THE STATE OF OHIO,)
) SS: SCHNEIDERMAN, J.
COUNTY OF SUMMIT.)

IN THE COURT OF COMMON PLEAS

KENNETH D. RUTTIG, et al.,)
Plaintiffs,)
) Case No. CV 9907 2986
v.)
)
STEVEN LIPPITT, M.D., et al.,)
Defendants.)

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Videotaped deposition of STEVEN LIPPITT, M.D., taken by the Plaintiffs as if upon cross-examination before Kerri L. Simmons, a Stenographic Reporter and Notary Public within and for the State of Ohio, at the offices of Roetzel & Andress, 222 South Main Street, Akron, Ohio, on Tuesday, the 21st day of December, 1999, commencing at 2:10 p.m.

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STEVEN LIPPITT, M.D.,
a Defendant herein, called by the Plaintiffs for the purpose of cross-examination, as provided by the Ohio Rules of Civil Procedure, being by me first duly sworn, as hereinafter certified, deposes and says as follows:

CROSS-EXAMINATION

BY MR. CARAVONA:

Q. Good afternoon, Doctor. I'm Don Caravona. We introduced ourselves a moment ago.

A. Hello.

Q. And as you know I represent Kenneth Ruttig and his family in a claim against you. I'm going to be asking you a series of questions today here at this deposition, which we are videotaping.

I'm sure you've gone over with your counsel some of the background on depositions, but if at any time you want to take a break or stop or don't understand my questions, take a break or ask me to rephrase my questions. All right?

A. Yes, sir.

Q. Have you been deposed before?

A. Expert witness several times. There was a --

MS. CARULAS: Just note my objection to this line of questioning, but go ahead.

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A. -- lawsuit as a resident, as a junior resident, where I was named in company with other residents in the staff. Gave a deposition and then was dropped as a defendant.
Q. (BY MR. CARAVONA) Okay. As an expert witness was it in your field of orthopedic medicine that you testified?
A. Yes.
Q. And can you tell me when was the last time you testified as an expert?
A. Oh, it's within the last year.
Q. And was that here in Summit County, Doctor?
A. Yes.
Q. Okay. And that was on behalf of the defendant or the plaintiff?
A. I see it as on behalf of my patient, which -- I don't understand your question. I'm not sure.
Q. Okay. The case that we're referring to, which is about a year ago, was that on behalf of one of your patients that was injured in some type of action?
A. Yes.
Q. Okay. And you testified for your patient --
A. Yes.
Q. -- as an expert witness to the degree of their injuries and whether or not there's any permanency?

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A. Right.
Q. Have you ever testified as an expert in a medical malpractice claim?
A. I've been asked, but I've not.
Q. By the plaintiff *or* the defendant, were you asked to be an expert in a medical malpractice claim?
A. Could you repeat that?
Q. Were you asked by the plaintiff, which is the person bringing the lawsuit, to be an expert in a medical malpractice claim?
A. No.
MS. CARULAS: Note my objection. Go ahead.
A. I just recall that -- I think there might have been a letter or something about a situation where they -- I believe a law firm just asked if I'd be interested in being an expert witness, and I haven't usually done those type of things.
Q. (BY MR. CARAVONA) Okay. As we sit here today are you feeling all right? You're not under any medication, having the flue, which a lot of people have today?
A. I feel okay.
Q. Okay. There's no reason for us to take an exceeding number of breaks for any reason, for medical

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emergencies, or is there anything on your mind at this particular time?
A. Not anticipated.
Q. Okay. When did you come to the Summit County area, Doctor, Summit County area?
A. Well, I did residency in Akron, Ohio. That would have been July 1985 until June of 1990. And then I did a two-year fellowship in orthopedic specialty shoulder and elbow and returned to Akron in July of '92 and started practice in August-of 1992.
Q. As we sit here today -- I asked you before we started if the curriculum vitae, which you have previously forwarded to me is up-to-date. Is it, in fact, up-to-date?
A. To my knowledge.
Q. It appears in my review of that that your education was continual from high school through college through medical school, there were no extended breaks?
A. Correct.
Q. All right. When did you actively engage in the practice of medicine?
MS. CARULAS: You mean after training when did he begin the practice of medicine?
MR. CARAVONA: Mm-hmm.

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MS. CARULAS: Okay.
A. I'm only pausing because in residency, you know, you're an acting physician to some degree intern, et cetera.
Q. (BY MR. CARAVONA) Okay. Let's say --
A. But in terms of practicing sole responsibility as a physician, it would be when I began orthopedic practice.
Q. In what year and what month?
A. Well, let me back up. Fellowship in University of Washington, Seattle was a training period for two years yet they introduce you as faculty as part of the University of Washington, so -- I mean, I was practicing orthopedic physician at that time, but I was still in training.
Q. Okay. And the year and month that you were doing that?
A. The fellowship was July 1990 to June 1992.
Q. And upon completion of that, what did you do?
A. Returned to Akron to practice orthopedic surgery with the group that I'm currently in.
Q. The Northeast Orthopedic Association?
A. Northeast Ohio Orthopedic Associates.
Q. And what month in 1992 would you have returned to go into private practice with that group?

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A. I began in August of 1992.
Q. For the rest of the deposition is it all right if I just refer to the group as Northeast and then --
A. Sure.
Q. -- we'll know what we're speaking of? Okay. From August of 1992 until the present time, which is December of 1999, have you continuously practiced medicine?
A. Yes.
Q. And that has been with the Northeast Group?
A. Yes.
Q. Have you taken any sabbaticals?
A. No.
Q. When did you first come to have Kenneth Ruttig as a patient, Doctor?
A. As per my office chart, my first and initial contact with Kenneth Ruttig was 12/11/1997.
Q. And at that time, Doctor, how did he come to you as a patient?
A. It is my understanding that he was referred by John VanFossen, M.D. in regard to his right shoulder complaints.
Q. And you know Dr. VanFossen, I would take it?
A. Yes.
Q. Do you get quite a bit of referrals from Dr. VanFossen?

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A. I don't know how to quantitate it.
Q. Well, let me --
A. Fairly regularly, yeah, I guess.
Q. Are the referrals to you or the Northeast Group?
A. Well, I practice, you know, principally in shoulder and elbow, so if their patients have other orthopedic problems they may actually utilize other consultants in our group.
Q. Let's talk about your group a little bit. In December of 1997, how many people were in the Northeast Group that were practicing medicine?
A. Ten.
Q. Were all of those people orthopedics?
A. Yes.
Q. Can you tell me how many locations the Northeast Group had in December of 1997?
A. We have our main physician office building at Akron General Medical Center, 224 West Exchange Street, Suite 440 in Akron. We have a satellite office at the Akron General Health and Wellness Center, 4125 Medina Road, Suite 201, Akron. And a satellite office at the Professional Center, 33 North Avenue, Suite 103, Tallmadge. Also, but I wasn't in this office, an office at Munroe Falls, 43 South Main Street.

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Q. Would the ten physicians that you've described rotate between the four areas that you've just spoken about?
A. It varied.
Q. You indicated you did not have anything to do with staffing the Munroe Falls office?
A. At that time.
Q. Can you tell me a little bit about the group. Would you start out by telling me, first of all, who was the senior member of the group in December of 1997?
A. It recalls -- that requires some history of the group, which, you know, I joined later, but Mark Leeson, M.D., Paul Reiman, M.D., and David Kay, M.D., I believe were the initial founders of that nucleus that continued to grow as they recruited.
Q. Okay. Now, when you were recruited in 1992 to this group, what was your position at that time?
A. One comment first. I was recruited somewhat even before I left residency.
Q. Okay.
A. They encouraged me as I did my fellowship to consider returning to them a possibility.
Q. And who did this, what individual?
A. Well, the primary individual was Buel Smith, M.D.,

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who was chairman of the orthopedic department and also a member of this same Northeast Group --
Q. Okay.
A. -- which he's retired.
Q. Now, in 1992 when you joined, you joined as a staff physician?
A. You join as an employee of the group with the opportunity to become a shareholder at a later date.
Q. As you sit here today are you a shareholder?
A. Yes.
Q. When did you become a shareholder?
A. I'm not sure.
Q. Were you a shareholder when you were treating Kenneth Ruttig in December of 1997?
MS. CARULAS: Objection, but go ahead.
A. I believe so.
Q. (BY MR. CARAVONA) Okay. Can you tell me a little bit about the organization as to how many shareholders there are, how many employees there are?
A. All the current physicians are shareholders and as I understand employees of the corporation. And then I think there's 40, at one time as much as 50, employees.
Q. Okay. And the Northeast Group when you joined in

1992, were all employees shareholders?
A. Physician?
Q. Yes.
A. No. I joined at the same time that Michael Smith, M.D. began and John Pinkowski, M.D. and Gordon Bennett, M.D. had been there one year prior and were not shareholders yet.
Q. In 1997 you had indicated there were ten physicians who were employees of Northeast Group, correct?
A. Right.
Q. In 1997 all ten people were shareholders?
A. No. No, I'm in error there.
Q. All right. If you find any errors at any time just say, stop and go back and correct it because I'm here to gather information.
A. I failed to put in the context of 1997 and I understand. Phrase your question once more.
Q. When you were treating Kenneth Ruttig in 1997, December of '97, were all ten of the physicians who were employed there shareholders?

MS. CARULAS: I'm just going to note a continuing objection --

MR. CARAVONA: Sure.

MS. CARULAS: -- just so I don't interrupt. Go ahead.

