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<p>State of Ohio,) County of Ashtabula.) SS:</p> <p> IN THE COURT OF COMMON PLEAS</p> <p>KEITH M. FUSCO, et al.,)) Plaintiffs,)) vs.) Case No. 2004 CV 00235) Judge Vettel THE ASHTABULA CLINIC,) et al.,)) Defendants.)</p> <p>-----</p> <p>THE VIDEOTAPED DEPOSITION OF JOHN LEE, D.O. MONDAY, JANUARY 3, 2005</p> <p>-----</p> <p>The videotaped deposition of JOHN LEE, D.O., called by the Plaintiffs for examination pursuant to the Ohio Rules of Civil Procedure, taken before me, the undersigned, Lynn A. Regovich, a Notary Public within and for the State of Ohio, taken at the Ashtabula Clinic, 2422 Lake Avenue, Ashtabula, Ohio, commencing at 2:14 p.m., the day and date above set forth.</p>	<p>1</p> <p>3</p> <p>1 MR. GRAY: Just a moment 2 ago I informed Mr. Peskin that in response to 3 his duces tecum request, which Dr. Lee has 4 rounded up a few documents, may all be one 5 document, which he just produced to me moments 6 ago, and in briefly looking it over, I have 7 questions as to whether or not it's responsive 8 or not, and whether or not there's any 9 confidentiality or privileged issues involved 10 with this document. And if it turns out that 11 there's no objection to having Mr. Peskin 12 inspect the document, there obviously, will be 13 no problem, you can do so, but I'm going to 14 refrain from allowing him to inspect it until 15 I've had an opportunity to look it over.</p> <p>16 MR. PESKIN: And I don't 17 have an objection to that. The only thing it's 18 going to incur, because I don't have documents 19 to look at, is it may require me to ask 20 Dr. Lee more questions that I otherwise wouldn't 21 have to ask.</p> <p>22 MR. GRAY: Well, if you 23 can look at the document -- first of all, I'm 24 not sure Dr. Lee is going to be the person to 25 respond to any questions to this document. I</p>
<p>2</p> <p>APPEARANCES:</p> <p>On behalf of the Plaintiffs:</p> <p>Lawrence F. Peskin, Esq. Becker & Mishkind 1660 West Second Street, Suite 660 Skylight Office Tower Cleveland, Ohio 44113</p> <p>On behalf of the Defendants:</p> <p>Todd A. Gray, Esq. Sutter, O'Connell, Mannion & Farchione 3600 Erieview Tower 1301 E. 9th Street Cleveland, Ohio 44114</p> <p>ALSO PRESENT:</p> <p>Alex Cook, Videographer.</p>	<p>4</p> <p>1 don't think he had anything to do with the 2 formation of this document. It's probably 3 clinic administrators. But I mean, if it turns 4 out that Dr. Lee does have knowledge about any 5 of the documents, you need to ask him questions, 6 I'm sure we can make him available briefly by 7 telephone, if that's okay with you.</p> <p>8 MR. PESKIN: Not so much the 9 documents, but the questions regarding the 10 nature of the relationship between the practice 11 and Dr. Lee and his health care.</p> <p>12 MR. GRAY: I assume the 13 only reason for asking for this material is 14 whether or not you're going to ask him if he 15 neglected to get certain referrals or order 16 certain tests because of fear of not being 17 reimbursed for them. So I mean, that seems to 18 be the obvious issue. If that's the only issue, 19 just go ahead and ask him those questions 20 hypothetically, anyway.</p> <p>21 MR. PESKIN: Okay. All 22 right. Anything else you want to put on the 23 record before we start?</p> <p>24 MR. GRAY: Yeah. Just 25 simply that although Mr. Peskin informs me that</p>

5

1 I was given notice on December 29th, today we're
 2 looking at January 3rd, coming off of a long
 3 holiday weekend, that I was given notice that
 4 this videotape -- that this deposition would be
 5 videotaped, I didn't -- I have not received
 6 notice. If I have, it's because of the holiday,
 7 and so at this juncture, Dr. Lee has not been
 8 prepared to be deposed and have it videotaped.
 9 So with that regard, I'm going to object to the
 10 use of the videotape at trial. I'm going to
 11 allow it to go forward with the understanding
 12 that Mr. Peskin is going to use this for
 13 in-office purposes only, for his preparation of
 14 his case, but if he intends to use it at trial,
 15 I object to that.

16 MR. PESKIN: Okay. And my
 17 response is that proper notice was given of the
 18 videotape deposition. I'm not going to waive or
 19 commit to any limitation on use of the video.
 20 If we get to the point where there's going to be
 21 a trial here, we can address that issue with the
 22 Court at that time. Okay?

23 MR. GRAY: Okay.
 24 MR. PESKIN: Fair enough?
 25 MR. GRAY: Fair enough.

6

1 VIDEOGRAPHER: We're on the
 2 record at 2:15.
 3 JOHN LEE, D.O.
 4 of lawful age, called by the Plaintiffs for
 5 examination pursuant to the Ohio Rules of Civil
 6 Procedure, having been first duly sworn, as
 7 hereinafter certified, was examined and
 8 testified as follows:
 9 EXAMINATION OF JOHN LEE, D.O.
 10 BY MR. PESKIN:
 11 Q Okay. Doctor, did you bring a CV with you?
 12 A No, I didn't.
 13 Q Okay. My name is Larry Peskin. I represent
 14 Keith Fusco. We met briefly before you were
 15 sworn in. Have you had your deposition taken
 16 before?
 17 A Have I had a deposition before?
 18 Q Yes.
 19 A No.
 20 Q No? Okay. Well, I'm sure Mr. Gray had a chance
 21 to talk to you about what this is all about.
 22 Basically, it's just a question/answer session
 23 under oath. My job is to make sure that I ask a
 24 question that you are able to understand and
 25 respond to. Sometimes I'm not very good at

7

1 that. So what I'd ask you to do is listen
 2 carefully to what I ask you, and if there's any
 3 reason you don't understand what I'm asking you,
 4 or you need me to clarify something, just please
 5 ask me to do that and I'll try the best I can,
 6 okay?
 7 A Okay.
 8 Q If you answer a question, the court reporter is
 9 going to take down your response, and there's
 10 an assumption that you understood it. That's
 11 why it's important that you ask me to clarify
 12 something that's unclear. All right?
 13 A Okay.
 14 Q And the other thing I'm sure Todd talked to you
 15 about is that it's important to remember to
 16 verbalize your responses because the court
 17 reporter can't take down nods or gestures,
 18 uh-huh's or huh-uhs, so do your best to do that.
 19 A Okay.
 20 Q What I'm going to do, just to make this a little
 21 better, is I'm going to move over this way,
 22 because there is a camera here, and it probably
 23 -- you'd probably prefer to have a video, if
 24 it's going to be used, where you're looking sort
 25 of at the camera instead of off to the side. So

8

1 I'll move over by the camera to help out with
 2 that.
 3 You have your chart with you related to
 4 Mr. Fusco's care. This is not a memory test in
 5 any way. So if you need to refer to anything in
 6 that chart, please do so.
 7 A Okay.
 8 Q Okay?
 9 MR. GRAY: Larry, those
 10 are yours?
 11 MR. PESKIN: These are mine.
 12 Q Before we get into your involvement with
 13 Mr. Fusco's care, I wanted to ask you some
 14 questions about you.
 15 State your full name, if you could, for the
 16 record.
 17 A John Lee.
 18 Q Where were you born, Dr. Lee?
 19 A Soule, Korea.
 20 Q When?
 21 A September 17, 1961.
 22 Q How long have you been in the United States?
 23 A Since 1980.
 24 Q Okay. You are an M.D.?
 25 A D.O.

