
18 left lower extremity. They were done on 7/13/95.
19 There are one, two, three, four, five, six,
20 seven -- there are eight films which go from the
21 left hip to the left ankle.

22 Q. And how many total films of the left
23 lower extremity, sir?

24 A. There are eight films of the left lower

1 extremity.

2 Q. That brings us to a total of nine films.
3 Do you have any other films?

4 A. No, that's all I have.

5 Q. Doctor, do you have anything else in
6 front of you that you consider to be part of your
7 file?

8 A. No, I do not.

9 Q. Has anything been removed from the
10 materials that you've been sent in this case?

11 A. No, there hasn't been anything removed.

12 Q. Are there any letters or correspondence
13 that you've received from Mr. Switzer or Mr.
14 Travis in connection with this case?

15 A. I do not have Mr. Switzer's letter
16 anymore. And if it was, it was just a cover
17 letter saying, Please review the film. I have no
18 other letters from Mr. Travis.

19 Q. You have no letters at all from Mr. .
20 Travis, or no other letters?

21 A. There was a cover letter that just said,
22 Here are the materials. I don't have that here.
23 I don't know where that is.

24 Q. Let me make sure I understand you,

1 Doctor. If you have received any correspondence
2 from counsel in this case, it was one cover letter
3 from Mr. Switzer, which you no longer possess, and
4 one cover letter from Mr. Travis that you don't
5 have in front of you, but your memory is it was
6 just kind of a breakdown of materials that he had
7 sent to you; am I correct?

8 A. That is correct.

9 Q. And no other correspondence of any kind?

10 A. No.

11 Q. What was the date, if you recall, of the
12 letter from Mr. Travis to yourself with the number
13 of items referenced therein?

14 A. The items arrived on Friday, August
15 13th. The letter, I believe, was probably dated
16 the day before, but it came with the materials
17 that were delivered on Friday the 13th of 1999.

18 Q. Okay. Before I leave the topic of your
19 file, Doctor. Have you looked at any medical
20 literature, any articles, having anything to do
21 with your opinions in this case?

22 A. No, I have not.

23 Q. Have you had any conversations with any
24 colleagues or other experts in this case regarding

1 this particular case?

2 A. No, I have not.

3 MR. MADDEN: Jennifer, what I'm
4 going to ask you to do is I'd like to mark the
5 doctor's file as he's described it. That's going
6 to be Exhibit 1. And then at the **end** of this
7 deposition, I'll cover with you what I'm going to
8 want copies of. Is that right?

9 THE STENOGRAPHER: Yes.

10 MR. MADDEN: I would like you to
11 take the single chest X-ray film that the doctor
12 identified.

13 Q. Doctor, I believe it was just one chest
14 X-ray that you reviewed; is that correct?

15 A. That is correct.

16 MR. MADDEN: Jennifer, would you
17 obtain that copy from the doctor and mark that 1A.

18 (Exhibits Nos. 1 and 1A marked for
19 identification.)

20 Q. Doctor, if you look at Exhibit 1A, I'm
21 going to just confirm that that's been identified
22 as the chest X-ray which you reviewed in reference
23 in your report to Mr. Switzer on July 7, 1997; is
24 that correct?

1 A. That is correct.

2 Q. And that was the only chest X-ray film
3 that you have in your file; correct?

4 A. That is correct.

5 Q. And that was the only radiographic film
6 that you reviewed in coming **to** your opinions in
7 your report to Mr. Switzer back on July of '97;
8 is that correct?

9 A. That's correct.

10 MR. MADDEN: Jennifer, one more
11 matter for you, please. Would you take a copy of
12 Dr. Kirkwood's report to Mr. Switzer, the July '97
13 report and mark that as Exhibit 2, please.

14 (Exhibit No. 2 marked for
15 identification.)

16 Q. Doctor, Plaintiff's Exhibit 2 is a
17 complete and accurate copy of your report to Mr.
18 Switzer back on July 7, 1997; true?

19 A. That is true.

20 Q. **Is** that the only report that you
21 submitted to Mr. Switzer in this case?

22 A. Yes, it **is**.

23 Q. Did you ever send any correspondence to
24 Mr. Switzer that expressed any other opinions or

1 beliefs that you had, other than what's been
2 marked as Exhibit 2?

3 A. No, I do not.

4 Q. Doctor, what is your professional
5 address?

6 A. My professional address is the
7 Department of Radiology, Baystate Medical Center,
8 759 Chestnut Street, Springfield, Massachusetts,
9 01199.

10 Q. What is your date of birth, sir?

11 A. March 19, 1941.

12 Q. Which would make you 58-years-young
13 today; is that correct?

14 A. That is correct.

15 Q. How many years have you been in the
16 practice of medicine, Doctor?

17 A. If you include from the time that I
18 graduated medical school, it would be 32 years.

19 Q. How would you describe your present
20 occupation?

21 A. My present occupation is chairman of the
22 department of radiology at the medical center,
23 practicing radiologist as part of that job.