A. I believe at that time they all were. We all had become shareholders by that time. And the question that I previously said is I'm not sure where my date was where I joined.
Q. (BY MR. CARAVONA) Okay. You're still a member of the Northeast Group today?
A. Yes.
Q. And there are ten people there still, or has it grown?
A. We are minus Gordon Bennett and David Kay as of -- I guess it was -- I'm not sure of the effective date. Just this past month, December 1, 1999.
Q. Is this a result of retirement or passing away or both?
A. No, not due to retirement.
Q. All right. What was their reasons for leaving?

MS. CARULAS: Objection. Go ahead.

A. Pursuing different career interests.
Q. (BY MR. CARAVONA) When you say different career interests, outside of medicine or in medicine with a different emphasis?
A. They were foot and ankle specialists and wanted to pursue a more foot and ankle collective that they thought would be a better career move.
Q. As you sit here today then there are eight shareholders in the Northeast Group?
A. Paul Reiman, in finishing that question, moved to California still practicing orthopedics in, I believe March of '99, but I'm not sure. So Dr. Paul Reiman, Dr. David Kay and Dr. Bennett three of the physicians over the last year have departed.
Q. So there are seven shareholders? If you had ten and three left, that would be seven.
A. That's my understanding, yes.
Q. Are you equal shareholders?

MS. CARULAS: Note an objection.

THE WITNESS: Answer?

MS. CARULAS: Yeah, go ahead.

A. Yes.
Q. (BY MR. CARAVONA) And you understand my question is to equal shareholders?
A. I think I do. There's a formula in our group, but --

MS. CARULAS: Which I don't want you to get into quite frankly. I think this is --

A. We're equal shareholders, yes.

MR. CARAVONA: You know, we had indicated originally that we were going to be getting into personal assets and if you had a problem with that we would like to know, and you never mentioned anything about that.

MS. CARULAS: I don't remember the letter ever saying if you have a problem let me know. I think you sent a letter saying you were thinking about doing that. I mean those -- that area of questioning is clearly improper and I've researched it. In fact, there's case law to say that granting protective orders is appropriate.

MR. CARAVONA: Unless you choose to let us do that, yeah. And you're choosing not to do that?

MS. CARULAS: Exactly.

MR. CARAVONA: Okay.

MS. CARULAS: Exactly.

Q. (BY MR. CARAVONA) In December of 1997 would you tell me your responsibilities as to the three locations that you've indicated to me?
A. Well, it has changed at times. I'm not sure I know recollection of '97, but I think this is the best information I can give. You mean, basically my weekly schedule?
Q. Sure. In December of '97 you indicated you didn't

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go to Munroe Falls?
A. Right.
Q. Okay. And that was they would send the shoulder and elbow patients to the other three locations?
A. Well, Munroe Falls was an office that -- When Dr. Hatherill joined the group that was her office before she joined and she wanted to keep it and she invited anyone that wanted office time there to practice there, but it's fairly close to the Tallmadge office and I was already established at the Tallmadge office and didn't go there. I mean, it's an elective.
Q. Sure.
A. You can practice at any of these facilities provided office time or conflicts with other physicians and then we work it out.
Q. All right. Well, tell me about your schedule in December of '97. Where would you spend the majority of your time or how would you work that out?
A. The majority would be at the Akron General office. Monday was usually a half day office at Akron General and then potentially surgery or other fit-ins. Tuesday was generally all day surgery at Akron General or St. Thomas, usually Akron General. Wednesday was morning and afternoon office at Akron

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General. Thursday was half day office at the Wellness Center, and Friday was a half day office at Tallmadge.
Q. What hospitals did you have privileges at in December of 1997?
A. Akron General, St. Thomas, Children's, and I'm unsure of Barberton because at some point we made the decision to not continue privileges there.
Q. Where did you do the majority of your surgery?
A. Akron General.
Q. Is that true today, also?
A. Yes.
Q. Out of the -- Did you have an opportunity to finish your schedule?
A. Yes.
Q. All right. Can you tell me, if you know, did you see Mr. Ruttig at only one location?
A. To my know1edge.
Q. All right. And what location would that have been?
A. Akron General.
Q. Did any of your other --
A. I should say when I say Akron General, I'm alluding to the Akron General Medical Center Physician Office Building where is, in essence, the Wellness Center is Akron General Wellness Center, so for the record

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I Akron General Medical Center for that.
Q. Let's just say Wellness Center.
A. Okay.
Q. All right?
A. Yes.
Q. Can you give me a percentage breakdown in December of 1997 the percentage of time you spent at the Akron General Center, the Wellness Center, and the Tallmadge location?
A. Well, I mean the way I'd work that out is look at the half days I just discussed and -- I mean, there's two half days, a working day, ten working units and I would -- I mean, I can do it. Is that what we need to do or --
Q. Is it accurate to say that most of your time was spent at the Akron General Center?
A. Yes.
Q. Okay. Let's now go back to your December 17th visit with Mr. Ruttig. You indicated you received this patient through a referral from Dr. VanFossen, correct?
A. Yes.
Q. Now, did Dr. VanFossen refer the patient to you or to the group?
A. We have a record in the chart where it's the

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information we obtain when an appointment is scheduled.
Q. Can you show me what page that is, Doctor? I have a copy here, which we were --
A. Well, it wouldn't be, I guess blue on yours, but --
MS. CARULAS: Patient registration it says on top.
Q. (BY MR. CARAVONA) In the order of your chart, is it towards the --
MS. CARULAS: Probably near the front because I think it's in reverse order.
A. Yes. And then the backside.
Q. (BY MR. CARAVONA) The backside would be something signed by Kenneth with a date of 12/11 on it, correct, and on top of the page is office scheduled appointment?
A. Yes.
Q. The upper right-hand corner what does that say?
Mine's cutoff.
A. No shoulder surgery.
Q. Do you know whose handwriting that is?
A. Most likely the secretary who schedules the patients.
Q. Okay. Let's go back to the patient registration. Does this document tell you how you received this

patient?
A. Dr. VanFossen referred. Part of body had been examined, right shoulder. And the relationship with Dr. VanFossen during my practice knowing he knows that I practice in this, he referred it directly to me.
Q. Okay. Are you familiar with the handwriting that is on this patient registration form? Do you know whose it is?
A. I don't recognize it.
Q. Okay. Can you tell me how many nurses were employed at the Northeast Group in December of 1997?
A. I don't believe there were any nurses.
Q. Okay. How many -- Well, tell me the staffing other than physicians that you had there including receptionists, technicians, surgical assistants.
A. Well, just as you said, we have a receptionist at the front desk.
Q. And who would that have been?
A. I'm not sure in 1997.
Q. Would you have any idea as to who -- Is it the same person who's there now or someone different? Do you change receptionists?
A. No, we've had turnover.
Q. Okay.

A. I mean -- Well, you know, I'm not sure.
Q. You would have records, though, through your office manager --
A. The office manager --
Q. -- that would be --
A. -- yeah.
Q. All right. If you could get me the name of the receptionist. ALL right?
A. (Indicating.)
Q. After the office receptionist who would be next in your support staff?
MS. CARULAS: Why don't you make a list and send me a request.
MR. CZACK: I am.
MS. CARULAS: Okay. I'll forget.
A. Well, we have the billing office.
Q. (BY MR. CARAVONA) How many people are in he billing office?
A. I don't know who falls right under the bil ing role versus coding versus who calls insurance. I'd say around six.
Q. Okay.
A. There would be transcription.
Q. Were they on-site, the transcriptionist?
A. Well, we've done different things with that, so I'm not sure in '97. I know we've done it off-site before and some even have asked to do it at home.
Q. Okay.
A. Office managers.
Q. Who was your -- Office managers? Let's say the Akron General Location I'm referring to only now. Who was the office manager of the Akron General location in 1997?
A. Brad Humbert.
Q. How is his last name spelled?
A. H-u-m-b-e-r-t, to my knowledge.
Q. Is Brad still with the organization?
A. Yes.
Q. Okay. And next?
A. I believe Valerie -- blanking on her last name -- was with us at that time.
Q. And what was her position?
A. They have different roles or descriptions that I may not know the title. Brad would be the operation manager, and I think Valerie was office manager, which meant she dealt more with the employees and Brad dealt more with the office management, computer -- different aspects that are not necessarily personnel.
Q. Did you have a personal secretary that would do your

appointments for you --
A. Yes.
Q. -- while you were there? And who was that in 1997?
A. Pam Hughes.
Q. Is she still with you?
A. No.
Q. And now would Pam Hughes set up all your scheduled patients?
A. Not all but the great majority. But if she would be at lunch or absent or others covering vacation, you know, other secretaries generally took that role. And then the front desk may do scheduling, but may defer to the personal secretary. And if it's a follow-up appointment, meaning you've seen the patient and you're setting up additional visit, generally the follow-up's done by the front desk personnel.
Q. Okay. What about assisting the patients from the waiting room to the examining room and getting anything for you that you might need in any of the examinations, how many people did they have at that time in 1997?
A. Well again, that role might be a front desk person. It could also be our office help, which were athletic trainers or cast technician.