<p style="text-align: right;">9</p> <p>1 Q D.O. Licensed to practice medicine in the State 2 of Ohio?</p> <p>3 A Yes.</p> <p>4 Q Tell me about your medical education and 5 training. Where did you go to medical school?</p> <p>6 A I went to Philadelphia College of Osteopathic 7 Medicine.</p> <p>8 Q Okay. And when did you graduate?</p> <p>9 A 1992.</p> <p>10 Q All right. Then after that what did you do?</p> <p>11 A I did an internship.</p> <p>12 Q Where?</p> <p>13 A In Phoenix, Arizona.</p> <p>14 Q At what facility?</p> <p>15 A Community Hospital Medical Center.</p> <p>16 Q Okay. And was that a one-year internship?</p> <p>17 A One-year internship.</p> <p>18 Q Was it in family practice or --</p> <p>19 A It was a rotating internship.</p> <p>20 Q Okay. And then after your rotating internship, 21 what did you do?</p> <p>22 A I went home to practice with -- to help with the 23 family business for a few years, three, four 24 years.</p> <p>25 Q What kind of family business was it?</p>	<p style="text-align: right;">11</p> <p>1 Q Sure.</p> <p>2 A I went to PGY3, family practice residency 3 training. I completed that in 1998, I think.</p> <p>4 Q Okay. Did you do the PGY3 --</p> <p>5 A That was in Indiana.</p> <p>6 Q Okay. Where?</p> <p>7 A St. Joseph's Community Hospital.</p> <p>8 Q Why did you leave the residency in Erie?</p> <p>9 A I got married.</p> <p>10 Q Okay. To somebody who didn't live in Erie 11 probably, right?</p> <p>12 A Well, they lived in Erie, but at that time, they 13 were working in Indiana.</p> <p>14 Q Okay. So you finished your family practice 15 residency at St. Joseph's?</p> <p>16 A Yes.</p> <p>17 Q PGY3 is the last year of that?</p> <p>18 A That's correct.</p> <p>19 Q Okay. And then after you finished your PGY3, 20 what did you do? Did you take the licensing 21 exam -- I mean, the Board certification?</p> <p>22 A Yes. I took a Board certifying exam.</p> <p>23 Q Which one did you take? One in -- is there more 24 than one for -- different one for osteopaths 25 than for M.D.s?</p>
<p style="text-align: right;">10</p> <p>1 A Export/import business.</p> <p>2 Q And home was at that time?</p> <p>3 A Toronto, Canada.</p> <p>4 Q So you sort of suspended your professional 5 activities as a physician at that period of 6 time?</p> <p>7 A Yes.</p> <p>8 Q Okay. And then when did you resume the practice 9 of medicine?</p> <p>10 A In 1997, I believe, I went to my second year in 11 family practice residency training.</p> <p>12 Q Okay. Where was that?</p> <p>13 A In Erie, Pennsylvania.</p> <p>14 Q At what facility?</p> <p>15 A Millcreek Community Hospital.</p> <p>16 Q Was that an osteopathic hospital?</p> <p>17 A Yes.</p> <p>18 Q So did you participate in an osteopathic --</p> <p>19 A Residency program?</p> <p>20 Q -- residency program and family practice -- or 21 medicine?</p> <p>22 A Yes.</p> <p>23 Q Was that just one year, or was that --</p> <p>24 A That was second year, and after that, I assume 25 you want to know what I did third year?</p>	<p style="text-align: right;">12</p> <p>1 A Yes.</p> <p>2 Q Okay. So did you take the osteopathic --</p> <p>3 A Yes.</p> <p>4 Q -- certification exam?</p> <p>5 A Yes.</p> <p>6 Q Okay. And when did you take that?</p> <p>7 A 1999, I believe.</p> <p>8 Q And did you pass it the first time?</p> <p>9 A Yes.</p> <p>10 Q Okay. And after you obtained your Board -- 11 well, where did you start working after you 12 finished your residency?</p> <p>13 A Ashtabula Clinic.</p> <p>14 Q Okay. So this is the first and only position 15 you've had since completing your formal training 16 in family medicine?</p> <p>17 A Yes.</p> <p>18 Q Okay. Did you start in 1999?</p> <p>19 A Yes.</p> <p>20 Q July or August, something like that? Or did you 21 take a little time off?</p> <p>22 A September, I believe.</p> <p>23 Q September. Okay.</p> <p>24 And you've been at the Ashtabula Clinic 25 since then?</p>

13

1 A Yes.

2 Q Okay. Are you a shareholder in the corporation?

3 A No.

4 Q You're an employee?

5 A Yes.

6 Q Where do you hold medical staff privileges?

7 Anyplace besides Ashtabula Hospital?

8 A This is the only place.

9 Q Okay. How many family medicine doctors are

10 there in your practice?

11 A Give me a minute. Let me think.

12 Q Sure.

13 A I believe seven.

14 Q Some have been hired since you came on in '99, I

15 assume?

16 A Yes.

17 Q You're not the junior member of the group --

18 A No.

19 Q -- any longer?

20 Ever had your medical staff privileges at

21 this hospital suspended or revoked?

22 A No.

23 Q Have you ever been a defendant in a medical

24 malpractice lawsuit before?

25 A No.

14

1 Q Have you ever done any work as an expert

2 witness?

3 A No.

4 Q Never reviewed a case for an attorney or

5 anything like that --

6 A No.

7 Q -- or been asked to?

8 Do you subscribe to any professional

9 journals?

10 A They just send it to me.

11 Q What do you receive?

12 A Patient Care, American Family Practice Journal.

13 Q American Family Practice Journal? Anything

14 else?

15 A OB/GYN. Things that I don't really do.

16 Q Is OB/GYN part of your practice?

17 A No.

18 Q Okay. Do you subscribe to American Family

19 Physician?

20 A I believe I said that.

21 Q Well, you said American Family Practice Journal.

22 A Okay.

23 Q There's a publication called American Family

24 Physician.

25 A I'm not really sure. It's American Family

15

1 Practice something.

2 MR. GRAY: I'm going to

3 just object. He said he didn't subscribe to any

4 of them. They were provided to him.

5 MR. PESKIN: Provided to

6 him.

7 Q Do you -- are you a member of the American

8 Academy of Family Physicians?

9 A No.

10 Q Do you know of the American Academy of Family

11 Physicians?

12 A I've heard of it, yes.

13 Q Are there any members of your group that are

14 members of the American Academy?

15 A I don't know.

16 Q Are you familiar with the publication of the

17 American Academy of Family Physicians called

18 American Family Physician?

19 A I'm not sure.

20 Q Okay. You've heard of the organization, though?

21 A Yes. I think.

22 Q Okay. What professional groups do you belong

23 to, if any?

24 A I don't belong to any professional groups.

25 Q Not the American Medical Association?

16

1 A No.

2 Q Okay. I want to talk with you, now, about

3 Keith Fusco. I want you to use the chart

4 liberally if it will help you.

5 First of all, I want you to tell me when

6 you first started seeing Keith Fusco.

7 A First visit of record that I have with him is in

8 January the 4th, 1992. Or 2002. I'm sorry,

9 2002.

10 Q Had he been a patient of the practice before you

11 started to see him?

12 A I inherited this patient from another physician.

13 Q Okay. Who was that?

14 A Dr. Gee. Oh, sorry. My first visit -- let's

15 see.

16 Q I'm seeing notes in here from 2001.

17 A Right. I just came across that. So -- I think

18 my first visit with him was in May, 2001.

19 Q Let's see. Are your initials JLL?

20 A JL.

21 Q Okay. I'm looking at a March 1st, 2001 note.

22 A March 1st, 2001 note?

23 Q Well, it just says, "N/HALL." I don't know if

24 that's you or not.