24 Q. On your letter to, I believe, Mr.

1 Switzer, you indicate that you are involved in
2 radiology and also neuroradiology; is that
3 correct?

4 A. That is correct.

5 Q. Is that still the case today?

6 A. That is correct.

7 Q. Have you ever been board certified in
8 radiology or neuroradiology?

9 A. Yes, I am.

10 Q. How long has that been the case?

11 A. I was board certified in diagnostic
12 radiology by the American Board of Radiology in
13 June of 1972, and I have a certificate of added
14 qualification in neuroradiology as of November of
15 1995, which was the first time it was offered.

16 Q. I'm not too familiar with that
17 certification. Is that the equivalent of being
18 board certified of neuroradiology, or is that
19 something else?

20 A. It probably is. It's a certificate of
21 added qualification within the board designation
22 of diagnostic radiology indicating that you have
23 mastered the subspecialty of neuroradiology, and
24 it is given by the American Board of Radiology and

1 it's called a CAQ or Certificate of Added
2 Qualification.

3 Q. Is there, as of this time, a board
4 certification for neuroradiology?

5 A. As a separate board, like the diagnostic
6 radiology board, there is not.

7 Q. There is not. Okay. Have you been
8 board certified or practiced in any other
9 specialties outside of radiology?

10 A. No, I have not.

11 Q. For the sake of clarity, then, you have
12 never practiced as an orthopedic surgeon; is that
13 right?

14 A. That is correct.

15 Q. You have never debrided a wound site; is
16 that true?

17 A. If you include medical school, we've
18 done some, but I do not do that as a routine
19 practice now.

20 Q. That's really what I'm driving at, so
21 thank you for pointing that out. Your practice of
22 medicine does not include the debridement of wound
23 sites; correct?

24 A. Correct.

1 Q. You have not treated abdominal injuries
2 in your regular practice of medicine; is that
3 true?

4 A. No, that's not true.

5 Q. How do you come to treat abdominal
6 injuries in your practice of radiology?

7 A. Through diagnosis with CT scans or other
8 X-rays, and on occasion, we do drainage procedures
9 for hemorrhages or abscesses that might be related
10 to abdominal injuries.

11 Q. Is it part of your regular practice of
12 medicine, Doctor, to see patients in a clinical
13 setting and diagnose or ascertain whether they
14 have an abdominal injury?

15 A. Not in a clinical setting, no.

16 Q. I take it, you don't administer
17 anesthesiology in your practice of medicine?

18 A. That is correct.

19 Q. You do not treat as a surgeon pulmonary
20 embolisms; is that correct?

21 A. That is not correct.

22 Q. Tell me how that's not correct.

23 A. As a radiologist doing procedures for
24 the diagnosis of pulmonary embolization, we do

1 pulmonary angiography, and sometimes in the course
2 of that, we treat the pulmonary embolism by either
3 using a thrombolytic agent, or sometimes by
4 attempted clot removal through a catheter.

5 Q. When was the last time you were involved
6 in treating or responding to a pulmonary embolism?

7 A. Probably two months ago.

8 Q. Tell me how your involvement -- how
9 would you describe your involvement? What did you
10 do?

11 A. My involvement in that would be being on
12 call for angio-interventional radiology,
13 discussing the case of a possible pulmonary
14 embolism with the clinician, reviewing the
15 radiographic studies, including plane chest
16 radiography, radionuclide studies and performing a
17 pulmonary angiography.

18 Q. I take it you don't treat pulmonary
19 embolisms as a clinician; is that correct?

20 A. That is correct.

21 Q. You indicated that you've given, to your
22 memory, approximately ten prior depositions, am I
23 correct?

24 A. That is about right.

1 Q. Let me try to break this down a little
2 bit. Have you ever been sued before?

3 MR. TRAVIS: Objection. You can
4 answer.

5 A. Yes, I have.

6 Q. How many times?

7 A. Once.

8 MR. TRAVIS: Objection. Could I
9 have a continuing objection, Justin?

10 MR. MADDEN: Sure.

11 A. One time.

12 Q. One time before?

13 A. Yes.

14 Q. Is that case concluded or is it still
15 pending?

16 A. That case is concluded.

17 Q. How long ago was that?

18 A. I believe the case was 1995 of an event
19 in 1993.

20 Q. What was the allegation against you?

21 A. Allegation against me was missing a
22 finding on a CT scan of the head, a finding in the
23 frontal sinus, in the skull, that indicated early
24 infection of the sinus.

1 Q. Do you know what the outcome of the case
2 was?

3 A. The outcome of the case was a
4 settlement.

5 Q. Thank you, Doctor. Did you give a
6 deposition in that case?

7 A. No, I did not.

8 Q. When you've given ten prior depositions,
9 was that all in the capacity of an expert of some
10 kind?

11 A. No. Some of the depositions have been
12 in the context of being subpoenaed to give a
13 deposition about X-ray reports involved in cases
14 of which I was not a party.