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Q. If someone wanted to make an appointment for you such as an attorney where one of your patients was involved in an accident and they wanted to talk to you about expert testimony, would they go through Pam?
A. Generally.
Q. Okay. What about drug representatives who wanted to speak to you regarding new products or discussing products that they had dropped off and wanted your input, would they go through Pam?
A. That's one avenue.
Q. What are the other avenues that would have been available to drug representatives to make an appointment with you or the group as a whole?
A. Well, I don't know of an example of the latter. I mean, if I'm in surgery all day Tuesday, I'm not fielding phone calls or taking whatever, so the secretary moves to the critical role of, you know, obtaining that information and then letting me know later who is requesting meeting time or something of that nature.
Q. Do you know Lynn Renz?
A. Yes.
Q. Okay. Is it your testimony that in July of 1997 until December of 1997 there was never a group

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meeting, by a group meeting I mean yourself, Pam and maybe one or two of the other physicians, who met with her regarding new products?
A. At one time --
Q. Yeah.
A. -- a formal meeting that was organized or set up?
Q. Right.
A. Not to my knowledge.
Q. Can you tell me, generally speaking, between July of 1997 and December of 1997 the context of the interaction you would have had with Lynn Renz during that time? Would it be a one-on-one, a stand-up call?
A. It would generally be in the office setting while I'm in half day office at Akron General. And, you know, if it were lunch time or we had free time, she would -- if she were there she would say, are you available for discussion? And if we were, we would discuss it at that time.
Q. When you say we, who would that be? You and --
A. Well, I meant in general for --
Q. The physicians?
A. -- the group, yeah. But it can be replaced with -- That's my method.
Q. It wouldn't be unusual for her to try to do that

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during lunch time and bring up lunch or the office staff and yourself and put a spread on the table and make her presentation?
A. I don't recall lunch.
Q. You never recall her coming up and putting lunch down for the whole office and giving her presentation at any time between July of '97 and December of '97?
A. Well, you mentioned lunch in a whole spread and when I'm in office on Wednesday, I eat on-the-go. I mean, I don't sit down at a spread. If she had it and it was in our cafeteria or our office has a kitchen space, I don't recall that setting.
Q. Okay. You've never seen that, is that what you're saying?
A. A lunch method, I don't recall.
Q. Okay.
A. Have I seen that method before?
Q. Yes.
A. Yes.
Q. Okay. And where have you seen that?
A. Well, if you're again talking about a meal at lunch time, it would be in our kitchen off the office and they set it out. And if we're available and can come in there, we would come in there. I don't know

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that it would be under a guise of a specific presentation.
Q. Okay. The patient registration which you have referred to, which is the blue sheet on your page here, you said the upper right-hand corner says no shoulder surgery. Who would fill this out, that portion reason for your visit?
A. The person making the appointment, which would generally be my personal secretary at the time.
Q. Okay. And would this be done over the telephone or would it be done once the patient came in?
A. Over the telephone making the appointment.
Q. Okay. And we have in here Dr. VanFossen's referral, right shoulder, office scheduled appointment. Were x-rays taken, yes. Known allergies. The verification of insurance that is not filled out. Is there a reason that's not filled out?
A. I'm not sure. The information I utilize in this sheet is what we've just discussed. I don't know if there may even be additional form or something that we use for that type of information.
Q. Okay. So then we go to the front of the form and that indicates on there a date, does it not, 12/11/97, 1:30?
A. Yes.

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Q. That's a date that Pam would give to the patient who's asking?
A. If Pam indeed made the appointment or she might make the appointment and someone notify the patient that that's the time that they're given.
Q. And what --
A. It usually would be the secretary.
Q. All right. And once again, you don't recognize whether or not that's Pam's handwriting there, the 12/11/97, the name of Kenneth Ruttig?
A. I'd just be assuming. I don't specifically note anything unique about it or anything that I recall that being hers.
Q. How long was she your secretary?
A. I think it was two to three years, two and a half to three years.
Q. And when did she leave?
A. She left as secretary, I think about three months ago. And then she returned to our employment about a month ago for, you know, a week not in a secretarial role.
Q. In what type of -- She came back on a part-time basis for one week?
A. I think she had a full-time role, but she was put at the front desk at that point because that's what

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they needed.
Q. And she didn't like that and left?
MS. CARULAS: Note an objection. Go ahead.
A. Apparently.
Q. (BY MR. CARAVONA) Okay. Do you know if she's in the area now?
A. I think she's in Canton or works in Canton. I'm not sure with what.
Q. And her last name is spelled H-u-g-h-e-s?
A. Yeah. She's married and she retained her ma den name and we so rarely alluded to her married name. It's a hyphenated that I'm blanking on what hat is.
Q. Okay. The other information that is written on the patient registration we see here, there's a difference in handwriting, would you not agree, Doctor?
A. Yes.
Q. All right. Do you know whose handwriting that is?
A. I think that might be the patient's. When they actually come, we give them the blue sheet -- the blue sheet in the waiting room and then they fill out the employer information, job title, their address, home and phone number, so they provide that I think when they come.

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Q. Okay. And'then we have a release of information assignment of benefits on the back of the page?
A. Yes.
Q. And that was executed by Mr.' Ruttig on December 11th of 1997?
A. Yes.
Q. All right. Do you have any independent recollection of this first meeting of Mr. Ruttig without referring to your notes?
A. I think I have a recollection of it because I've reviewed my notes.
Q. Okay. Can you tell me what portion of this document that you have as your office chart refers to the December 11th visit, each and every page which would refer to the December Ilth, '97 visit of Kenneth Ruttig?
A. I'm not sure I understand your question.
Q. You have a packet of several pages before you, do you not, Doctor?
A. Yes, I do.
Q. All right. We've spoken about the patient registration?
A. Yes.
Q. All right. Would you agree this page that we have here, which is two-sided, dated December 11th of

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'97, is a document which pertains to his first visit, correct?
A. Yes.
Q. What other documents in your office chart refer to the December 11th visit?
A. I wouldn't know without looking at each page.
Q. Well, did you examine him on that date?
A. I would refer to my chart to answer that.
Q. Okay. Well, refer to your chart.
A. All right. The date of exam I have is 12/11/97 per my dictated office record.
Q. Okay. And this is a letter that was authored on what date, Doctor?
A. What do you mean by authored? The day I dictated it?
Q. What's the date of the letter?
A. The date on the top would be the date that it was transcribed.
Q. Okay. Let me ask you about that. Do you dictate immediately upon seeing the patient and hold the transcription? There's a date of exam of December Ilth, correct?
A. Correct.
Q. All right. Tell me what your process is when you take a history from the patient. Do you take

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handwritten notes?
A. Yes.
Q. All right. And where are they?
A. This is the sheet that I generally use during the history taking.
Q. Okay. And that's on top and it indicates patient's name, date, and referring physician, does it not?
A. Yes.
Q. And we have his age and all other pertinent --
A. Yes.
Q. -- dominant hand, whatever, correct?
A. Yes.
Q. And when you first see the patient, this is what you fill out in your handwriting?
A. Yes.
Q. All right. Can you tell me what -- When you first see a patient, what is the first thing you do with that patient?
A. Obtain a history.
Q. Did you do that on this occasion?
A. Yes.
Q. Would you tell me what the history is?
A. The history, according to my record on 12/11/97, is a 41 year old right hand dominant male, employed as a manufacturing engineer, sustained an injury at

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home working on his 20 acre farm in late September 1997. He was doing fence work involving 80 to 90 pound posts.

He apparently was carrying one of the posts on his right shoulder when he stepped in a hole causing a jerking motion of the beam against his right shoulder. He had initial discomfort in the shoulder, as well as the posterior scapular region and low back. He presented for medical evaluation a few days later, and was treated by initial sling immobilization, ice, and heat modalities, as well as a C-spine collar for some of the neck pain.

Symptoms resolved except for persistent somewhat diffuse anterolateral right shoulder pain. He states pain is fairly constant including night discomfort interfering with sleep if he turns onto his right side. Provocative activities include any Lifting or use of the arm for activities of daily living. No associated numbness or tingling.

Current treatment included Soma with Codeine and Relafen anti-inflammatory medication. He's had trigger point injections in the posterior shoulder with mild relief. No formal physical therapy. Work up includes radiographs dated 10/2/97, consisting of an AP view right shoulder and internal

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and external rotation without any acute fracture. Past medical history essentially unremarkable.
Q. Did you review the 10/2/97 x-rays at that time, Doctor?
A. The record doesn't allow me to be specific. If they were available, I review them and if there's a report -- You're asking about -- I've just stated the history. The radiograph's dated 10/2/97.
Q. Mm-hmm.
A. My impression is if I'm actually saying what the views are, AP right shoulder and internal, external rotation, then I did view them.
Q. Okay. Now, after doing that, what would be the next thing that you would do with your patient, perform an exam?
A. Well, after the history taking, which again is as we've discussed past medical history, the yellow sheet marked medical history --
Q. Okay. Yes.
A. -- is a method where we also obtain medical illnesses, family history, tobacco, alcohol use.
Q. Now --
A. That's combined with history taking.
Q. Is this filled out by the patient while you're with him or while he's -- before you see him?

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A. Before I see him, generally.
Q. All right. Now, you've brought this up. Do you look at that after taking the history, or do you review it?
A. I usually review it before I go in the room and then verify it with him and not assume anything.
Q. Okay. Is there anything significant in the medical history of Kenneth Ruttig?
A. Well, there's -- In the past history?
Q. Yes.
A. That he's on Relafen and Soma with Codeine. That he doesn't have allergies. He's not had previous surgery. I mean, all of those are pertinent in decision making.
Q. Okay. And you mentioned all of those things in the history that you just --
A. Yes.
Q. -- reiterated to us?
A. So if you're asking is there additional in this sheet, family history, tobacco and alcohol exposure. They mark medical illnesses.
Q. All right. Your reason for bringing this up I asked you after taking the history, would you next do the exam and you then referred to the medical history sheet.