25 A That's not me. I'm number 43.

<p>17</p> <p>1 Q That helps. Who is GVJ?</p> <p>2 A GVJ is a doctor that he was seeing before for</p> <p>3 other problems.</p> <p>4 Q Okay. Let's try to zero in on this. I know --</p> <p>5 I can tell from the record that on February</p> <p>6 19th, 2001, he was seen in the office for an</p> <p>7 abscess of the groin by a GVJ, whoever that</p> <p>8 doctor is. Can you identify that doctor for me?</p> <p>9 A I believe that's Dr. Jene Blanc.</p> <p>10 Q That's in February. Now, on the next page,</p> <p>11 3-31-2001, do you see a note there, a</p> <p>12 handwritten note that says, "Referral,</p> <p>13 Dr. J. Lee"?</p> <p>14 A Yes, I do.</p> <p>15 Q "Complained of body aches, chills, alternating</p> <p>16 with sweating, with bilateral lower back pain."</p> <p>17 Do you see that?</p> <p>18 A Yes, I do.</p> <p>19 Q Okay. Does that make sense that that would be</p> <p>20 at or around the time when you first started</p> <p>21 seeing him?</p> <p>22 A It may have been that I just told him to go see</p> <p>23 a surgeon because he had these symptoms with</p> <p>24 this groin injury or something.</p> <p>25 Q What I meant is would that have been the time</p>	<p>19</p> <p>1 A Yeah. Those aren't mine.</p> <p>2 Q Starting at around April 1st?</p> <p>3 A That's --</p> <p>4 Q April 9th, I guess?</p> <p>5 A First time I seen this patient was -- what did I</p> <p>6 say? April?</p> <p>7 Q Let's see. There's still lots of Aprils.</p> <p>8 A April 20th appears to be the first time I seen</p> <p>9 this patient.</p> <p>10 Q April 20th?</p> <p>11 A April 20th? Let's see. No. April -- no. It</p> <p>12 was May -- May 1st.</p> <p>13 Q Okay. Yeah. There's a number --</p> <p>14 A May 9th. May 9th.</p> <p>15 Q There's a number of phone calls, it seems like,</p> <p>16 to the office related to this issue he had with</p> <p>17 an abscess or groin problems, and then</p> <p>18 April 9th, you're referring to this note right</p> <p>19 here?</p> <p>20 A That's May 9th.</p> <p>21 Q May 9th I mean. Excuse me.</p> <p>22 A Yes.</p> <p>23 Q Is that the note you're referring to, the first</p> <p>24 time you had contact with him?</p> <p>25 A Yes. I think there should be a typed one for</p>
<p>18</p> <p>1 you assumed the role -- a role as Mr. Fusco's</p> <p>2 primary care physician?</p> <p>3 A The first time I seen the patient was in</p> <p>4 April of '01.</p> <p>5 Q Okay. You may -- you mean in this other</p> <p>6 instance, you may have just been facilitating a</p> <p>7 referral for one of your colleagues?</p> <p>8 A Yes.</p> <p>9 Q Because I'm looking at the next note down, which</p> <p>10 is typewritten. It says, "3-31-01," and that</p> <p>11 one appears to be the same GVJ. Do you see</p> <p>12 that? It's after the handwritten note that</p> <p>13 says, "Referral by Dr. Lee."</p> <p>14 A Which note are you talking about?</p> <p>15 Q This note and those two.</p> <p>16 A Okay. Yeah. That's GVJ. That's Dr. Jene</p> <p>17 Blanc.</p> <p>18 Q So he was still -- he was not your patient on</p> <p>19 March 31st. And then on April 11th, there's a</p> <p>20 stamp plate, here, and a couple of notes on this</p> <p>21 patient. Did he become your patient around that</p> <p>22 time?</p> <p>23 A That's -- the initials is not mine. Dr. Jene</p> <p>24 Blanc okayed those medicines.</p> <p>25 Q Including down here?</p>	<p>20</p> <p>1 that, too.</p> <p>2 Q There we go. There should be -- "May 9th, 2001,</p> <p>3 here for blood pressure check." And is that</p> <p>4 your -- the J is you?</p> <p>5 A Yes, that's me.</p> <p>6 Q Okay. Finally zeroed in on that, anyway.</p> <p>7 Fair to say from this point forward, you</p> <p>8 were Mr. Fusco's primary care physician?</p> <p>9 A Yes.</p> <p>10 Q Dr. -- and I can't remember what the J stands</p> <p>11 for.</p> <p>12 A Jene Blanc, surgeon.</p> <p>13 Q No. The doctor that was seeing him before.</p> <p>14 A Oh, Dr. Gee?</p> <p>15 Q Yeah. Did he leave the practice or something?</p> <p>16 A Yes.</p> <p>17 Q Okay. So when Mr. Fusco had to come in for</p> <p>18 another appointment, he would have seen you?</p> <p>19 A Yes.</p> <p>20 Q Okay. Now, Mr. Fusco was part of HMO through</p> <p>21 Aetna U.S. Healthcare?</p> <p>22 A Okay. That may be.</p> <p>23 Q And there are a number of entries in the chart</p> <p>24 from May 9th forward that indicate that you were</p> <p>25 making referrals to other physicians and seeking</p>

<p>21</p> <p>1 authorization for those referrals. Do you</p> <p>2 recall -- or in your practice, are you sometimes</p> <p>3 in a position where you are what's known as a</p> <p>4 gate keeper? You know what I mean by that, what</p> <p>5 that means?</p> <p>6 A Yes.</p> <p>7 Q So that in an HMO setting, a patient has a</p> <p>8 primary care physician, who then has to</p> <p>9 authorize or seek authorization for referrals to</p> <p>10 specialists or for diagnostic testing. Are you</p> <p>11 with me?</p> <p>12 A Yes.</p> <p>13 Q Okay. Was Mr. Fusco a patient who was in that</p> <p>14 kind of situation, to your knowledge?</p> <p>15 A Well, he was seeing Dr. Jene Blanc already, and</p> <p>16 I don't -- I didn't refer him to Dr. Jene Blanc,</p> <p>17 he was seeing him already.</p> <p>18 Q Well, that referral may have been made by</p> <p>19 somebody else.</p> <p>20 A Right. He was seeing him already, and I saw him</p> <p>21 on -- what is that -- May of '01 for high blood</p> <p>22 pressure.</p> <p>23 Q I'm talking about referrals afterwards. Were</p> <p>24 you involved, at any time, when you were caring</p> <p>25 for Mr. Fusco in seeking authorization for</p>	<p>23</p> <p>1 are letters that exist to Aetna or union</p> <p>2 members?</p> <p>3 MR. PESKIN: I'm saying that</p> <p>4 there are -- and I'll probably come across them,</p> <p>5 I noticed them as I was going through the chart,</p> <p>6 there are indications of contacts with Aetna</p> <p>7 U.S. Healthcare about authorization. That's all</p> <p>8 I know.</p> <p>9 MR. GRAY: Okay. I just</p> <p>10 want to make sure you don't have any letters or</p> <p>11 documents from him that he hasn't had the</p> <p>12 opportunity --</p> <p>13 MR. PESKIN: No. All I have</p> <p>14 is what I received.</p> <p>15 MR. GRAY: Okay.</p> <p>16 MR. PESKIN: They would be</p> <p>17 in his chart. But we'll probably come across</p> <p>18 something like that, or at least what I assume</p> <p>19 is something like that, and I don't know.</p> <p>20 BY MR. PESKIN:</p> <p>21 Q When is the next time you saw Mr. Fusco?</p> <p>22 A January the 4th, 2002.</p> <p>23 Q Who is HK?</p> <p>24 A That's a physician assistant.</p> <p>25 Q Okay. I saw a note on November 8th, 2001.</p>
<p>22</p> <p>1 referrals to specialists?</p> <p>2 A No.</p> <p>3 Q Do you know, were you designated as Mr. Fusco's</p> <p>4 primary care physician for purposes of his HMO?</p> <p>5 A I don't know. He just came to see me. If that</p> <p>6 makes me so, it is so.</p> <p>7 Q You don't have any recollection, as you sit</p> <p>8 here, today, of corresponding with or</p> <p>9 communicating with anyone at Aetna U.S.</p> <p>10 Healthcare, or his union, or anybody about</p> <p>11 getting --</p> <p>12 A No.</p> <p>13 Q -- services for him?</p> <p>14 A No.</p> <p>15 Q Okay. Let's talk about when you first started</p> <p>16 seeing Mr. Fusco in May of 2001. He was there</p> <p>17 for a blood pressure check?</p> <p>18 A Yes.</p> <p>19 Q And other than that, were there any significant</p> <p>20 complaints?</p> <p>21 A He was seeing Dr. Jene Blanc for a skin</p> <p>22 infection.</p> <p>23 Q Okay.</p> <p>24 MR. GRAY: Before we go</p> <p>25 any further, Larry, are you saying that there</p>	<p>24</p> <p>1 A Right.</p> <p>2 Q He was still being followed by the surgeon at</p> <p>3 this point. It appears -- is the surgeon -- is</p> <p>4 the surgeon part of the Ashtabula Clinic?</p> <p>5 A Yes.</p> <p>6 Q Okay. The next date you identified was</p> <p>7 January 4th, you said?</p> <p>8 A Yes.</p> <p>9 Q Okay. He came in for what?</p> <p>10 A Cough.</p> <p>11 Q And you prescribed an antibiotic?</p> <p>12 A Yes.</p> <p>13 Q Okay. When these phone -- starting after your</p> <p>14 January 4th, 2002 note, the next page that I see</p> <p>15 has -- it looks like a number of phone contacts</p> <p>16 with the office?</p> <p>17 A Okay.</p> <p>18 Q What procedures are in place to notify you when</p> <p>19 the patient has contacted the office, either for</p> <p>20 requesting a prescription, or refills, or things</p> <p>21 of that nature?</p> <p>22 A Nurses write down the request and I put down,</p> <p>23 "Okay," or "Come in," or whatever --</p> <p>24 Q Okay.</p> <p>25 A -- in the chart.</p>

25

1 Q Can you turn -- on that sheet I just showed you,
 2 there's a phone call on 3-27-02, right about the
 3 middle of the page there.
 4 A 3-27-02?
 5 Q Yeah. There's a handwritten note here, then
 6 there's a telephone message slip.
 7 A Okay. That's '02. Okay. Okay. 3-27-02
 8 there's a message here. Yes.
 9 Q Okay. Now, that -- you see the telephone
 10 message slip?
 11 A Yes.
 12 Q It says, "Lee," and then it says -- is it
 13 "Krajec"?
 14 A Yes.
 15 Q Who is Krajec?
 16 A He's a doctor that was on call.
 17 Q Okay. And Lee would be referring to you?
 18 There's no other Dr. Lee's?
 19 A Myself.
 20 Q And it's received by an A -- can you read that
 21 name?
 22 A I don't know. A. D'George, maybe.
 23 Q A. D'George? Do you know who that is maybe?
 24 R.N.?
 25 A No. I don't know who that is.