15 MR. TRAVIS: Just answer the
16 question.

17 Q. In other words, you would have been
18 deposed in the capacity of a treating physician of
19 some kind rather than an expert on the standard-of
20 care?

21 A. Yes.

22 Q. Have you served as an expert in issues
23 involving the standard of care prior to this case,
24 or other than this case, let me put it that way?

1 MR. TRAVIS: I want to object.
2 He's not testifying to the standard of care in
3 this case at all.

4 MR. MADDEN: Thanks for the
5 clarification.

6 Q. Doctor, have you ever served as an
7 expert where the issue before you involved the
8 standard of care?

9 A. Can I have a clarification? It
10 involves -- oftentimes when we read the X-rays or
11 give information, it may indirectly involve
12 standard of care or at least you're describing,
13 but basically my role is to describe the X-ray
14 findings, what I think the X-ray findings show
15 about a case.

16 Q. When that has been your role, Doctor,
17 have you been retained by the law firm
18 representing someone in a defendant's capacity or
19 someone in a plaintiff's capacity?

20 A. Both.

21 Q. How many of each?

22 A. For depositions?

23 Q. Let's start there.

24 A. It's about 60/40 percent defense versus

1 plaintiff.

2 Q. So if you've given ten depositions, it's
3 your belief that approximately 60 percent of the
4 time you were serving for someone who was
5 defendant and 40 percent of the time for someone
6 who was a plaintiff; is that correct?

7 A. That is correct.

8 Q. Now, in cases where you've been involved
9 either writing a report or consulting, that may
10 not have involved a deposition, how many of those
11 instances have occurred?

12 A. Probably on the order of 30.

13 Q. Over how many years?

14 A. Eleven to twelve years.

15 Q. Out of the 30 times where depositions
16 may not have been involved, but you've been
17 serving as some sort of an expert, what is the
18 breakdown of your involvement for the defendant as
19 opposed to the plaintiff?

20 A. Breakdown is about the same, possibly a
21 little bit more over a longer period of time. It
22 is probably 65/35. So two-thirds defense,
23 one-third plaintiff.

24 Q. Thank you, Doctor. Would you describe

1 for us how you spend your professional time. Do
2 you teach? Do you do rounds? Tell me how you
3 spend your professional day?

4 A. I have a number of roles. My role as
5 chairman is to oversee the function of the
6 department and maintain the overall quality of
7 care and quality of service of the department. so
8 that's an administrative function.

9 I have another function as the person
10 responsible for the residency training program in
11 radiology within our department. That includes
12 overseeing the curriculum, resident performance,
13 and also includes teaching assignments that I have
14 and perform myself. It includes, also, attending
15 a number of the department teaching conferences.

16 The third function is to perform
17 clinical work, to read X-rays, and do
18 interventional radiology procedures. I have a
19 fourth function, and that is to perform some
20 research activities which lead to scientific
21 papers or book chapters or books.

22 Q. Without being unreasonable, can you just
23 break down the percentage of time you devote to
24 your administrative work, the time you devote to

1 your administrative work on the teaching
2 curriculum, the time that you devote to teaching,
3 and the time that you devote to your clinical
4 work, and the time that you devote to your
5 research?

6 A. I will give you a rough percentage. The
clinical work is 40 percent. The administrative
8 work is 30 percent. Teaching is 20 percent and
9 research is 10 percent.

10 Q. Thank you. Doctor, in this particular
11 case, what is your rate of charge? How are you
12 being compensated?

13 A. My rate of charge is \$250 per hour.

14 Q. Is that a flat fee across the board,
15 whether it's research, deposition testimony, or
16 trial testimony?

17 A. That is correct.

18 Q. How much are you owed thus far?

19 A. I've put in approximately nine hours of
20 time on this case.

21 Q. So you're presently owed an excess of
22 \$2,000, and we still have to complete your
23 deposition, and then your trial testimony; is that
24 right?

1 A. That is correct.

2 Q. As you sit here today, do you anticipate
3 doing any other investigation or research, or is
4 there material that you're still waiting for prior
5 to the time you give your trial testimony?

6 A. I expect to do no additional work.

7 Q. Are you preparing any type of exhibits
8 or demonstrative exhibits of some kind as part of
9 your testimony?

10 A. No.

11 MR. TRAVIS: I may have an
12 exhibit, but the doctor is not preparing anything.

13 Q. Doctor, have you been shown any kind of
14 exhibits that are anticipated for your trial
15 testimony?

16 A. No.

17 Q. If you said "no," I didn't hear you.

18 A. I'm sorry. No.

19 Q. The answer is "no"?

20 A. The answer is "no."

21 Q. Thank you. Doctor, I want to ask you
22 about your previous work with Mr. Switzer in the
23 law firm of Jacobson, Maynard, Tuschman & Kalur.
24 Was this the only case where you had served as an

1 expert for that firm?