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A. I was alluding to the history I've taken. This is the --
Q. The totality of the history?
A. -- totality of it, yeah. And before I went to physical exam, I felt like I did not completely answer how I've obtained a history.
Q. So before seeing the patient you review the medical history here, you ask the patient questions, also, and then after doing that history, you then proceed to the exam?
A. Yes.
Q. You did that here?
A. Yes.
Q. And what were your findings?
A. On physical exam?
Q. Yeah.
A. Exam reveals local tenderness in the cervical spine, but no radiating pain into the right shoulder with range of motion or axial compression. Right shoulder has a normal contour without swelling, ecchymosis or atrophy. Biceps with normal contour. Slight tenderness about right AC joint. Subacromial motion is essentially smooth.

There is diffuse tenderness about the coracoacromial arch. Positive impingement and

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reinforcement sign. Active forward elevation is maintained to 160 degrees bilateral, external rotational 60 degrees symmetrical. Internal rotation as to T11. He has some discomfort with cross-body adduction. Motor testing reveals somewhat diffuse pain with deltoid and cuff testing with the most provocative testing was supraspinatus grade four minus out of five strength. Internal rotation is unremarkable. Biceps testing negative. Neurologic testing C5 through T1 is negative.
Q. Did that conclude the exam, Doctor?
A. On this medical history sheet we have weight and height 6 feet and 210.
Q. And would you have done that after doing the examination, or would he be weighed by one of the support staff before he came into the room?
A. The latter. He would be weighed and that would be filled out before seeing him.
Q. As a result of the history and the exam taking, did you then do any additional diagnostic testing on this patient at that time?
A. Yes.
Q. What did you do?
A. Right shoulder radiographs.
Q. And did you -- Can you tell me what those revealed?

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A. I've alluded to impingement radiographs. Those are radiographs angled in such a way in the context of rotator cuff problems or impingement. Impingement radiographs right shoulder include an AC joint view, a type II curved acromion morphology. There is some inferior spurring of the AC joint with some subchondral bone sclerosis. Glenohumeral joint space unremarkable. No apparent separation of the AC joint with a normal coracoclavicular distance.
Q. Any other diagnostic testing, Doctor?
A. No.
Q. After doing your history, after doing the examination, and reviewing the radiographs, did you then relate to the patient what your impression was?
A. Yes.
Q. All right. What did you tell the patient your impression was?
A. Rotator cuff tendonitis and AC joint arthrosis right shoulder.
Q. And that's what you told Kenneth Ruttig in those words?
A. Well, that is what I have in the record and impression.
Q. No. My question to you, Doctor, was after doing your history, after doing your exam, and after

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looking at the radiographs, did you form an impression and your answer is yes, correct?
A. Yes. And when I form an impression, I inform the patient as to what that impression is.
Q. And is that what you told the patient, what you just read?
A. As a bear minimum it would be the rotator cuff and AC joint arthrosis, but there would be more discussion.
Q. Tell me what you discussed with Kenneth at that time to expound on the arthrosis of the rotator cuff tendonitis and AC joint arthrosis. Did he say to you, what is that?
A. I don't specifically recall.
Q. Normally would your patients understand the impression that you have documented in your report?
A. No, but --
Q. What normally would you tell a patient as to the impression that you found on Kenneth Ruttig?
A. Well, sir, the problem I hope you understand that I'm having is I can speak in general terms about how I presented rotator cuff and AC joint arthritis, but you're asking me what did I specifically say to him two years ago, and I'm saying, well, what -- I mean, I don't recall what the first sentence would be,

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what the second sentence would be, what the third sentence would be, what he asked between the first and second sentence.

Q. And, Doctor, I want to be fair with you. All right? And I understand that two years ago you cannot give me every specific item that you talked to him about. I'm asking you, can you tell me generally what would you tell a patient --

A. Sure.

Q. -- based on this impression?

A. Rotator cuff tendonitis is inflammation of the tendons that connect the muscles on your shoulder blade. The AC joint is the joint at the end of your collar bone. Rotator cuff functions in raising your arm generally to shoulder level or higher especially pushing, pulling or lifting-type activity. It's 50 percent of the power of raising the arm. It is -- AC joint is, again, a joint that if we lean on it, et cetera, may elicit symptoms. I mean, it would be in the context *of* helping him understand what a diagnosis means anatomically, where is it, so I would point to it. We would bring a shoulder model in often.

Q. Show it to the patient?

A. Right.

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Q. All right. One of the questions I'm sure the patients would ask you, well, doctor is this going to go away?

A. Yes.

Q. So this impression that you had was not a permanent injury to Kenneth Ruttig?

A. Well, I was answering yes to I think he would likely ask that question, but the answer to it would be, generally, rotator cuff tendonitis and AC joint arthrosis responds to non-operative measures.

Q. There was an indication no shoulder surgery on the patient registration. Do you recall that, Doctor?

A. Yes.

Q. Do you know if that was the patient saying that or your words that he does not need surgery?

A. What that is is the secretary asks certain questions with the initial contact with the patient in scheduling. And I have indicated to her that if the patient has had previous surgery, we'd like to identify it so that they would have time to get those records and bring them to the office for the evaluation.

Q. All right. So that's not a statement as to no, I don't want shoulder. It's just so you know there is no previous shoulder surgery?

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A. It means no previous shoulder surgery.

Q. All right. The previous treatment that you mentioned, the Soma and the Codeine, the Relafen and the trigger point injections, did that have any significance on your impression in that apparently these modalities and prescriptions were used and there was no relief of pain? Was that *of* importance?

A. For making the diagnostic impression --

Q. And treatment.

A. -- or just how it was being treated?

Q. How it was being treated.

A. It made a definite impression about how it was being treated.

Q. Were you in agreement with the previous treatment that was given to Mr. Ruttig for his shoulder, which was Soma and Codeine, Relafen, and trigger point injections?

A. I didn't provide that treatment. I just took it at face value that that's what he had.

Q. Did you find it unusual that he was still symptomatic from a September injury when you saw him in December of '97?

A. Not particularly.

Q. Okay. At that time did you feel the condition that

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he had in his shoulder was permanent?

A. No.

Q. Did you feel that he would need surgical intervention to relieve the symtomology that he explained to you on December 11th?

A. I don't know that I would render -- The general is that we would exhaust on operative measures before considering surgery. And then depending on how he progresses in that algorithm of treatment would define whether he's becoming a surgical candidate.

Q. Okay. Now, in your practice you've treated hundreds and hundreds of people with shoulder injuries similar to Mr. Ruttig's, have you not?

A. I don't know that I've treated anyone that has carried 80 to 90 pound posts, stepped in a hole and caused a jerking motion of the beam against his right shoulder. Is that what you mean, that type of injury?

Q. No. You've treated several people who have rotator cuff tendonitis with AC joint arthrosis in the right shoulder?

A. Yes.

Q. Hundreds and hundreds of cases, I would imagine?

A. Certainly rotator cuff tendonitis. Rotator cuff along with AC joint would be a lessor segment of

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that pie, but it would still be quite a bit.
Q. You've seen several of those cases, I would imagine?
A. Yes.
Q. All right. And getting back to the 80 to 90 pounds, what does that indicate to you about Mr. Ruttig's physical state before this incident in September where he fell in the hole?
A. I don't know that I have an opinion about his physical state for the whole other than he was lifting 80 to 90 pounds and that gives me an idea of what force is going across the shoulder.
Q. Does it give you any indication that he was a pretty active person?
A. Well, an inactive person could make a decision to lift an 80 and 90-pound pole over and over and that might be why he ends up in the doctor's office.
Q. That wasn't the reason he wound up in your office, was it? He fell in the hole, didn't he?
A. He was apparently carrying one of the posts on his right shoulder when he stepped in a hole, which caused a jerking motion of the beam against his right shoulder.
Q. So he didn't have a problem lifting these over and over and over. He was carrying a 90-pound post and fell in a hole?

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A. Well, you're making an assumption which I'm not making. I don't know which part of his history with that is necessarily the thing, but he's attributing the major force on his shoulder to stepping in the hole, yes. I'm saying as a physician I recognize also that lifting 80 to 90 pound poles may have fatigued the shoulder or set it up in such a way that stepping in the hole was a more likely injury.
Q. Would you agree based on just the bold statement that the man was outside working lifting 80 to 90 pounds over his shoulder with fence posts and walking around with them, that he was fairly actively and physically fit before he fell in the hole in September of 1997?
A. I wouldn't make an assumption about physical fit given his history.
Q. All right. Did you find any other problems orthopedically that Mr. Ruttig had other than the rotator cuff tendonitis and AC joint arthrosis of the right shoulder when you examined him on December 11th of 1997?
A. No.
Q. Low back was fine?
A. He had initial discomfort in the shoulder as well as the posterior scapular region and low back.

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Q. Your impression, though, didn't have any low back pain, did it?
A. That wasn't the symptom that he had at the time, a referral to me, for shoulder pain.
Q. And if he had been symptomatic and you examined him and it did exist, it would have been in there that he had low back pain, also, correct?
A. Or there would be an impression about what the etiology of the back pain was.
Q. Right. And the only thing orthopedically that you found with this man is what we've talked about, correct?
A. By this visit on 12/11/97, yes, my documented impression included inclusive rotator cuff tendonitis and AC joint arthrosis, right shoulder.
Q. After taking the history, after doing the exam, of reviewing the radiographs, talking with the patient and giving him your impression, did you then recommend treatment for that patient?
A. Yes.
Q. What did you recommend?
A. Patient was discussed treatment options, was recommended and given a right shoulder subacromial injection of Marcaine and Celestone utilizing sterile technique. Re-exam revealed some

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improvement with the comfort on forward elevation and with impingement and cuff testing. He had persistent tenderness about the AC joint.

The patient was prescribed physical therapy for stretching and strengthening exercises and was instructed on modification of repetitive or strenuous overhead use of the arm. He was recommended discontinuing the Soma with Codeine and was given Duract for pain. He is to follow up in six weeks and we will see the effect of the Cortisone injection.