26

1 Q What about on the previous page? There's a
 2 handwritten note. It says, "Patient phoned
 3 complaining of back pain, frequency and burning
 4 with voiding"?
 5 A That was my nurse.
 6 Q Okay. "L. Flegler"?
 7 A Yes.
 8 Q That's your nurse?
 9 A Yes.
 10 Q Okay. So if a phone call like that came into
 11 your office and was taken by your nurse, would
 12 her practice be to talk with you about that, or
 13 advise you of it?
 14 A Yes.
 15 Q Okay. And it says, "Requests prescription." I
 16 think. "REQ RX." See that after the --
 17 A Request prescription. Yes.
 18 Q Do you know what for?
 19 A No. That's why I told the patient to come in.
 20 Q Okay. Where does it say that you told the
 21 patient to come in?
 22 A Below that it says, "Come in."
 23 Q "Call patient, no answer" --
 24 A No. Above that. Small.
 25 Q "Come in"?

27

1 A Yes.
 2 Q Okay. This would have been your handwriting?
 3 A Yes.
 4 Q So in response to the information you received
 5 from your nurse about Mr. Fusco's phone call,
 6 and his complaints, and his request for
 7 prescription, you asked your nurse to get a hold
 8 of him to have him come in?
 9 A Right.
 10 Q Okay. And he came in on March 29th?
 11 A Well, it's April 1st on mine.
 12 Q Well, excuse me.
 13 A That must be--
 14 Q There's a telephone triage first?
 15 A Yeah. I may have told him to come in and he
 16 comes in on April the 1st.
 17 Q All right. Do you have any idea why there would
 18 be this telephone triage?
 19 A Sometimes I can tell a patient to come in now
 20 and sometimes they can't and they have to come
 21 in when they can. Sometimes the schedule is
 22 booked and they have to come in a couple days
 23 afterwards.
 24 Q Okay. This looks like a telephone triage
 25 assessment documentation form. First of all,

28

1 can you tell if Mr. Fusco had been seen in an
 2 emergency room at any time -- between the time
 3 that he called and the time that you saw him on
 4 April 1st?
 5 A Well, on 4-1-02 it says, "Follow up E.R."
 6 Q Okay. All right. So if we can get the sequence
 7 right, on the 27th he called your office and he
 8 was complaining of back pain and burning with
 9 voiding, correct?
 10 A Uh-huh. Yes.
 11 Q He talked to a nurse, the nurse talked to you,
 12 it appears. You said, "Have him come in for an
 13 appointment," right?
 14 A Yes.
 15 Q Is there any way to tell from your records or do
 16 you recollect whether the message delivered to
 17 Mr. Fusco was: "Come in today," or, "Come in
 18 tomorrow," or, "Let's just get an appointment
 19 for you"?
 20 A No. "Come in." Usually when it's acute
 21 symptoms, I tell them to come in as soon as
 22 possible.
 23 Q Okay. But you would have no way of knowing from
 24 these records the mechanism for scheduling that
 25 appointment? In other words, whether Mr. Fusco

<p>29</p> <p>1 told your facility, "I can't get in today," or</p> <p>2 whether Mr. Fusco was told, "We could give you</p> <p>3 an appointment on April 1st"?</p> <p>4 A I don't -- I can't answer that. You know --</p> <p>5 Q I wouldn't expect that you could. I'm just</p> <p>6 trying to figure out if there's no way to know</p> <p>7 from just these records what happened that</p> <p>8 caused Mr. Fusco to get an appointment for</p> <p>9 April 1st. In other words, whether it was he</p> <p>10 wasn't available till then or there wasn't an</p> <p>11 appointment till then?</p> <p>12 A That may be -- usually, I tell people to come in</p> <p>13 as soon as possible when they have these</p> <p>14 symptoms.</p> <p>15 Q "These symptoms" meaning what?</p> <p>16 A Symptoms of what he's complaining about, burning</p> <p>17 sensation on voiding.</p> <p>18 Q Okay. Now, can you find in your record a record</p> <p>19 of the emergency room visit that apparently</p> <p>20 occurred on March 29th?</p> <p>21 A Yes. It's right here.</p> <p>22 Q Okay. Let me just take a look at that real</p> <p>23 quick, if I can. My records have problems.</p> <p>24 Okay. When a patient of yours is seen in</p> <p>25 the emergency room, here at this hospital, I</p>	<p>31</p> <p>1 than he's responding to the Cipro?</p> <p>2 MR. PESKIN: We don't know</p> <p>3 whether --</p> <p>4 Q Do you know whether he had an infection?</p> <p>5 A Well, his symptoms that we're talking about</p> <p>6 suggest that he had urine tract infection.</p> <p>7 Q Okay. Were there urine cultures done?</p> <p>8 MR. GRAY: I don't know if</p> <p>9 it will help you, Doctor, but I have in my notes</p> <p>10 that the emergency room did do culture on --</p> <p>11 culture and sensitivity and the results were</p> <p>12 returned on March 30th.</p> <p>13 A Yeah. The results are here.</p> <p>14 Q Okay. And what do the results say?</p> <p>15 A It says patient has over 100,000 enterococcus</p> <p>16 faecalis.</p> <p>17 Q And what's the significance of that?</p> <p>18 A It's positive for organism for urine tract</p> <p>19 infection.</p> <p>20 Q What was your understanding of the extent of the</p> <p>21 hematuria that Mr. Fusco had? Was it</p> <p>22 microscopic or frank blood in his urine,</p> <p>23 according to the reports that you had?</p> <p>24 A It was just blood in urine. I don't have</p> <p>25 information if it was microscopic or not.</p>
<p>30</p> <p>1 assume your office is notified?</p> <p>2 A Seen in the emergency room?</p> <p>3 Q If they're seen in the emergency room, do they</p> <p>4 notify your office?</p> <p>5 A We get a report.</p> <p>6 Q Okay. Would you have gotten a copy of that</p> <p>7 consultation, or discharge summary?</p> <p>8 A I -- sometimes if it's too soon, like this, it</p> <p>9 takes a little while.</p> <p>10 Q Okay. When you saw Mr. Fusco on April 1st, were</p> <p>11 you aware at that time that he had been in the</p> <p>12 emergency room?</p> <p>13 A Yes.</p> <p>14 Q Did you know what he had been in the emergency</p> <p>15 room for?</p> <p>16 A Urine tract infection.</p> <p>17 Q Okay. I need to take a look at that note</p> <p>18 because that's one of the notes that did not</p> <p>19 reproduce.</p> <p>20 When you saw Mr. Fusco on April 1st, was</p> <p>21 there any -- is there any indication that there</p> <p>22 was confirmation that he did, in fact, have a</p> <p>23 urinary tract infection when he presented to the</p> <p>24 emergency room on March 29th?</p> <p>25 MR. GRAY: You mean other</p>	<p>32</p> <p>1 Q Okay. It was enough for him to notice, is that</p> <p>2 fair to say? I mean, it wasn't something that</p> <p>3 was found on a urinalysis? It was blood that he</p> <p>4 saw when he urinated?</p> <p>5 A Yes, his urine was abnormal. So that's why he</p> <p>6 was concerned. I don't know if it was frank or</p> <p>7 microscopic.</p> <p>8 Q Okay. Aside from a urinary tract infection,</p> <p>9 what other conditions would you have in a</p> <p>10 differential for somebody who had frank blood in</p> <p>11 their urine?</p> <p>12 A Well, for a person who has blood in urine, you</p> <p>13 basically check for urinary tract infection.</p> <p>14 That's the first thing. And depending on what</p> <p>15 other symptoms he has, depending on what other</p> <p>16 factors are involved, we go from there.</p> <p>17 Q And what other conditions -- well, would a</p> <p>18 malignancy, somewhere in the urinary tract or</p> <p>19 kidneys, cause blood in the urine?</p> <p>20 A Depending on the person's age, yes.</p> <p>21 Q At this point, when you saw Mr. Fusco on the 1st</p> <p>22 of April, did you consider a more extensive</p> <p>23 workup for the source of his bleeding?</p> <p>24 A I did not. I treated him with antibiotic</p> <p>25 therapy first imperatively and see how he</p>