2 A. No. I have reviewed some other cases
3 for Mr. Switzer.

4 Q. How many would that be?

5 A. I think I've reviewed somewhere between
6 three and five cases for Mr. Switzer.

7 Q. In those three to five cases, did you
8 agree to be an expert?

9 A. Yes, I did.

10 Q. Have you worked for any lawyers in Mr.
11 Switzer's firm, other than Mr. Switzer?

12 A. No, I have not.

13 Q. You've met Mr. Travis. Are you working
14 on any other cases with Mr. Travis outside of this
15 one?

16 A. No, I'm not.

17 Q. Are you working on any cases for any
18 lawyers of Mr. Travis' firm, Gallagher, Sharp,
19 Fulton & Norman, outside of this case?

20 A. No.

21 Q. I take it, in your prior work with Mr.
22 Switzer, you've served as an expert here in Ohio
23 before?

24 A. That is correct.

1 Q. Have you ever testified at trial here in
2 Ohio?

3 A. Yes, I have.

4 Q. Where?

5 A. In Cleveland.

6 Q. Any other cities other than Cleveland?

7 A. No.

8 Q. Do you recall the names of the judge or
9 the names of the cases that you were involved in
10 when you testified here in Cleveland?

11 A. No, I don't offhand remember the name of
12 the case.

13 Q. Do you keep records on your prior work
14 as an expert? Do you keep old reports, old
15 deposition transcripts, or anything like that?

16 A. Yes.

17 Q. I'm going to ask you when we recess the
18 deposition, if you would just located the names of
19 the cases, the names of the plaintiff, the names
20 of courtrooms where you were and provide that to
21 Mr. Travis who can then forward that information
22 onto us. Would you do that, sir?

23 A. Yes, I will.

24 Q. Thank you. Doctor, have you published

1 any articles in the medical literature?

2 A. Yes, I have.

3 Q. What topics have you published on? I
4 don't have anything in front of me that tells me
5 how many articles you might have published, but
6 can you approximate for me how many and in what
7 fields you've written in?

8 A. Seventeen or eighteen articles in
9 radiology, mostly in neuroradiology, with some
10 general radiology, as well.

11 Q. Are any of the 17 or 18 articles that
12 you've referenced, Doctor, articles that address
13 in any way the diagnosis of pulmonary embolism?

14 A. No.

15 Q. When did Mr. Switzer first contact you
16 in this case?

17 A. Sometime shortly before July 7th of
18 1997.

19 Q. You say "shortly before." Is it your
20 memory that it was in June of '97?

21 A. It probably was in June of '97.

22 Q. What did Mr. Switzer ask you to do?

23 A. Mr. Switzer asked me to look at the film
24 and give him a report of the findings on the film.

1 Q. Did Mr. Switzer provide you with any
2 information about the underlying facts in this
3 case or what the allegations were?

4 A. No. He sent me the film, just as a
5 film, along, without any background information.

6 Q. Were you able to fulfill his request
7 with the information that he provided you?

8 A. I was able to fulfill the request that
9 he gave me, yes.

10 Q. You didn't need any other information to
11 answer the question he posed to you; is that
12 correct?

13 A. The question he posed to me was read the
14 film without background information.

15 Q. You wrote a report dated July 7, 1997,
16 and that contained the entirety of your
17 conclusions to his question; is that fair?

18 A. That is correct.

19 Q. Did you have any further contact with.
20 Mr. Switzer after sending that report?

21 A. I can't remember. We may have had one
22 phone call, and I think that phone call -- I can't
23 remember what the phone call was. We had one
24 phone call where we really didn't discuss the case

1 very much. It was more of an administrative kind
2 of phone call, I think, as I recall.

3 Q. Approximately how long after your report
4 in July of '97 did this phone call occur?

5 A. I can't remember.

6 Q. Was it a matter of weeks or months? Do
7 you have any memory at all?

8 A. I really don't.

9 Q. When you say you talked just briefly
10 about matters in the case, more on an
11 administrative basis, what do you recall saying in
12 the conversation?

13 A. I think what I remember of the summary
14 of the conversation was that as far as he was
15 concerned on this particular case that I really
16 didn't have to do any more.

17 Q. Did he say why?

18 A. No. I don't remember if he did.

19 Q. **Did** you say anything in response to
20 that?

21 A. No.

22 Q. Is there anything else that you can
23 recall in that conversation with Mr. Switzer, in
24 the telephone call following your report?

1 A. No.

2 Q. What was your next contact from anyone
3 associated in this case?

4 A. It was probably two months ago, a phone
5 call from Mr. Travis' office.

6 Q. I take it that was your first
7 introduction to Mr. Travis?

8 A. That's correct.

9 Q. What was discussed in that phone call?

10 A. I believe we did not have a conversation
11 then, but he left a message with my secretary that
12 he was now involved with the case of Mr. Porter,
13 and that he scheduled this deposition.