Q. Okay. Thank you. What were the treatment options that you discussed with him?
A. First option is no treatment or live with it. Second option would be the Cortisone injection that I discussed. It is an elective procedure and the patient may not wish to have the injection.
Q. He did wish to have it obviously?
A. Yes.
Q. Did you tell them that would be direct treatment for this or would it be indirect as to alleviating symtomology?
A. You might have to define direct and indirect.
Q. When you told him you were going to give him a Cortisone injection, did you indicate to him that

after giving this injection it will take about three or four days for it to take, the inflammation will go down and you'll feel better?

A. Well, let me say what I did say. I just didn't know what you meant by direct and indirect. The injection was used as both a diagnostic test and a therapeutic treatment. The Marcaine is a local anesthetic agent. The Celestone is a Cortisone preparation for joint injection. The Marcaine allows a diagnostic test of re-examining him after the injection to see if the symptoms of rotator cuff tendonitis are relieved.

Q. That is if you get it in the right spot and he immediately states it feels better, you know that's the area of the problem?

A. Yes.

Q. Okay.

A. And then the Celestone is a treatment, which as you've mentioned, requires 24 to 48 hours to be absorbed to the point of expecting symptomatic change if it's going to occur.

Q. And can you tell me a little bit about that. What are the dynamics of the injection working on the shoulder to make it asymptomatic days down the road?

A. It is a Cortisone family anti-inflammatory. It will

be locally effective by direct deposit by injection into the bursa, diffuse into the anatomical area of the rotator cuff tendons and have a medical effect on reducing inflammation within the tendon.

Q. Now, this inflammation in the tendon, which is reduced by the cortico steroid, doesn't occur immediately. It will occur after the tendon decreases with inflammation and then at that time hopefully the pain will go away, is that accurate?

A. The pain that's due to the inflammation, yes.

Q. All right. Why did you discontinue the Codeine with Soma?

A. I don't prefer a Codeine narcotic level medication for this diagnostic category or categories.

Q. So you thought the pain medication was too high for the severity of the injury there, is that accurate?

A. Well, the record is silent on this, but I think I learned not only was he on Soma Compound with Codeine, but he had been on it for a period of time. I believe a couple months or more.

Q. And what are the problems with that?

A. Again, Soma is a combination drug. There's Soma. There's Soma Compound and Soma Compound with Codeine, so Soma is a muscle relaxant.

Q. Okay.

A. So I've not identified muscle spasm or a muscle strain, specifically. I have identified tendonitis. And on exam I didn't identify tight muscle, muscle tenderness, et cetera to the point that a muscle relaxant would be my preferred treatment.

Q. Okay.

A. Soma Compound has aspirin. That's an anti-inflammatory. Probably no opinion on that regard.

Q. You already have that working with the injection, correct, the anti-inflammatory?

A. Yes.

Q. Okay.

A. That wouldn't exclude using it or not. It's just your statement is correct. The Codeine would be the main issue in that that is a narcotic level medicine and I would object to -- or I would not choose to renew or continue that medicine because I didn't feel a narcotic was needed for this.

Q. And that the pain wasn't severe enough to warrant a narcotic medication such as someone who's just post-surgical for an achilles tendon, an abdominal wound, ACL?

A. Again the record is silent, but I recall that it wasn't that he was on it for two days because of

severe pain until he could get in to see an orthopedic surgeon to see again what modalities we may do. He'd been on it sometime. Codeine level medicine I wouldn't want to continue knowing that it's habit forming, other side effects of that category of medicine for a longer period of time.

Q. Okay. Did you know what he did for a living, what his occupation was?

A. The record, I believe identified that he was a manufacturing engineer, but let me check. Employed as a manufacturing engineer.

Q. Is that somewhat of a desk job, in your opinion, Doctor? Do you know what the duties are?

A. I don't know. The record is silent on what the specific duties are.

Q. You didn't tell him to refrain from working, did you?

A. Patient was instructed on modification of repetitive or strenuous overhead use of the arm. So we want him to understand whether the rotator cuff is being used on the job or at home or whatever, the common denominator is what stress you're putting on the rotator cuff and we'd like to modify that. We don't necessarily stop it all together unless symptoms warrant it.

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Q. Certainly writing wouldn't effect that, would it, writing?
A. Well, let me -- If I may -- May I finish?
Q. Sure. I'm sorry. If I do cut you off, stop me again. I want you to be able to answer in entirety.
A. You're correct in that we have to look at the job in terms of what duties he's required to perform with it. It would be very hard to discuss that we recommend that you modify repetitive reaching and strenuous pushing, pulling, or lifting without obviously that factor being considered.

If we find that that's considered the additional treatment, depending on severity of symptoms and other variables, that could have as much to do with if he can have sick leave or be off work or not to make the treatment worse than the disease, so-to-speak, is whether there would be a work release. The work release typically would be light duty with no repetitive reaching, pushing, pulling, or lifting less than ten pounds. If they don't have light duty, they might be off work.

Q. Okay.
A. That is a treatment option, which the record is silent on. I would presume that the manufacturing engineer job duty was discussed in the context.

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Q. Did you feel that he was suffering from a severe debilitating injury when he left your office on December 11th of 1997?
A. I believe he was still functioning at work, so if -- I mean, you might have to define severe disabling, but --
Q. Severe debilitating injury. In the realm of the patients you see, would you say this was a very moderate injury, an average injury, or a severe injury?

MS. CARULAS: Just note my objection, but go ahead.

A. I understand your question.
Q. (BY MR. CARAVONA) Okay.
A. You know, I'm wading through information.
Q. Well, it wasn't bad enough that you wanted to keep him on Codeine because he was on Codeine for a while and you didn't think the pain was that bad where he would need Codeine, correct?
A. You may need to rephrase that because if that's the angle you are taking, I would need to know specifically what the question is.
Q. The question is, was it a moderate, average, or severe injury in the realm of your practice, which is --

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A. But what you're just asking me was it moderate or whatever in relation to Codeine. So on that question the severity would probably not swayed me wanting to prescribe Codeine. Because I've already told you this category of diagnosis whether it be mild, moderate, severe by whatever definition --
Q. Let's forget the Codeine.
A. I'd like to finish --
Q. All right.
A. -- if I might.
Q. All right.
A. If the diagnosis of rotator cuff tendonitis of whatever severity by your definition or mine, especially given the individual characteristics in this patient, I would have not preferred to have used a narcotic level medication.
Q. Okay.
A. And your assumption was that if it was severe, obviously I'd be more likely to use Codeine. And I'd like to point 'out that that assumption isn't correct.
Q. Okay. Thank you. Let's get back to my question. Moderate, average, or severe?
A. Okay. Then that's when I was saying I'm wading through which variable of how we measure it. There

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is mild pain that might be exactly the thing that a job requires that they can't function. And if they can't function and can't work, an emotional overlay in income, they would tell me that this is major. So I would probably put that in the moderate or severe given those variables.

I've had people with severe pain who say that they can take the pain despite them grading it that way, and that they don't want release from work for the variables of I don't want to be off work and it's holiday season or other things. That's why I have difficulty with mild, moderate, severe and I would go so far as to say that's why my impression has not used that adjective as a subcategory.

Q. You didn't think he needed to be hospitalized, did you?
A. No.
Q. Your re-appointment was in six weeks?
A. My plan as of the first visit he's to fo low-up in six weeks.
Q. And if you were very concerned and felt t to be a severely debilitating injury, would you et him go six weeks without re-appointment?
A. Are there situations where the symptoms are more severe than this individual Mr. Ruttig where I might

bring them back, yes, but six weeks for this condition is by far and away the most common thing I do.

Q. You indicated to me that in addition to the treatment you rendered, which was the injection, you prescribed Duract for pain and I think that's what you have in your report, correct?

A. Yes.

Q. What was your rationale for utilizing Duract for pain?

A. Well, he's presenting in pain and that's why I'm seeing him. The goal oriented treatment has to be to address pain. What physicians or what I individually would like to do is to treat the underlying condition to remove the pain.

Q. I'd like you to go back six months from this date, Doctor, to June of 1997 and present the exact same type of patient, exact same symptomatology. What would you have prescribed for that man for pain at that time?

A. I wasn't done with what I was saying on the question.

Q. Oh. Okay. Well, finish then.

A. You might need to repeat the question. About -- you said I gave Duract for pain and --

Q. What was your rationale for that?

A. Okay. I was trying to outline for you exactly what the rationale was, so --

Q. Please do so.

A. -- the first point was he's in pain and I need to address pain, but what I'd like to do is treat the underlying disorder. So I'm going to modify activity and I'm going to stretch a tight tendon. I'm going to strengthen a weak muscle tendon unit and I'm going to try to treat inflammation. And that would generally be the tools of initial conservative management, but because he's on a narcotic level medicine, Codeine on presentation, I recognize that if I don't -- if I recommend he discontinue Soma with Codeine, I've not addressed the level of pain that he has already been treated.

In other words, I'm losing ground on that one. So I now have to make an individual decision about if we discontinue Soma with Codeine, what do we subsequently treat in its place. So I'd like a non-narcotic, non-addicting pain medicine, which is why I chose Duract.

Q. Thank you. You had mentioned several times that you were very concerned and you were very aware that for two months this man was on Codeine, correct?

A. I don't know how many times I've mentioned it. I said I think I recall in the history, but the chart is silent. I don't have that information that he had been on it for sometime.

Q. Sometime.

A. And the example I gave is if he had been on it three days, I might not actually have as much reservation about just stopping it cold turkey.