<p>33</p> <p>1 responds with that. And if he responds well, 2 then there's no need to proceed further. 3 Q Now, when you saw him on April 1st, your notes 4 indicate that he -- that he was reporting that 5 he had improved somewhat, at the time you saw 6 him? 7 A Yes. Indicates that he did get better. 8 Q Okay. Now, he had been on -- he had been on 9 Cipro already? 10 A Yes. 11 Q Through the emergency room by the time he saw 12 you, correct? 13 A Yes. 14 Q And he reported to you that his symptoms were 15 better, including the symptom of blood in his 16 urine? 17 A Yes. 18 Q Okay. So would that have been something that 19 was reassuring to you at that time? 20 A Yes. 21 Q Okay. And would you have expected that his 22 condition would continue to improve if the 23 source of his bleeding was related solely to a 24 urinary tract infection now that he was on Cipro 25 and presumably would continue to take it?</p>	<p>35</p> <p>1 A Yes. 2 Q When a patient's got a complaint of this nature? 3 A Yes. 4 Q And when these calls come in -- this one looks 5 like it came in at 8:11 a.m. If you look at the 6 bottom, "Time completed." 7 A Okay. Yes. 8 Q You would have been advised of this? 9 A Yes. 10 Q And it indicates that he had been scheduled for 11 a same day appointment on April 3rd? 12 A Yes. 13 Q All right. And did you see him on April 3rd? 14 A Yes. 15 Q Okay. Now, did you type -- was there a 16 typewritten note from you for that date? 17 A Yes. 18 Q It says, "Chief complaint, the patient is over 19 here for follow-up for hematuria"? 20 A Yes. 21 Q All right. It states, "42 year old male, 22 treated with antibiotics for hematuria. States 23 that he got better, however, today patient did 24 have some hematuria also. Is on Cipro. Has 25 frequency." At the end of the history section</p>
<p>34</p> <p>1 A Yes, unless, like I said before, if he has other 2 conditions, like -- if he had other conditions 3 that may not, however, I would expect him to get 4 better. 5 Q Okay. When's the next time your office heard 6 from Mr. Fusco after your appointment on the 7 1st? 8 A On April the 3rd. 9 Q Okay. What happened on April the 3rd? 10 A He called and states that he still is urinating 11 blood. 12 Q Okay. Let me back up for a second. 13 Again, there's the signature at the bottom. 14 It looks like A. D'George? 15 A Yeah. That's a telephone nurse. 16 Q Okay. Is that a telephone nurse that's employed 17 by your clinic? 18 A Employed by the clinic and hospital. 19 Q Okay. And when -- well, the form says, 20 "Ashtabula Clinic Family Practice, Telephone 21 Triage Assessment Documentation Form." Is there 22 somebody designated to answer phone -- field 23 phone calls from patients and fill out one of 24 these triage forms, to your knowledge, when a 25 call comes in?</p>	<p>36</p> <p>1 it says, "The patient states that he does work 2 on chemicals, but he's very careful." 3 Would you have been asking him questions 4 about chemical exposure? Would that be part of 5 your routine practice? 6 A Yes. 7 Q Okay. And what would be the reason for asking 8 about chemical exposure in a patient with 9 symptoms of hematuria? 10 A Sometimes they can have other problems like 11 bladder cancers and things like that. 12 Q Yeah. I mean, is there an association between 13 chemical exposure and certain cancers? 14 A Yes. 15 Q Like bladder cancer? You're aware of that? 16 A Yes. 17 Q So fair to say that on April 3rd, 2002, 18 somewhere in your differential was the thought 19 of cancer? 20 A Yes. 21 Q Okay. Now, at this point, you testified earlier 22 that you would have expected that Mr. Fusco 23 would continue to improve on the antibiotic that 24 you had prescribed for him -- that had been 25 prescribed in the emergency room and that you</p>

<p style="text-align: right;">37</p> <p>1 continued on April 1st. Now, on April 3rd, 2 you're hearing about more blood in his urine, 3 and in addition, if you look back at the triage 4 assessment, there's also a lower back pain 5 complaint, left lower back pain. See that? 6 A Yes. 7 Q Did the fact that Mr. Fusco's symptoms 8 reappeared, at least in terms of hematuria, and 9 he was complaining of back pain, cause you any 10 concern that this might be something other than 11 a urinary tract infection? 12 A The fact that it has not gotten better, yes. 13 Q And you wrote an assessment plan here, 14 "Hematuria, possibly urinary tract infection. 15 The patient is being treated with Cipro. We 16 will increase the Cipro to 500 milligrams one 17 tablet twice a day, increase fluids, we will 18 check urine for cytology, and if the patient 19 conditions to have hematuria, we will refer this 20 patient to Dr. Ravi, urologist." Who's 21 Dr. Ravi? 22 A He's a urologist. 23 Q Is he part of your clinic? 24 A No. Well, at that time, he may have been. 25 Q Any indication that -- why did you not refer him</p>	<p style="text-align: right;">39</p> <p>1 A It's Candida yeast was found, hypertrophic 2 squamous cells neutrophils. That was the second 3 one. The first one -- it's like separated. The 4 first one shows that, basically, no malignant 5 cells identified. Mostly superficial squamous 6 cells and neutrophils. 7 Q Well, did you consider that the results of that 8 urinalysis to be reassuring in terms of there 9 being any possibility that Mr. Fusco's hematuria 10 was related to a malignancy? 11 A Because of his young age and because of his 12 negative cytology, yes. 13 Q Was it your belief that that -- those results of 14 the UTI would rule out kidney cancer? 15 A Pardon me? 16 Q Would those results on a UT -- on a urinalysis 17 rule out kidney cancer? 18 A In this patient; with respect to his young age, 19 that was very low on my differential. 20 Q Okay. When was the next time you saw Mr. Fusco? 21 A I saw him on April the 8th. 22 Q Okay. And what was the reason for that visit? 23 A For his diabetes. 24 Q Okay. Did you assess the status of his urinary 25 tract during this visit?</p>
<p style="text-align: right;">38</p> <p>1 to Dr. Ravi at this point, on April 3rd? 2 A Well, if he was responding, and I wanted to 3 check his -- if he was responding, I wanted to 4 see if he would respond to higher dose of 5 antibiotics, as well. If there's a reason that 6 he's having hematuria, then I would have the 7 reason and I would not need to refer him. 8 Q Well, assume that -- assume that hematuria -- 9 that his hematuria resolved. Would that rule 10 out another source for his bleeding other than a 11 urinary tract infection? 12 A If it was -- if it stopped, then I would monitor 13 the patient to see how he does. 14 Q Would you expect that patients that have 15 hematuria as a result of a malignancy somewhere 16 in their bladder, or urinary tract, or kidney 17 would have hematuria that would wax and wane, 18 appear and disappear? 19 A It can, but not to see an oncologist, say. 20 Q Did you consider any further diagnostic testing 21 on Mr. Fusco at this point, such an IVP? 22 A I did a urine cytology. 23 Q Okay. 24 A Two of them. 25 Q And what were the results of the urine cytology?</p>	<p style="text-align: right;">40</p> <p>1 A Yes. Diflucan was given for the yeast 2 infection, and states that he's feeling much 3 better, no blood in urine noticed. 4 Q And he was still taking antibiotics? 5 A I would say so, yes. 6 Q Okay. Did your office have another contact with 7 Mr. Fusco in April? 8 A 4-25 he called saying that he had burning 9 sensation and he wanted Diflucan again. 10 Q And did you -- was there a request that he come 11 in for an appointment at that time? 12 A No. Actually, I wanted him to come in, but he 13 said he was going out of town, he wanted the 14 prescription, so I did call in Cipro for three 15 days and I wanted to check his urine again to 16 see if there was yeast in his urine. 17 Q Okay. And did you do that? 18 A Patient was contacted and given instructions on 19 4-25-02. 20 Q We don't know what that means though, do we, 21 what kind of instructions? 22 A Well, he was contacted to pick up a urine sheet 23 and give urine sample at the lab. 24 Q Okay. And was that done? 25 A That I don't know. 4-25. It appears that I</p>