14 Q. That was just an exchange of phone
15 messages; is that correct?

16 A. That is correct.

17 Q. Did you eventually have a telephone
18 conversation with **Mr.** Travis?

19 A. I had a telephone conversation with Mr.
20 Travis last week, where he indicated to me that
21 there were materials that I had not seen in this
22 case and that he would be forwarding those
23 materials for me to review.

24 Q. I take it until he said that to you, you

1 had not requested any other materials or
2 information in this case from anyone; is that
3 right?

4 A. That is correct.

5 Q. It was Mr. Travis' idea to forward the
6 materials to you and have **you** review them; is that
7 fairly summarized?

8 A. Yes.

9 Q. So we talked about an exchange of phone
10 messages between Mr. Travis' office and yours and
11 a phone conversation with Mr. Travis and yourself
12 about a week ago. Any other discussions with Mr.
13 Travis prior to this morning?

14 A. No. Only that I had written a report
15 over the weekend and notified him that I was
16 faxing it to him.

17 Q. So when you reference the report that
18 you wrote over the weekend, I take it it was last
19 weekend you're mentioning?

20 A. That's correct.

21 Q. That's the report that's now dated
22 August 17, 1999?

23 A. That is correct.

24 Q. And when you completed the report over

1 the weekend, did you send him a draft of your
2 report on Monday?

3 A. No. I sent him the -- what day is
4 today? Today is Wednesday. I sent him the fax of
5 the report yesterday. I had it finally typed by
6 my secretary yesterday, and faxed it to him.

7 Q. Are there any other drafts of your
8 report that have been revised or edited?

9 A. No.

10 Q. So you wrote the report over the
11 weekend, it was finally typed yesterday, and then
12 it was faxed; is that correct?

13 A. That is correct.

14 MR. MADDEN: Give me just a moment,
15 if you will, Doctor. There's a request for a
16 bathroom break, two minutes, John.

17 MR. TRAVIS: Sure.

18 (Recess taken.)

19 BY MR. MADDEN:

20 Q. Doctor, I want to back up to the phone
21 conversation that you've referenced after you had
22 sent your report to Mr. Switzer. Do you recall
23 that portion of your testimony?

24 A. Yes, I do.

1 Q. In that phone conversation you told me
2 that you didn't really discuss the case with Mr.
3 Switzer, it was more of an administrative phone
4 call; right?

5 A. That is correct.

6 Q. And you tell me if I misstate your
7 testimony. In that conversation, Mr. Switzer told
8 you that he basically wouldn't need anything
9 further from you; is that correct?

10 A. That is correct.

11 Q. Was it your understanding in that phone
12 conversation that Mr. Switzer was not going to use
13 you as an expert in the case?

14 A. No. I didn't -- we didn't discuss that,
15 and it was more that he wasn't going to need
16 anything at that time.

17 Q. Did you understand in that conversation
18 whether you had any further involvement in the
19 case?

20 A. No. I just put it in the file and just
21 let it in the -- be. I didn't know whether there
22 would be involvement or not.

23 Q. You had no further follow-up from Mr.
24 Switzer, obviously?

1 A. No, I didn't.

2 Q. Doctor, I would like to go ahead and
3 look at the copy of the report that you sent to
4 Mr. Switzer, which Jennifer has marked as Exhibit
5 2. Do you have that in front of you?

6 A. I do.

7 Q. Have you had a chance to look at it
8 recently? Are we okay to discuss the report?

9 A. Yes, you can.

10 Q. Thank you. You mentioned this earlier
11 and I don't mean to recover things, but I want to
12 be clear. The only information that you had in
13 this case at the time you wrote that report was a
14 single radiographic film of Mr. Porter's chest;
15 correct?

16 A. That is correct.

17 Q. Now, you had an opportunity to review
18 the film that was sent. Did you discuss the film
19 with any colleagues?

20 A. No, I did not.

21 Q. The film is labeled over the left
22 scapular glenoid. Can you translate that for
23 someone who may not know a lot about medicine?
24 What are we talking about?

1 A. There's a written -- a handwritten
2 notation up in the upper left corner of the film,
3 which overlies the scapula or wing bone of his
4 left shoulder. And it's -- there's some
5 handwritten stuff there.

6 Q. You said earlier this was a portable
7 chest X-ray?

8 A. That is correct.

9 Q. And from the description of what the
10 X-ray depicts, can you describe how Mr. Porter's
11 body would have been positioned? Was he on his
12 side, on his back? How would he have been
13 positioned?

14 A. He would be positioned on his back.

15 Q. It's over on the left side; is that
16 correct?

17 A. You said "it is over on the left side,"
18 what is "it."

19 Q. Thanks for pointing that out. The film
20 is taken from his left side?

21 A. No. The film -- no.

22 Q. Can you tell us how you describe -- how
23 is the film taken, where was it taken, I'm just
24 trying to understand what you're writing?