Q. Okay. You would agree it's important to know the duration of time a person's on medication?

A. And I'm saying I believe at the time I made these treatment recommendations I did.

Q. Do you agree it's important to know --

A. Yes.

Q. -- the duration of time one is on a particular medication?

A. Yes.

Q. Thank you. Go back to June of 1997. Same history, same exam, same radiographs, same impression, what would you do for that patient as to a prescription for pain?

A. June 19 --

Q. '97.

A. -- '97 versus?

Q. December of 1997.

MS. CARULAS: Just note my objection. Go ahead. You can answer.

A. Does that -- I mean -- I don't know. Is that --

Q. (BY MR. CARAVONA) How long have you been prescribing Duract as of December 1997?

A. Well, that's why I paused. I mean, was the medicine out in June or was it -- I mean --

Q. Well, let me ask you this, when you prescribed that medication in December of 1997, were you familiar with it?

A. I was familiar with it. It was relatively new.

Q. How long had you been prescribing it, years?

A. It hadn't been out for years.

Q. Okay. Well, do you know how long it had been out?

A. I don't know to the day. I think it was probably around the date you just mentioned, but I don't know.

Q. It came out in July of 1997.

A. Okay. So --

Q. You weren't aware of that?

A. I don't carry that figure in my head. My chart's silent on that. I could easily answer it by obtaining that information.

Q. You didn't look when it was brought on the market when you were looking over your chart for this

deposition?
A. I believe I did. I just didn't commit it to memory.
Q. When was it taken off the market? That would be important for you to know.
A. It took them several more months after the unfortunate incident with Mr. Ruttig.
Q. Well, I submit to you, Doctor, in July of 1997 is when Duract hit the market. Let's go to June. What would you have prescribed?
A. In this scenario a non-narcotic, non-addicting medicine choice would be Ultram.
Q. Okay. And had you been prescribing that for some period of time in June of 1997?
A. I would presume so, yes.
Q. Okay. What gave you reason to move from Ultram to Duract?
A. My understanding that Duract was more effective with less side effects in regard to Ultram.
Q. More effective, less side effects. Where did you get this information?
A. I think the principle but not sole source, but principal source was the drug representative Lynn Renz.
Q. And where else?
A. The insert in the sample medication. I don't think

there was a PDR supplement, you know, until the new year, whatever.
Q. When you're changing from one prescribed drug like Ultram to Duract, am I correct in my statement that you relied upon a drug salesman's presentation to make that change?
A. I rely on me to assimilate the information, but I --
Q. Well, what did you assimilate on Duract other than listening to the drug sales rep and reading the insert?
MS. CARULAS: You know, Don, the one thing you do a lot is you're just continually cutting him off. Maybe you could just try to not do that.
MR. CARAVONA: And when he's says he's cut off, I let him go back.
Q. (BY MR. CARAVONA) Did I cut you off, Doctor?
A. I'm developing th nking, but --
MS. CARULAS: I think the last word he said was but, but go ahead. I mean --
A. We better repeat he question now, please.
MR. CARAVONA: Why don't you read that back.
(Question and answer read back by reporter.)
A. So where are we in this process now again?

Q. (BY MR. CARAVONA) Let's go here in the process. Doctor, do you agree that at one time you were prescribing Ultram for pain?
A. Yes.
Q. And at some point in time you switched from Ultram to Duract?
A. Switched meaning 100 percent never used Ultram again or --
Q. No.
A. Well, I mean switched to me is you leave one and completely go to another. I started incorporating Duract into my armamentarium of what medicines I might choose to use and trial and see what the clinical effectiveness would be.
Q. Well, why did you arm Mr. Ruttig with Duract as opposed to Ultram?
A. I believe I've answered that.
Q. I'd like you to answer it again.
MS. CARULAS: Just note an objection. Go ahead.'
A. Because I felt that my understanding of Duract at the time I prescribed it was such that it was the potential to be effective in that patient more than Ultram.
Q. (BY MR. CARAVONA) Because it was more effective and

had less side effects?
A. Yes. That's what I include as part of effective, yeah.
Q. Where did you get this information that you've just given to me?
A. The principle source by the time I'm prescribing this medicine to Kenneth Ruttig was the drug representative Lynn Renz, but it was not the only source.
Q. What were the other source or sources?
A. The --
MS. CARULAS: Just note my objection because I think we've been over this, but go ahead.
A. The sample medication, the insert. It depends on the point in time, but the medicine had been out for sometime and there are ways to learn about how it has done so far in my community or amongst peers.
Q. (BY MR. CARAVONA) Did you do that?
A. The record is silent on that. I generally make a strong effort to do that.
Q. When you say --
A. And part of that would be with Lynn Renz because as she discusses the merits of the medicine I might ask, well, are people using this, and what are you

finding, and are they receptive to it, and are they continuing to use it? And I would have those similar questions in general with colleagues.

Q. Did you have conversations before December 11th of 1997 with colleagues about Duract?

A. I don't recall, specifically.

Q. Lynn Renz's sample medication is another thing that you said you relied upon?

A. Well, she brings the medication in when she's discussing it.

Q. How does that teach you more about the medication --

A. The --

Q. -- if you would?

A. The box, the insert, the information that comes with the medication.

Q. Okay. The insert then that's one of the principle -- other than Lynn Renz, is that one of the principle methods of gathering information about a drug?

A. Again, I think I've answered it. And what I said was the principle method was Lynn Renz and that there were other methods that I take into account.

Q. So first and foremost would have been Lynn Renz, but you also would read the insert, wouldn't you?

A. Yes.

Q. And why would you do that?

A. It's an additional source of information on the drug that discusses it.

Q. Well, I mean, Doctor, you know Lynn Renz works for an organization that is manufacturing Duract, you knew that, correct?

A. Yes.

Q. And you knew that she was selling that, and based upon her selling it she would get commissions?

MS. BITTENCE: Objection.

Q. (BY MR. CARAVONA) Didn't you know that?

THE WITNESS: Do I answer the question? There was an objection.

MS. CARULAS: Yeah, you can go ahead and answer it.

A. I don't know anything about whether she gets commission or not.

Q. (BY MR. CARAVONA) Doctor, in your general every day living when someone is selling you something, isn't it normal for them to magnify the benefits and minimize the detriments?

MS. CARULAS: Note my objection, but go ahead.

MS. BITTENCE: Objection.

A. I don't assume that strongly about people and I make

individual decisions about the person that I'm dealing with.

Q. (BY MR. CARAVONA) So your decision to give Kenneth Ruttig Duract as opposed to Ultram was based upon presentations by Lynn Renz?

A. Principally at the time that this prescription was made. And then as I gained additional information about the medicine and clinical practice and talk with peers about what are we finding as continued experience, I continued to modify or strengthen that position.

Q. Okay. Did you modify or strengthen the position from December Ilth, 1997?

A. I can say in this individual case it's exceeded in getting us off Soma with Codeine, which was again one of the main goals I did. And I would say, in general, I was pleased that the medicine seemed to have effective pain relief with less identified side effects than what I recalled with Ultram.

Q. Okay. What were the side effects with Ultram that you were worried about?

A. It's a centratly acting non-narcotic medicine so it tends to have central nervous system-type side effects as the most common. So the most common side effect was often lightheadedness or dizziness. The,

again, central nervous system being how it acts is seizures had been reported, and actually, I recall it come out, you know, as a potential problem with the medication, I think I recall that having a history of epilepsy or being on anti-depressant medicines would be a greater risk for that.

Q. Was Mr. Ruttig on anti-depressant medication or did he have --

A. Not to my knowledge.

Q. Did he have a history of epilepsy?

A. Not to my knowledge.

Q. Is it -- What was your understanding of the side effects of Duract?

A. Principally central nervous system and lightheadedness. Also understanding that there can be allergic reactions, which is common to all medicines. That all medicines have to be metabolized in the body, principally, via liver or kidney. And that Ultram may have, I believe some GI side effects, but not being an anti-inflammatory class were not as profound.

MS. CARULAS: No. I think his question was about Duract. I think you answered Ultram.

A. Oh. I was talking about Ultram.

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Q. (BY MR. CARAVONA) Yeah.
A. I apologize.
Q. So from what you've told me Duract effects the central nervous system, also, correct?
A. No.
MS. CARULAS: His answer was about Ultram.
A. I was in error. I was answering Ultram. I thought we were still on that theme of why -- what were the side effects of Ultram. I thought we were still developing that theme.
Q. (BY MR. CARAVONA) Well, I want to make sure that I have this clear from you.
A. Okay.
Q. The side effects of Ultram was central nervous system, dizziness, lightheaded, right?
A. Yes.
Q. GI irritation?
A. Could but not as high as anti-inflammatory class.
Q. Which would be Duract?
A. Duract is in the anti-inflammatory class.
Q. So Duract would have more effect on the GI system than Ultram?
A. In that category.
Q. Okay. So far we have light, dizzy, and lightheaded

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on Ultram. What else?
A. Are we talking of Ultram?
Q. Yes.
A. Back to Ultram, which I made that error?
Q. Yeah, Ultram.
A. Well, the additional is despite that it's non-addictive, non-narcotic is that we were cautioned in use if dependent or history of narcotic addiction or use. I think it actually states if, for example, you've been on Codeine or a narcotic it may not be the best choice.
Q. Anything else?
MS. CARULAS: You had mentioned earlier seizures, which you didn't mention here, but go ahead.
THE WITNESS: Seizures for Ultram.
MS. CARULAS: Right.
THE WITNESS: Right.
Q. (BY MR. CARAVONA) Anything else?
A. Well, I -- I mean -- You mean is that all that can be associated with the medicine, a whole host of things can occur with the medicine, but those are the principle ones.
Q. Dizzy, lightheaded?
A. Central nervous system, allergic reactions, GI