<p style="text-align: right;">41</p> <p>1 have no record of that in the chart.</p> <p>2 Q Well, when you say given instructions on 4-25,</p> <p>3 you don't -- do you know whose signature that</p> <p>4 is?</p> <p>5 A That's one of my nurses, also.</p> <p>6 Q Okay. How do you know what kind of instructions</p> <p>7 Mr. Fusco was given by your nurse?</p> <p>8 A My nurse read what I wrote down and told</p> <p>9 Mr. Fusco to do what I wrote down. Check urine,</p> <p>10 and Cipro was also called into the pharmacist.</p> <p>11 Q That arrow that goes down, it says, "Chart slip</p> <p>12 yes," and then there's an arrow that goes down</p> <p>13 from the telephone message on my copy here, and</p> <p>14 then there's something that -- says, "UA do it"</p> <p>15 before. What does that mean?</p> <p>16 A UA do it.</p> <p>17 Q And it appears to be scratched out. See what</p> <p>18 I'm saying?</p> <p>19 A Uh-huh. I'm not sure what I was getting at at</p> <p>20 that time.</p> <p>21 Q It says, "UA do it before UA if there is yeast</p> <p>22 in UA"?</p> <p>23 A That's note for myself. Basically, I wanted to</p> <p>24 check the urine to see if there's yeast in</p> <p>25 urine, and see if there's any other reason that</p>	<p style="text-align: right;">43</p> <p>1 A "Was in last p.m." Okay. They recommend</p> <p>2 referral to Dr. Weiss. That's June 21st.</p> <p>3 Q Okay. I apologize. I thought -- I didn't see</p> <p>4 the 6 there.</p> <p>5 Was there a visit to the E.R. in June?</p> <p>6 A Yes, there is.</p> <p>7 Q June 20th?</p> <p>8 A June 20th. Yes.</p> <p>9 Q Okay. And what was he in the emergency room</p> <p>10 for?</p> <p>11 A Hematuria.</p> <p>12 Q Okay. How do they describe the hematuria?</p> <p>13 A "Voiding blood today."</p> <p>14 Q And what was their recommendation? What is the</p> <p>15 plan by the E.R.?</p> <p>16 A They put him on Cipro.</p> <p>17 Q Okay.</p> <p>18 A Called Dr. Weiss in the morning for follow-up.</p> <p>19 Q Do you know why they would have had him call</p> <p>20 Dr. Weiss?</p> <p>21 A I have no idea why.</p> <p>22 Q There's a series of notes and then telephone</p> <p>23 messages, and it looks like on 6-21, he was</p> <p>24 given an appointment with Dr. Weiss. Is</p> <p>25 Dr. Weiss number 28?</p>
<p style="text-align: right;">42</p> <p>1 he's having these symptoms at that time.</p> <p>2 Q Okay. I mean, in all fairness, Doctor, you</p> <p>3 really don't know what your nurse may have told</p> <p>4 Mr. Fusco on that telephone call, do you?</p> <p>5 MR. GRAY: Objection.</p> <p>6 Asked and answered.</p> <p>7 Q I mean, you weren't there when your nurse talked</p> <p>8 to Mr. Fusco on April 25th, were you?</p> <p>9 A I was not next to her --</p> <p>10 Q Right.</p> <p>11 A -- when she was talking, but it's common</p> <p>12 practice that when I give instructions on the</p> <p>13 chart, and it's noted, my nurse reads what it</p> <p>14 says and does -- carries out what I want.</p> <p>15 Q Okay. Mr. Fusco had another emergency room</p> <p>16 visit, then, in early May. I believe it was</p> <p>17 May 8th.</p> <p>18 A I don't have that information here.</p> <p>19 Q Let's see if I have this one or not. Well,</p> <p>20 let's look at -- look at May 9th in your chart,</p> <p>21 to start with.</p> <p>22 A May 9th. No show.</p> <p>23 Q Number 43. What is number 43? That's you?</p> <p>24 A That's my number.</p> <p>25 Q That's the telephone message right after that?</p>	<p style="text-align: right;">44</p> <p>1 A I don't know what number he is, but I guess he</p> <p>2 is according to what this says over here on the</p> <p>3 bottom.</p> <p>4 Q Okay. When's the next time you saw Mr. Lee?</p> <p>5 A On August the 2nd.</p> <p>6 Q Of '02, right?</p> <p>7 A Yes.</p> <p>8 Q Do you recall any conversations with anybody in</p> <p>9 your office regarding Mr. Fusco's emergency room</p> <p>10 visit in July?</p> <p>11 A No.</p> <p>12 Q You would have received a copy -- your office</p> <p>13 would have received a copy of the record from</p> <p>14 that emergency room visit?</p> <p>15 A Yes.</p> <p>16 Q When you saw him on August 2nd, what were you</p> <p>17 seeing him for?</p> <p>18 A Diabetic follow-up.</p> <p>19 Q Okay. Was there any questions by you about the</p> <p>20 status of his hematuria as reflected in your</p> <p>21 note?</p> <p>22 A No.</p> <p>23 Q And the next time you saw him was what?</p> <p>24 A After August the 2nd?</p> <p>25 Q Yes.</p>

<p style="text-align: right;">45</p> <p>1 A August the 9th.</p> <p>2 Q Okay. And what was the reason for that?</p> <p>3 A For diabetic follow-up.</p> <p>4 Q Was there any questions or concerns at that time</p> <p>5 about his urinary problems?</p> <p>6 A No. He didn't complain of anything.</p> <p>7 Q When was your next appointment with him?</p> <p>8 A Well, it was supposed to be 9-27, but it was a</p> <p>9 no show then. And then it was August --</p> <p>10 October 28th of 2002.</p> <p>11 Q Okay. And what was the reason for that visit?</p> <p>12 A He was here for follow-up of diabetes.</p> <p>13 Q Any issues with his urinary tract at that time,</p> <p>14 and questions to him that you can see? Any</p> <p>15 complaints by him?</p> <p>16 A No.</p> <p>17 Q And your next appointment with him?</p> <p>18 A I didn't have a next appointment with him. Oh,</p> <p>19 next appointment with him was in January the</p> <p>20 17th of '03.</p> <p>21 Q What was that --</p> <p>22 MR. GRAY: Hold on one</p> <p>23 second. I have in my own personal notes a visit</p> <p>24 in October of '02. October 28th. So I just</p> <p>25 wanted to make sure --</p>	<p style="text-align: right;">47</p> <p>1 urologist who recommended referral to Cleveland</p> <p>2 Clinic.</p> <p>3 Q What was the size of the mass?</p> <p>4 A I don't know.</p> <p>5 Q Do you have any opinion as to whether the mass</p> <p>6 that was identified in December of 2002 was</p> <p>7 likely present in March of 2001?</p> <p>8 A I can't say -- I can't say.</p> <p>9 Q You can't say one way or the other?</p> <p>10 A I can't say one way or the other.</p> <p>11 Q Okay. That's something that would be outside</p> <p>12 your expertise?</p> <p>13 A That's correct.</p> <p>14 Q You would defer to an oncologist on that, a</p> <p>15 surgeon?</p> <p>16 A I can't say.</p> <p>17 Q Okay.</p> <p>18 A But -- well, never mind.</p> <p>19 Q Okay. Do you have any explanation as to why</p> <p>20 Mr. Fusco wasn't referred to a urologist at any</p> <p>21 time between March of 2001 and December, 2002?</p> <p>22 A He always responded appropriately with</p> <p>23 antibiotics and --</p> <p>24 MR. GRAY: I'm just going</p> <p>25 to -- I'm just going to object being vague, and</p>
<p style="text-align: right;">46</p> <p>1 THE WITNESS: October 28th.</p> <p>2 MR. GRAY: Did you already</p> <p>3 talk about that?</p> <p>4 THE WITNESS: Yes. He</p> <p>5 already questioned me about that.</p> <p>6 MR. GRAY: All right.</p> <p>7 MR. PESKIN: October 28th.</p> <p>8 Yes.</p> <p>9 MR. GRAY: All right.</p> <p>10 BY MR. PESKIN:</p> <p>11 Q Was Mr. Fusco in the emergency room again after</p> <p>12 the emergency room visit in June?</p> <p>13 A I think he was in the emergency room in December</p> <p>14 after that. He was in the emergency room in</p> <p>15 December.</p> <p>16 Q Okay. And what was he in the emergency room for</p> <p>17 in December?</p> <p>18 A Urinating blood.</p> <p>19 Q Okay. And your office would have been notified,</p> <p>20 again, of that visit?</p> <p>21 A Yes.</p> <p>22 Q And what occurred during that emergency room</p> <p>23 visit? Was he admitted?</p> <p>24 A Basically, they did a CT scan and they found a</p> <p>25 mass and he was admitted and referred to a</p>	<p style="text-align: right;">48</p> <p>1 also, I think it's a pretty open-ended question</p> <p>2 as far as I don't know if it's realistic for him</p> <p>3 to be able to recount --</p> <p>4 MR. PESKIN: All right.</p> <p>5 MR. GRAY: -- everything.</p> <p>6 MR. PESKIN: Fair enough.</p> <p>7 I'll back that up a little bit.</p> <p>8 Q We read a note in your chart where you were</p> <p>9 considering a referral to a urologist. Do you</p> <p>10 recall that?</p> <p>11 A Yes.</p> <p>12 Q Can you tell me why that never happened?</p> <p>13 A Because he always responded appropriately with</p> <p>14 antibiotics and Diflucan. There was an</p> <p>15 explanation why he had blood in the urine.</p> <p>16 Q You would agree with me that the presence of a</p> <p>17 urinary tract infection, or yeast organisms in</p> <p>18 his urinalysis wouldn't rule out something -- a</p> <p>19 more serious condition that would be accounting</p> <p>20 for blood in his urine?</p> <p>21 A Like I say, you have to take each individual</p> <p>22 differently.</p> <p>23 Q Are you aware of any standards or guidelines for</p> <p>24 working up patients that have microscopic or</p> <p>25 hematuria or frank blood in their urine?</p>

49

1 MR. GRAY: I'm going to
 2 object to the use of the word standard along
 3 with the word guidelines. Are you talking about
 4 guidelines --
 5 MR. PESKIN: Published.
 6 MR. GRAY: Published
 7 guidelines?
 8 Q Published guidelines. Have you seen the
 9 literature?
 10 A Well, the guidelines and recommendations are
 11 just that, recommendations, and you have to take
 12 each patient individually.
 13 Q Well, I understand that. My question is simply:
 14 Are you aware of the existence of such
 15 guidelines for the treatment or evaluation of
 16 patients presenting with microscopic hematuria
 17 or frank blood in their urine?
 18 A Yes, there are standards for that.
 19 Q Okay. Had you -- were you familiar with those
 20 standards in 2001, or have you become familiar
 21 with them since?
 22 A I was familiar with them, yes.
 23 Q What's your understanding of what those
 24 standards or guidelines suggest in terms of a
 25 workup of a patient that has frank blood in

50

1 their urine?
 2 MR. GRAY: Again, hold on
 3 one second. I'm just going to the object for
 4 the record to the use of the word standard, and
 5 I understand the Doctor referred to it, but you
 6 and I both know that in our profession, Larry,
 7 the word standard has a little bit --
 8 MR. PESKIN: I understand
 9 that.
 10 MR. GRAY: -- different
 11 meaning, so --
 12 MR. PESKIN: I understand
 13 that.
 14 MR. GRAY: -- I'm going to
 15 object to the word standard.
 16 A Well, standards are guidelines, recommendations,
 17 and it's up to the physician to look at each
 18 individual patient as an individual and treat
 19 accordingly.
 20 Q Would you agree with the proposition that a
 21 patient that presents with frank blood in their
 22 urine should be considered to have a malignancy
 23 unless proven otherwise?
 24 MR. GRAY: Objection.
 25 A No.