1 A. This is a single shot film taken in the
2 AP direction, that means anterior to posterior
3 direction, with the patient supine, which means
4 horizontal, on his back.

5 Q. I'm trying to figure out where you've
6 got a handwritten note of the left scapular
7 glenoid, are you talking about where the
8 handwriting appears?

9 A. Yes.

10 Q. Going to the next paragraph, can you
11 essentially summarize what you're telling us in
12 that paragraph?

13 A. Yes, I can. This paragraph states that
14 the heart is enlarged. The main pulmonary artery
15 and the proximal right and left main pulmonary
16 artery are also enlarged. That means they are
17 enlarged over normal. The more peripheral
18 pulmonary vessels are normal in size, which has
19 significance in this case.

20 The lungs are clear, without any
21 infiltrates, that means there's no pneumonia,
22 there is an endotracheal tube present, which is a
23 tube that passes through the patient's nose or
24 mouth and enters the trachea of the chest to

1 provide respiration, and that the position of the
2 tube is good, with the tip just above the corina
3 (phonetic), which is -- the corina is the triangle
4 at the bottom of the division **of** the trachea into
5 the left and right bronchi.

6 A nasogastric tube is present with its
7 tip in the stomach, just in the stomach, and there
8 are electrocardiographic leads, which are seen
9 positioned over the chest.

10 The bones that I see here are normal,
11 and the lungs are fully expanded in the chest.

12 Q. You mentioned earlier that the
13 peripheral pulmonary artery is being normal size
14 is significant?

15 A. Yes.

16 Q. Why is that significant?

17 A. When we're reading chest X-rays, we can
18 get physiological information by comparing the
19 size of vessels between their proximal segments
20 and their more distal segments.

21 If there is a discrepancy, it gives
22 information that there may be pathologic processes
23 that are present.

24 Q. Doctor, did you finish your answer?

1 A. Yes, I have.

2 Q. I couldn't tell by your last sentence
3 whether you had finished or whether you were
4 continuing with a thought.

5 A. I'm sorry. I'm done.

6 Q. Okay. Let me go back and make sure I
7 understand something. Mr. Switzer sent you a
8 letter with this single chest radiographic film
9 and asked for your opinions; is that right?

10 MR. TRAVIS: I'm going to object.
11 I think this is the third time we're over this.
12 You can answer again, Doctor.

13 MR. MADDEN: I might even ask him
14 ten or fifteen times, so go ahead and object.

15 Q. Doctor, is that what Mr. Switzer asked
16 you to do?

17 A. Yes, he did.

18 Q. Did he tell you anything about Mr.
19 Porter?

20 A. No, he did not.

21 Q. Did you know whether the patient was
22 alive or deceased?

23 A. No. I -- I did not from the history he
24 gave, no, he didn't say anything about that.

1 Q. What did Mr. Switzer say along the lines
2 of a history?

3 A. I believe he just said something along
4 the lines of, Would you, please, review this film
5 taken on Mr. Porter, and after you've had a chance
6 to review it, send me a report.

7 Q. Did he tell you anything about Mr.
8 Porter's age, anything about an injury or what
9 caused him to be in the hospital or what led to
10 this chest film?

11 A. No, he didn't.

12 Q. What I'm getting to, Doctor, is, and I'm
13 not a doctor, obviously, but how do you get into a
14 conversation about a possible pulmonary embolism
15 based on someone sending you a chest X-ray with no
16 explanation about the patient's history or
17 anything else?

18 A. You can do that from the pattern that is
19 present on the film, and that's where the
20 difference in the size of the blood vessels come
21 in.

22 The difference in the size between the
23 central blood vessels, which appear large and the
24 more peripheral blood vessels, which appear small,

1 is a characteristic finding of someone who has had
2 a large, more central pulmonary embolism.

3 Q. I'm not trying to be smart or anything,
4 Doctor, I'm trying to understand what the setting
5 is when you look at this film, okay?

6 A. Right.

7 Q. What other conclusions could you draw
8 from looking at this chest X-ray. Certainly that
9 can't be the only thing you're contemplating when
10 you look at a film of chest with no indication of
11 what the patient's history was or anything else.
12 What other conclusions could you draw from this
13 X-ray?

14 A. I can conclude -- I mean, there are a
15 number of negative conclusions.

16 Q. Which include what?

17 A. Which include that there is no
18 pneumonia, there is no collapse of the lungs, I
19 see no fracture of ribs or other bones; that the
20 tubes are in good position; that the patient is in
21 such a condition that he is having an ECG monitor.
22 That, I can conclude.

23 Q. So can you tell me then why the only
24 impression that you discussed is a possibility of

1 pulmonary embolization when you have all these
2 other considerations that might have been in play?

3 A. Well, the other considerations are
4 negative ones. I wrote down what I saw --
5 thought. He said, Come up with a diagnosis or
6 what can you see as a possibility here? This is
7 what I see as a possibility.