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caution inpatients with narcotic usage.
Q. What was your understanding *of* the side effects with Duract?
A. Duract was in the class of an anti-inflammatory medicine. Again, all medicines we have to be aware of allergic reactions. Anti-inflammatory medicines, non-steroidal anti-inflammatory, their principles are the GI system, gastrointestinal. All medicines are metabolized by liver and excreted by kidneys, and that Duract had risk of elevation of liver enzymes. An allergic how it's metabolized, anti-inflammatory class, and then again recognizing that medicines can have many other side effects and some unforeseen.
Q. Are you finished?
A. Those are the principle, yeah.
Q. Maybe I'm missing something, but from what you've told me if I've got to take the two pills, not knowing what I know now, doesn't it seem like the Ultram has less side effects than the Duract?
MS. CARULAS: Objection.
THE WITNESS: Do I answer?
Q. (BY MR. CARAVONA) Well, sure.
MS. CARULAS: Go ahead.
A. No, that wasn't my impression. It would depend on

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incidents. Common things happen commonly, rare things happen rare and we have to take those into account when we give them medicine.
MS. CARULAS: Do you mind if we take a break?
MR. CARAVONA: No, You can take a break. That's fine.
(Short recess taken.)
Q. (BY MR. CARAVONA) Doctor, have I given you ample opportunity to explain what you believe are all the benefits and detriments of Ultram and all the benefits and detriments of Duract as you knew them on December 11th of 1997?
MS. CARULAS: Just note my objection.
A. I think in terms of us trying to help you understand the decision making of why I would use Duract instead of Ultram, I think I've given the principle factors that were involved in that.
Q. (BY MR. CARAVONA) Okay. After December 11th of 1997 you still prescribed Ultram, did you not?
A. I believe I did.
Q. Can you give me a percentage of pain relievers that you -- was it 50/50 Ultram/Duract? Was it 80/20?
MS. CARULAS: Objection.
A. I don't know.

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Q. (BY MR. CARAVONA) You have no idea?
A. Not in the context of that time. I don't know.
Q. Well, do you have any independent recollection when you first started to prescribe Duract?
A. Well, I made an effort to use it to start to see how it was effective in my practice. And then --
Q. Well, when was that?
A. For Duract?
Q. Yeah.
A. Well, it was released in --
Q. July.
A. -- July. I don't recall, specifically, but I don't tend to use new medicines right off the bat. I would guess October when I started prescribing.
Q. And you made the statement, I made an effort to use it to see if it was effective in my practice.
A. Mm-hmm. When indicated.
Q. Before you gave it to your patients -- I'm kind of confused. Before giving it to your patients, you were totally familiar with the drug, the benefits of it and the side effects of it, were you not?

MS. CARULAS: Note my objection.

A. I felt I had enough information about a new medicine to make judgments about when it should be prescribed on an individual basis.

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Q. (BY MR. CARAVONA) And you wouldn't prescribe any medication to one of your patients if you were not familiar with that drug and its benefits and detriments?
A. To the best of my ability.
Q. All right. And a minimum, a minimum, for giving that to your patients would be to be familiar and aware of the insert, correct?
A. Yes.
Q. I mean, to read it and know it, correct?
A. Define know it.
Q. To know what the benefits and detriments are or the cautions, precautions or contraindications, that would be important, wouldn't it?
A. Having that information would be important the route of which I felt I had successfully answered those questions to myself. I have already said that the principle route was initially a drug rep, Lynn Renz, who brought, as I recall, verbal and information about the medicine.
Q. Okay. Verbal and information about the medicine. And the verbal was what she told you were the benefits and detriments and the reading information was the insert, correct?
A. I think she had a chart comparing Duract to Ultram.

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I think she'alluded to the studies that had been done on Duract for its approval.
Q. Have you ever done any studies for drug companies?
A. No.
Q. Do you watch television?
A. Yes.
Q. Did you watch television Sunday?
A. I was coming -- No. I didn't get home until eight. I mean, I guess I watched TV in there somewhere.
Q. Okay. You're aware that studies for drug companies are done by individual physicians, correct, researchers?
A. I understand that they're done by researchers, some are Ph.D. some are M.D.
Q. And they're given a grant?
A. That's a method.
Q. They sign a contract?
A. I'm not sure of your question.
Q. Well, it has been shown that many of the researchers on the drug signed a contract of confidentiality and if the studies are not what the drug company wants them to be, they can't release the information. Have you ever heard that before?

MS. BITTENCE: Objection.

A. I'm confused by what you're saying.

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Q. (BY MR. CARAVONA) Well, here. All right. Well, Doctor, I would like you to entertain this hypothetical question. Wyeth Laboratories hires you to study Duract and they pay you a grant of $500,000 per year. Now, you enter in a contract to spend sometime studying that drug. And in the contract it says to you, Dr. Lippitt anything you find is confidential between Wyeth Laboratories and you. That's it.

Now you study this drug and you find out that hepatic dysfunction is quite rapid in the study of Duract. And you go to Wyeth and say, you know, this is terrible. Hepatic dysfunction is showing up after five weeks, six weeks. And they say to you, no, Doctor, your data is wrong. And you go, no. No, it isn't. I want to publish this. And they say, well, we remind you, Doctor, you signed a confidentiality agreement here. Did you ever hear of that?

MS. CARULAS: Objection.

MS. BITTENCE: Objection.

MS. CARULAS: I think that's an impossible question to answer.

Q. (BY MR. CARAVONA) Did you watch 60 Minutes last night?

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A. No.
Q. It was on there.
MS. CARULAS: There's no question in front of you right now.
Q. (BY MR. CARAVONA) All right. Let me pose a question to you, Doctor. So getting back. You said you tend not to use drugs when they're brand new?
A. Yes.
Q. Why?
A. Because I don't like to get on the train in the beginning. I like to get on it a little further back to see what we're running into with the medicine.
Q. Okay. And you felt that waiting two and a half, three months was getting on the train a little later with Duract?
A. Well, I remember with Duract that -- you know, as an orthopedic surgeon and patients with pain and pain that lasts a while, we don't have a lot of choices and so we're always looking in that category for what might be effective.
Q. Pain that lasts a while?
A. Yes.
Q. Is it your understanding that Duract was for pain that lasted a while?

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A. You'd have to define a while.
Q. Well, what did you mean by you're an orthopedic surgeon, you have patients who have pain that lasts a while? Define that for me.
A. Well, after orthopedic surgery they have post-operative surgical pain, which may require narcotic level medication for, you know, a period of time or three weeks.
Q. Is that a while?
A. It's a while for narcotic medicine.
Q. Okay.
A. I don't understand your question. The time frame is I'd want to use medicines in the proper indications on an individual basis for the period of time it would be appropriate.
Q. What was your understanding on December 11th of 1997 as to what was the appropriate period of time to prescribe Duract?
A. The way that I prescribed it is what I thought was an appropriate length of time to prescribe it.
Q. Did you come to learn at a later time it was inappropriate?
MS. CARULAS: Objection.
A. I don't think I've learned that it's inappropriate. I'm coming to understand that it's much more "clear"

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to everyone now that it was ten days.
Q. (BY MR. CARAVONA) What did you perceive to be an appropriate duration of time to prescribe Duract on December 11th of 1997?
MS. CARULAS: Just note my objection. I think he's just answered that.
A. That's what I was going to say.
Q. (BY MR. CARAVONA) What was the appropriate period of time to prescribe it, ten days?
A. There were many variables that I would take into account some of which are individual basis. And in this particular individual, Mr. Kenneth Ruttig, who had been on a narcotic level medicine, I felt I would need a medicine that could help with pain for a period of time that would be realistic.
Q. How long?
A. In the context of appropriate use of the medicine. So the way that I prescribed it is the -- was what I felt was appropriate to the medicine with my understanding at that time.
Q. How long?
A. What was the prescription for?
Q. How much did you give him?
A. The initial prescription for Duract is twenty-five milligram tablet, fifty tablets, one to two tablets

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Q to six hours, PRN pain.
Q. Now, did you give him any samples before that?
A. The record is silent on that. We generally do and my recollection is that we did.
Q. Why didn't you document in there how many of the samples you gave him?
A. It hadn't been my practice to -- How many samples?
Q. Mm-hmm.
A. I do recall often using the sentence a sample and prescription of the medicine was provided. I obviously don't all the time.
Q. Well, you're not denying that you gave him samples, are you?
A. I'm saying the record is silent on whether a sample was given to him or not, but in general on initial drug exposure, we give samples.
Q. Okay. Now, when you gave the sample and you wrote your first script, you've indicated 25 milligrams, 50 pills, correct?
A. Yes.
Q. When you gave him that prescription, was there a refill on there?
A. Yes.
Q. What were you relying on as to the length of time you were going to keep him on this medication?

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A. My understanding is it was an anti-inflammatory class of medication, that it was compared to Ultram, which was a medicine that was for chronic use, and I used this medicine in the context --
Q. Doctor, I'm going to cut you off. What were you relying on? Answer that question.
A. I thought that's what I was trying to answer.
Q. Well, you're telling me -- What were you relying on? What information that -- Was it written? Was it oral? Was it an insert?
MS. CARULAS: Just note my objection, but go ahead.
A. I've said the way that I used the medicine is principally related to the drug rep. And that was verbal information, charts, the box, and the package insert.
Q. (BY MR. CARAVONA) What did the drug rep tell you you could do, how long you could prescribe the medication --
A. It was better than Ultram.
Q. No. No. Doctor --.
A. It's my answer nonetheless.
Q. How long did she tell you you could prescribe this medication?
A. That I could use it like Ultram.