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1 Q Well, what about --
 2 MR. GRAY: I'm just going
 3 to object to the number of fronts. Are you
 4 talking about certain age group? I'm just going
 5 to object to it.
 6 MR. PESKIN: Just a general
 7 principal.
 8 Q I mean, have you ever heard -- let's take it out
 9 of context of blood and urine. How about a
 10 patient that's bleeding from the rectum? Would
 11 you agree with the principal that a patient that
 12 has bleeding from the rectum should be presumed
 13 to have cancer unless proven otherwise?
 14 MR. GRAY: Objection.
 15 THE WITNESS: Do I answer
 16 that?
 17 MR. GRAY: I'm just going
 18 to object to the question.
 19 Q You can answer it.
 20 MR. GRAY: I think it's an
 21 unfair question and I think it's vague.
 22 A You have to take individual at -- each
 23 individual differently. If a person is young,
 24 twelve years old, or five years old, that's
 25 going to be very, very low on your differential

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1 list.
 2 Q As the patient gets older, the likelihood of
 3 cancer being the cause of -- let's get back to
 4 blood in the urine. Would you agree that it
 5 increases?
 6 A As the patient is older, yes.
 7 Q Okay. In terms of bladder cancer or kidney
 8 cancer, did you consider Mr. Fusco to be in an
 9 age group that was of low risk?
 10 A Yes.
 11 Q What about other risk factors, did Mr. Fusco
 12 have other risk factors for either bladder or
 13 kidney cancer that you're aware of?
 14 A No.
 15 Q What about smoking?
 16 A No.
 17 MR. GRAY: Object to
 18 foundation, but go ahead.
 19 Q Well, you knew that he smoked, right? Are you
 20 saying that smoking history is not a risk factor
 21 for some significant disease in a patient with
 22 microscopic hematuria or frank blood in the
 23 urine?
 24 A Smoking is a risk factor for a lot of things.
 25 Q Okay. You were aware of the risk factor

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1 presented by occupational exposure to solvents
 2 because you asked him about that, correct?
 3 A Correct.
 4 Q What about -- at what age does one get into a
 5 higher risk category for bladder cancers or
 6 kidney cancers, to your knowledge?
 7 A Well, you'd have to ask the oncologist that to
 8 get a more precise answer. My understanding of
 9 bladder or renal cancer is cancer for old
 10 people.
 11 Q Is a history of frequent UTIs a risk factor for
 12 either bladder or kidney cancer?
 13 A History of frequent UTI can be caused by many
 14 things. Diabetes is one of them, also.
 15 Q I understand that. But I'm asking specifically
 16 with regard to bladder and kidney cancer. Would
 17 a history of frequent UTIs --
 18 A No.
 19 Q -- be something that would cause you to have a
 20 higher index of suspicion for somebody having
 21 either bladder or kidney cancer?
 22 A No.
 23 Q Did Mr. Fusco -- do you recall Mr. Fusco
 24 speaking with you about seeing a urologist at
 25 any time?

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1 A No.
 2 Q Did you ever share with Mr. Fusco your thought
 3 of referring him to a urologist, to your
 4 knowledge?
 5 A I can't recall that.
 6 Q Okay. So that note that we were looking at
 7 before where you wrote as part of your plan, if
 8 it doesn't get better, consider referral, you
 9 don't know whether you would have discussed that
 10 with him or not?
 11 A I probably -- I can't say. I don't remember.
 12 Q That's fine. That's fine.
 13 Tell me what you can recall about your --
 14 well, let's see. Mr. -- we know Mr. Fusco's
 15 kidney cancer was diagnosed in December of 2002,
 16 correct?
 17 A Yes.
 18 Q And then you did see him again after the
 19 diagnosis?
 20 A January 17th.
 21 Q Okay. And what was the purpose of that visit?
 22 A Some edema of lower extremities, anxiety, back
 23 pain.
 24 Q Did you have a conversation with him about his
 25 kidney cancer?

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1 A I'm sure I discussed it when I discussed the --
 2 Q Are you looking at your typewritten note?
 3 A Yes.
 4 Q Okay. Flip back a page to -- there's a
 5 handwritten note that says 1-17-03. Is that
 6 some of that your handwriting?
 7 A Yes.
 8 Q It says, "Discuss kidney problems." Is that
 9 your handwriting?
 10 A Yes.
 11 Q Okay. What can you tell me about the
 12 discussion, if anything, that you would have had
 13 with Mr. Fusco?
 14 A Well, 1-17-03 -- the typewritten one is 1-17-03
 15 over here.
 16 Q Right.
 17 A I'm going by this over here, and basically, we
 18 probably discussed -- I don't recall what we
 19 discussed, but we discussed the general events
 20 that occurred.
 21 Q Okay. Going back to when? Do you recall
 22 Mr. Fusco expressing some concern to you about
 23 having been diagnosed with kidney cancer and the
 24 fact that he had blood in his urine for some
 25 time?

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1 A He talked about that. He was more concerned
 2 about his anxiety and pain medication.
 3 Q For going forward. What I'm asking you: Do you
 4 have any specific recollection of Mr. Fusco
 5 talking with you or being upset about the fact
 6 that he had kidney cancer and had had blood in
 7 his urine for some time?
 8 A I'm sure he was not happy, but I don't think
 9 he --
 10 Q I mean, it's not going to be in these notes, I
 11 know that.
 12 A Okay.
 13 MR. GRAY: He's asking.
 14 Q I'm asking about your independent recollection.
 15 MR. GRAY: He's just
 16 asking if you simply recall without the benefit
 17 of the medical records any conversation with
 18 Mr. Fusco about his cancer at that time in
 19 January.
 20 A I don't quite understand the question.
 21 Q All right. I want you to put aside the record
 22 for a moment.
 23 A Okay.
 24 Q Because we can see what the record says. It
 25 only has three words. It says, "Discussed