8 Q. Now, at the time that you wrote your
9 impressions to Mr. Switzer, having had an
10 opportunity to review this single chest film, it
11 was your opinion that the film showed the
12 possibility of a pulmonary embolization; is that
13 correct?

14 A. Yes, that may be understating my feeling
15 on it, but, yes, that's what it says.

16 Q. Am I correctly reading what you've
17 written to Mr. Switzer?

18 A. That's correct.

19 Q. You answered that? I didn't hear you,
20 sir.

21 A. That's correct.

22 Q. Thank you. In your report to Mr.
23 Switzer, and in your follow-up phone conversation
24 with Mr. Switzer, you did not indicate to him that

1 you needed any other information; correct?

2 A. I don't know the answer to that, if --
3 you know, clearly -- I don't know the answer to
4 that. We did not discuss it any more. He said,
5 Thank you, and that was that.

6 Q. Certain, Dr. Kirkwood, when you wrote
7 your report to Mr. Switzer, *you* were doing your
8 best to be truthful, accurate, and complete; is
9 that right?

10 A. That is correct.

11 Q. Doctor, at the time you sent this report
12 to Mr. Switzer, either before or after your
13 follow-up conversation with him when he said,
14 that's pretty much all that he needed, did you
15 hold any other opinions in this case whatsoever,
16 outside of what's printed on your July 7, '97
17 report?

18 A. No.

19 Q. Have you and I now discussed everything
20 that you can recall regarding your involvement in
21 this case up to the point where you sent Mr.
22 Switzer the letter expressing your impressions
23 from the single chest film that you reviewed?

24 A. Can you just ask me that again?

1 Q. Sure. You and I have now discussed in
2 this deposition everything that you can recall
3 concerning your involvement in the case, up to the
4 point where you sent your report to Mr. Switzer;
5 is that right?

6 A. That's correct.

7 Q. In other words, were there any other
8 pieces of information, pieces of conversation,
9 opinions, questions that you had that we haven't
10 discussed up to the point when you wrote your
11 impressions to Mr. Switzer?

12 A. In reading this, Mr. Switzer at some
13 point must have told me the age of the patient or
14 that he was a young person and that he had had a
15 cardiopulmonary arrest.

16 Q. Again, I'm not being smart with you.
17 What prompted that recollection?

18 A. Reading the impression of the report.

19 Q. So Mr. Switzer did tell you something
20 about the age of the patient?

21 A. That's correct.

22 Q. And he also told you -- tell me again, I
23 can't recall what you told me.

24 A. The age of the patient and that he had a

1 cardiopulmonary arrest.

2 Q. Do you have any other information about
3 the patient's cardiopulmonary arrest?

4 A. No.

5 Q. You just knew that it happened. Did you
6 know where it happened?

7 A. No.

8 Q. Do you know what the setting was, where
9 it happened?

10 A. No.

11 Q. Then, just so I'm clear, you've told me
12 that between your follow-up conversation with Mr.
13 Switzer and the contact from Mr. Travis about two
14 months ago, you had no other involvement or
15 activity in this case of any kind; is that right?

16 A. That is correct.

17 Q. And then you told me there was an
18 exchange of phone messages between Mr. Travis'
19 office and yourself, a phone conversation between
20 you and Mr. Travis a week ago, and then you
21 rewrote your report over the weekend.

22 Is there anything else that came up in
23 that span of events that you and I haven't talked
24 about?

1 A. No.

2 Q. Have we discussed everything that you
3 can recall being discussed in your conversation
4 with Mr. Travis a week ago?

5 A. Yes.

6 MR. MADDEN: Doctor, again, given
7 my preliminary remarks and position that was
8 stated prior to taking your first deposition here
9 this morning. I have no other questions for you
10 at this time. Obviously, we'll be talking further
11 if the Court allows your supplemental report to
12 come in.

13 But at this point, I would want to thank
14 you for your time, and I'll just offer other
15 counsel a chance to inquire if they wish to.

16 MR. FOGARTY: Again, Dennis
17 Fogarty, no questions.

18 MS. MASSE: Susan Masse, no
19 questions, but I reserve our right to ask
20 questions **if**, in fact, the Court allows the
21 supplemental report to come in.

22 MR. FOGARTY: I'll do the same.

23 MR. TRAVIS: I have a couple
24 questions.

1 MR. MADDEN: How?

2 MR. TRAVIS: Pardon me?

3 MR. MADDEN: Are you making a
4 separate record for the hearing, or are you going
5 to ask questions to discover his opinions?

6 MR. TRAVIS: I'm going to ask
7 questions about the July 7th letter.

8 MR. MADDEN: Again, for the purpose
9 of making a record on our motion of protective
10 order?

11 MR. TRAVIS: No.

12 MR. MADDEN: I object, but I can't
13 stop you. Go ahead.

14 CROSS-EXAMINATION

15 BY MR. TRAVIS:

16 Q. Doctor, in your impression of the July
17 7, 1997 report, you state that the enlarged
18 central pulmonary vessels and the slightly
19 enlarged heart in this young man raised a
20 possibility of pulmonary embolism; correct?

21 A. That is correct.

22 Q. Can you testify to a reasonable medical
23 certainty that this chest X-ray is consistent with
24 the pulmonary embolism?

1 MR. MADDEN: Objection. The
2 question is contemplating the opinion that is not
3 stated in his report. It is also leading, since
4 this is your witness. Please note my objection,
5 Jennifer.

6 MR. TRAVIS: You can answer.

7 A. Yes.

8 Q. You do state that you cannot diagnose a
9 PE just on this single chest X-ray; correct?

10 A. Correct.

11 Q. Nonetheless, do you have an opinion,
12 based on reasonable medical certainty whether it
13 is or is not consistent with a PE?

14 MR. MADDEN: Objection.

15 Q. Do you have an opinion?

16 A. Yes.

17 Q. What is that opinion?

18 A. My opinion is that the chest radiograph
19 is consistent with a pulmonary embolism.

20 MR. MADDEN: Objection. Move to
21 strike.

22 Q. Why is it consistent? And I would like
23 you to answer based on the single chest X-ray and
24 what you knew in July of 1997.

1 MR. MADDEN: Objection, and move to
2 strike.

3 A. It is consistent because **of** the enlarged
4 heart and the large central pulmonary vessels and
5 the small peripheral pulmonary vessels as being a
6 typical pattern for pulmonary embolization.

7 MR. TRAVIS: That's all **I** have.
8 Thank you, Doctor.

9 MR. MADDEN: I'll simply reserve
10 any cross-examination on that point, pending the
11 Court's ruling on our motion.

12 (Whereupon, the deposition was
13 suspended at 11:20 a.m.)
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RE: Kirkwood, 8-18-99

This deposition was delivered to C.A.T.A. with the following pages missing

Pages 51 to 51

Pages _____ to _____

Pages _____ to _____

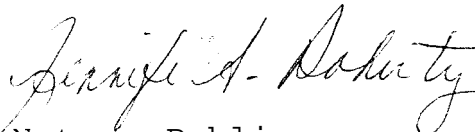
C E R T I F I C A T E

COMMONWEALTH OF MASSACHUSETTS
Worcester, ss.

I, Jennifer A. Doherty, Certified
Shorthand Reporter and Notary Public duly
commissioned and qualified in and for the
Commonwealth of Massachusetts, do hereby certify
that there came before me on the 8th day of
August, 1999, the person hereinbefore named, who
was by me duly sworn to testify to the truth and
nothing but the truth of their knowledge touching
and concerning the matters in controversy in this
cause; that they were thereupon examined upon
their oath, and their examination reduced to
typewriting under my direction and that the
deposition is a true record of the testimony given
by the deponent.

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

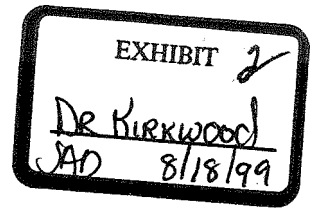
IN WITNESS WHEREOF, I HAVE HEREUNTO SET
MY HAND AND SEAL THIS 19TH DAY OF AUGUST, 1999.



Notary Public
My Commission Expires:
December 13, 2002
CSR No. 1398F95

%--

THIS TRANSCRIPT TO BE READ & SIGNED.



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July 7, 1997

Donald H. Switzer
Jacobson, Maynard, Tuschman & Kalur
1001 Lakeside Avenue, Suite 1600
Cleveland, OH 44114-1192

Re: Hubert Porter, Etc. v. Marhal A. Ghanma, M.D., et al.
Loran County Common Pleas Court, Case No. 96 CV 115689
Your file # 101844

Dear **Mr.** Switzer:

I reviewed the single anterior-posterior chest radiograph that you forwarded to me. The film is labeled, hand-written over the left scapular glenoid, "Brad Porter." This is a copy film rendering the original label unrecognizable.

The examination shows a slightly enlarged cardiac silhouette. The main pulmonary artery and the proximal right and left main pulmonary artery segments are enlarged. The more peripheral pulmonary arteries are normal sized. The lungs are clear without infiltrates. An endotracheal tube is present and in good position with the tip just above the carina. A nasogastric tube is present with the tip at the esophago-gastric junction. Electrocardiographic leads lie on the chest. The bones appear normal. Both lungs are fully expanded.

Impression: The enlarged central pulmonary vessels, and the slightly enlarged heart in this young man, raise the possibility of pulmonary embolization. This pattern is typical of embolization. However, this diagnosis cannot be made with certainty using the chest radiographic findings alone. I see no other abnormalities on this examination to explain the sudden cardiopulmonary arrest in this man.

Yours very truly,


J. Robert Kirkwood, M.D., F.A.C.R.