<p style="text-align: right;">57</p> <p>1 kidney problem," which is an indication that</p> <p>2 there was some discussion. Fair?</p> <p>3 A Uh-huh.</p> <p>4 Q You -- I'm trying to determine if you, as you</p> <p>5 sit here, today, and part of the purpose for</p> <p>6 this deposition is for me to understand what</p> <p>7 your recollection is, and if you don't recall,</p> <p>8 that's perfectly fine, too. I just want to know</p> <p>9 if you have any recollection of that -- of the</p> <p>10 details of this discussion about Mr. Fusco's</p> <p>11 kidney problems. Any of them. Any of the</p> <p>12 details.</p> <p>13 A We just discussed what happened.</p> <p>14 Q Meaning -- meaning what? That he had been</p> <p>15 diagnosed with cancer?</p> <p>16 A That he went to the emergency room, he went to</p> <p>17 Cleveland Clinic, and what they told him, things</p> <p>18 like that.</p> <p>19 Q Okay. Aside from that, do you remember him</p> <p>20 expressing any other concerns to you about the</p> <p>21 care you provided?</p> <p>22 A No.</p> <p>23 Q Okay. Let's take it away from January 17th.</p> <p>24 A Okay.</p> <p>25 Q Aside from January -- this conversation, do you</p>	<p style="text-align: right;">59</p> <p>1 A On May 16, '03, for diabetes.</p> <p>2 Q Okay. Any discussion about his kidney cancer at</p> <p>3 that point, other than what he was going through</p> <p>4 in terms of treatment?</p> <p>5 A No.</p> <p>6 Q I'm going to ask you to flip back a second to</p> <p>7 January 29th, the handwritten notes.</p> <p>8 A Okay.</p> <p>9 Q There's a note dated -- first of all, there's a</p> <p>10 note dated 1-28-03. It says, "Request chart,"</p> <p>11 then it says "Beth" and "REF SP." I take it to</p> <p>12 mean referral specialist. Do you know who Beth</p> <p>13 is?</p> <p>14 A Where is that?</p> <p>15 Q It's on the handwritten note --</p> <p>16 A Okay.</p> <p>17 Q -- on January 28th. Do you know who Beth would</p> <p>18 be?</p> <p>19 A She's our referral specialist.</p> <p>20 Q Beth who?</p> <p>21 A Beth Cooley.</p> <p>22 Q And her title is referral specialist?</p> <p>23 A Yeah. She works as a referral specialist.</p> <p>24 Q What does that job entail, to your knowledge?</p> <p>25 A Well, it looks like he was getting some surgery</p>
<p style="text-align: right;">58</p> <p>1 recall any other conversations with Mr. Fusco</p> <p>2 where there would have been a discussion about</p> <p>3 his kidney cancer?</p> <p>4 A Meaning that he was upset about care that I was</p> <p>5 providing?</p> <p>6 Q Or about his condition at all. I mean, other</p> <p>7 than the one we know about, because there's a</p> <p>8 note about it, although, obviously, you don't</p> <p>9 recall all the details about that conversation.</p> <p>10 Do you recall if there were any other</p> <p>11 conversations other than this one that we know</p> <p>12 about because there's a note about it.</p> <p>13 A If I saw him after that, I'm sure we discussed</p> <p>14 something about his kidney cancer.</p> <p>15 Q Okay. Did you see him after that?</p> <p>16 A I saw him March 18 of '03.</p> <p>17 Q Okay. And what was the reason for that visit?</p> <p>18 A Here for blood pressure follow-up.</p> <p>19 Q Okay. Any -- any recollection of any discussion</p> <p>20 about his kidney cancer at that time?</p> <p>21 A He just told me what went on.</p> <p>22 Q Other than that, do you recall anything</p> <p>23 specific?</p> <p>24 A No.</p> <p>25 Q When's the next time you saw Mr. Fusco?</p>	<p style="text-align: right;">60</p> <p>1 and other procedures done, and needed a</p> <p>2 referral, authorization for it and that's what</p> <p>3 she takes care of.</p> <p>4 Q Okay. And you would -- I assume you would have</p> <p>5 no knowledge as to how often Beth was involved</p> <p>6 or who -- somebody in Beth's position in making</p> <p>7 referrals for Keith Fusco?</p> <p>8 A Well, if referral results -- request comes, I</p> <p>9 just put "okay" and give it to Beth.</p> <p>10 Q Okay. You're not involved in that process</p> <p>11 directly?</p> <p>12 A No.</p> <p>13 Q Are you compensated by your practice with a</p> <p>14 salary?</p> <p>15 A Salary. I'm paid by salary.</p> <p>16 MR. GRAY: Objection.</p> <p>17 Q Is there any relationship between your income</p> <p>18 and productivity?</p> <p>19 MR. GRAY: Objection.</p> <p>20 A If I work more, then your income -- my income</p> <p>21 increases.</p> <p>22 Q Okay. Is it based on the fees that the practice</p> <p>23 receives for the services you provide, or just</p> <p>24 the number of hours you work?</p> <p>25 MR. GRAY: Objection.</p>

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1 A I don't know.

2 Q Don't know?

3 A I know that if I work, I get paid.

4 Q Okay. So you don't understand the details of

5 how your compensation is calculated?

6 A If I see more patients, if I work longer hours,

7 I get paid more.

8 MR. GRAY: Objection.

9 Q Well, my question is: Do you understand you can

10 be seeing patients, and the degree to which the

11 practice is reimbursed from that patient differs

12 from patient to patient; do you understand that?

13 MR. GRAY: Hold on one

14 second. What was the question again?

15 Q Do you understand that not all patients that you

16 see result in the same income to the practice?

17 A That's correct.

18 Q Okay. Do you know if your income is tied to

19 simply the number of visits, or is it tied to

20 the income that the practice receives?

21 MR. GRAY: I'm going to

22 object.

23 MR. PESKIN: I'm not asking

24 for the numbers. I'm just asking for the

25 system. So I don't think there's any reason to

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1 instruct him not to answer these questions.

2 MR. GRAY: I don't -- I'm

3 not exactly sure what the relevance is to this,

4 and I believe the questions are inappropriate.

5 I think we're getting to the point where I'm

6 going to begin to instruct him not to answer on

7 this.

8 MR. PESKIN: Well --

9 MR. GRAY: But I mean --

10 MR. PESKIN: You know -- you

11 know the issue that I've got here, and I think

12 I'm entitled just to explore generally without

13 asking for details. I've not asked him yet what

14 earnings --

15 MR. GRAY: I think you're

16 attempting to -- I think you're attempting to

17 say that your client didn't get optimal care

18 because Dr. Lee felt he wasn't going to get paid

19 or wasn't bringing enough money by treating your

20 patient, and I think it's inappropriate, I think

21 it's offensive, and I don't think it's necessary

22 to, you know, for him to divulge, you know, how

23 he's compensated in terms of with respect to the

24 allegations in this case, but -- and I'm going

25 to start to instruct him not to answer if it

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1 goes too far further.

2 MR. PESKIN: As I told you,

3 I have no intention of prying into his personal

4 affairs in terms of asking him how much income

5 he earns. I'm simply asking him his knowledge

6 as to manner in which he's compensated. I think

7 that's perfectly fair.

8 MR. GRAY: Why don't you

9 ask him if he treats -- if his treatment to

10 certain patients are different based upon their

11 income or their insurance. It might -- it might

12 jump right to the conclusion.

13 MR. PESKIN: That's a

14 conclusion for somebody else to draw.

15 MR. GRAY: Yeah. I know

16 that you're not interested in that conclusion,

17 but go ahead.

18 MR. PESKIN: I know what his

19 answer would be. I'm just asking a question. I

20 know what the answer would be. Let me get back

21 to the question I was asking about.

22 BY MR. PESKIN:

23 Q Is the amount that -- is your compensation tied

24 to simply the number of patient visits, or the

25 income generated from your visits?

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1 MR. GRAY: Objection.

2 Q If you know.

3 A I just have to answer that question like I did

4 before. If I see more patients, I get paid

5 more. And I treat all my patients the same,

6 regardless of what insurance they have.

7 Q Who makes the decision -- is there a level of

8 decision making above you at the Ashtabula

9 Clinic as to how referrals are handled to

10 specialists when there are patients that are

11 part of an HMO program?

12 A No.

13 Q Did you have any -- let's see. We got

14 sidetracked, so I want to get back to where we

15 were.

16 When was your next visit with Mr. Fusco? I

17 think we got all the way into March, didn't we,

18 of 2003?

19 MR. GRAY: I think you

20 went into May --

21 MR. PESKIN: Yeah. May.

22 MR. GRAY: -- of 2003.

23 Did you see him after May, 2003?

24 Q Did you see him after May, 2003? That's a

25 better question.

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1 A No, I did not.
2 Q Okay. No other contact with Mr. Fusco that
3 you're aware of?
4 A After May --
5 Q 2003.
6 A -- 2003, there was like some prescription
7 request for pain medication. Other than that,
8 no.
9 Q Yeah. I was talking about your face-to-face or
10 personal contact.
11 A No.
12 VIDEOGRAPHER: We have
13 five minutes left on this tape.
14 MR. PESKIN: I think I'm
15 about done. I have no other questions.
16 MR. GRAY: All right.
17 Great.
18 Larry, can we agree to give him a little
19 bit more time --
20 MR. PESKIN: Oh, sure.
21 MR. GRAY: -- to read
22 this? Okay. We'll read it.
23 VIDEOGRAPHER: We're off the
24 record at 3:35.
25 (Deposition concluded at 3:35 p.m.)

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THE STATE OF OHIO,) SS:
COUNTY OF CUYAHOGA.)

I, Lynn A. Regovich, a Notary Public within and for the State of Ohio, duly commissioned and qualified, do hereby certify that JOHN LEE, D.O., was first duly sworn to testify the truth, the whole truth and nothing but the truth in the cause aforesaid; that the testimony then given by him was by me reduced to stenotypy in the presence of said witness, afterwards transcribed on a computer/printer, and that the foregoing is a true and correct transcript of the testimony so given by him as aforesaid.

I do further certify that this deposition was taken at the time and place in the foregoing caption specified. I do further certify that I am not a relative, counsel or attorney of either party, or otherwise interested in the event of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Cleveland, Ohio, on this 5th day of January, 2005.

Lynn A. Regovich, Notary Public
within and for the State of Ohio
My Commission expires June 14, 2008.

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THE STATE OF)
) SS:
COUNTY OF)

Before me, a Notary Public in and for said state and county, personally appeared the above-named JOHN LEE, D.O., who acknowledged that he did sign the foregoing transcript and that the same is a true and correct transcript of the testimony so given.

IN TESTIMONY WHEREOF, I have hereunto affixed my name and official seal at
this day of
, 2005.

JOHN LEE, D.O.

Notary Public
My Commission expires:

lar

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