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Q. It was not -- Was it a short-term pain relief?
A. I'm trying to answer it. It was explained to me that it was in the anti-inflammatory class of medicine. Anti-inflammatories are not generally used for ten days. I understood that it was being compared to Duract.
Q. No, Duract's what you're talking about.
A. Or compared to Ultram. And that Ultram was used for pain certainly more than ten days. That the ten days was not a mandate, but a piece of the information to take into consideration as a recommendation. It was not an absolute use it ten days not eleven.
Q. Okay. Did the drug rep tell you anything about utilizing it long term over four weeks?
A. My impression was, yeah, that's what we discussed and that it was okay.
Q. She told you it was okay to use it over four weeks?
A. I struggle on exactly what the conversation would be this far out. I'm telling you that all information sources, as I used that information, that I could use it more than four weeks.
Q. Other than the drug rep, was the insert another one of the sources that you relied on?
A. I think I've answered that.

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Q. On December 11th did you discuss this Duract with any of the other senior physicians at Northeast Group?
A. At what time?
Q. December 11th of 1997.
A. Not that I recall.
Q. Well, this was a new drug on the market. Would you normally discuss a new pain reliever? You had indicated to me --
A. You're asking on this day. I don't know that any physicians are in my office on this day.
Q. Well, did you have any discussions on or about that time before you started prescribing it? In October did you discuss it with your colleagues?
A. I think I've answered that question.
Q. Who did you discuss it with?
A. I think I've answered that, in general, I discussed it with colleagues, peers, but I don't recall a specific. But I'm comfortable saying that knowing that the opinion I formulated about the medicine that is generally what I would do and recall doing. I just don't recall, specifically, who enough to state it as fact.
Q. Is it accurate to say, though, based on this that you basically primarily relied upon Lynn Renz?

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A. I think I answered that.
Q. Yes or no?
MS. CARULAS: Don this is probably about the 10th or 5th time you've asked this question.
Q. (BY MR. CARAVONA) Is it primarily you relied upon her?
A. I think I've used the word principally.
Q. Okay. Do you know her educational background?
A. No.
Q. Do you know if she's a -- You know nothing about her educational background?
A. No.
Q. Okay. You know that she works for the company that manufactures Duract?
A. Yes.
Q. Okay. Was there any indication if you used i more than four weeks something should be done?
MS. CARULAS: You're talking --
A. What time frame?
Q. (BY MR. CARAVONA) At any time you started us ng the drug.
A. At four weeks it was recommended that you consider liver enzyme testing.
Q. Did you do that?

A. No.
Q. Why not?
A. I saw him at six weeks, not four weeks, with return. In that office visit we learned that we were off the Codeine. I wanted to start an anti-inflammatory medicine, which was Lodine and get off the Duract. So I didn't order or pursue laboratory testing because the plan was to get off the medicine that would require that.
Q. The plan was to get off the Duract on January 22nd?
A. The record January 22nd, 1998 last paragraph, which is treatment, patient was recommended and given a selective injection of Marcaine and Celestone of the right AC joint. Plan is to see the effect of the injection, along with additional exercises. He was given Lodine XL anti-infiammatory medication along with Duract. And what I'm saying is the plan that I was formulating, which if we look at his follow-up we'll see that it happened, is basically given Lodine XL anti-inflammatory medication in lieu of or as we come off Duract.
Q. Doctor, you know, maybe I've got a problem with reading. Would you read, he was given Lodine XL? Read the whole sentence.
A. I did read it.

Q. What does it say?
A. That he was given Lodine XL anti-inflammatory medication along with the Duract.
Q. So on January 22nd you indicated that he's still taking Duract, you knew that?
A. Yes.
Q. And as a matter of fact, Doctor, on January 23rd he had another prescription filled?
A. He was given the prescription that day, January 22nd.
Q. So you weren't taking him off it?
A. I identified that the plan --
Q. Doctor, were you taking him off the Duract on January 22nd?
MS. CARULAS: He's trying to explain.
A. I was taking him off of it. You're saying taking him off of it means that second, that minute. I'm coming off of it.
Q. (BY MR. CARAVONA) Where does it indicate in here you tell him to reduce the amount of Duract he's taking?
A. Well, you're asking me again -- I'm trying to tell you the record says what we've read twice now. What I'm telling you is I know what my plan was and the plan, which I even went back to the beginning, is to

on not treat pain, but treat the disorder. So as soon as I can get off of pain medicine, I don't have to have Duract in the picture and then I'll replace it with an anti-inflammatory if we still have trouble. So I've replaced -- He's off the Codeine, which we identified on this day, 1/22/98.
Q. Doctor, he was off the Codeine when he saw you on December 17th. You took him off it, didn't you?
A. Yes.
Q. And you put him on Duract?
A. I didn't give him the Codeine. He may have some at home and he could get it from family doctors or other sources, so I ask, are you off Codeine? And the answer is, yes in my history, which was the goal of what I wanted to do with Duract. If you're asking do patients come in and say, actually, I still take Codeine with the Duract, yeah, it happens.
Q. Doctor, what was your plan to get him off the Duract? What was the day?
A. On 1/22/98 my plan with the Lodine anti-inflammatory was given in the context of will now come off the Duract.
Q. And that plan was carried out by the fact that you gave him --

A. By next visit.
Q. By next visit. Next visit being six weeks away?
A. During that time to come off of it and take the Lodine. The next visit was six weeks.
Q. Right. So that's 12 weeks of being on the Duract?
A. I think it would only be 12 weeks if we had renewed it or something over that time, which he'd have to contact us about.
Q. How many pills did you give him in addition to the samples, Doctor? Why don't you count it up.
A. Are you asking me to count them up?
Q. You gave him 300. Check it.
A. Well, I presume if you have that that's what the number is.
Q. Yeah. You gave him samples and you gave him 300 pills. What was the maximum dosage of Duract that one should have taken a day?
A. One hundred and fifty.
Q. So that's six pills a day, right?
A. Of twenty-five mi1ligram.
Q. So that gives him fifty days of pills, does it not, Doctor, in addition to the samples you gave him?
MS. CARULAS: Is this a math test right now?
A. Yeah, give me paper and pencil and --

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MR. CARAVONA: I just want to make sure that somebody else in his group didn't write the other prescriptions. That's all.
A. Well, if that's your question that's not math. No one else, to my knowledge, wrote the prescription for Ouract.
Q. (BY MR. CARAVONA) Well, when you write the prescription you look back to see how long, like you were talking with the Soma with Codeine, how long he's been on this particular medication, don't you?
A. Yes.
Q. And you know how many pills you're giving him, don't you?
A. Yes.
Q. Except you didn't write down how many samples you gave him?
A. It's a sample or you know --
Q. Okay. It's a sample?
A. It's one sample. I mean, you know --
Q. But we know for a fact that you prescribed for this man 300 pills of Duract.
A. Is there a question?
Q. How many days of medication would that be?
A. Have we not answered this? I prescribed it on 1/22/98. We understand that that prescription would

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allow him to take it longer, but the instruction is let's start coming off this medicine.
Q. But that's not in the record, is it?
A. It's not in the record, which I've identified at least twice.
Q. What rationale did you use to ignore the warnings of liver enzyme test with a patient who's on this for more than four weeks?
MS. CARULAS: Just first of all note my objection to the statement that this was a warning. Go ahead.
A. I didn't ignore it. I took it into account of my decision making.
Q. (BY MR. CARAVONA) Okay. And tell me how you came to this decision process?
A. Well, if we're coming off the medicine and I've not identified that there are any problems with the medicine, and we're going to be off the medicine as a plan, then I wasn't going to pursue liver enzyme test or -- you know, testing in that regard.
Q. You were aware that it was suggested that this is generally ten days or less of medication that should be used, correct?
A. Yes.
Q. You were aware that if the physician is going to use

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this more than four weeks, that liver enzyme test should be done?
A. *As a recommendation.*
Q. You were aware of that, weren't you?
A. Yeah.
Q. All right. And you chose to ignore that recommendation on the basis of you were weaning him off and that there was no symptomatology when you saw him on January 22nd?
MS. CARULAS: Note an objection. Go ahead.
A. There were several questions in that. Restate part one.
Q. (BY MR. CARAVONA) Well --
A. I didn't ignore it. I took it into account. I've answered it. The way that I took it into account is I think we want off this medicine. Let's do it over this time period. And I'm trying to reflect it by next visit that he's off of it reflects that he understood that plan that I've alluded to I'm sure was my plan. I think your point is, but you elected to go beyond four weeks and keep giving it. And I'm saying that in an individual basis with the decision making of I'm trying to get him off of it, I elected to do that.

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Q. Okay. And how does one get a person off of a medication?
A. Well, the method I used is one method because he was off of it by next visit, so I guess I could start there.
Q. Well, Doctor, when you saw him on the 22nd you gave him a prescription for 100 more pills. Is that getting him off it?
A. Did it get him off of it by next visit? I've answered this.
Q. Yeah, seven weeks later. Yeah, you did. You got him off --
A. Seven weeks later from 1/22?
Q. December 11 is when he started on it?
A. Well, you said seven weeks later in the context of when I gave this prescription on 1/22. I merely asked is that what you meant?
Q. No. Doctor, you gave him a prescription on December 11th, didn't you?
A. I've answered that.
Q. All right. You gave him a prescription on December 11th and at the pharmacy he filled 50 of them on December 12th. He filled 50 on December 18th. He filled 50 on December 24th. He filled 50 on January 9th. He filled 50 on January 23rd, and he

filled 50 on December 9th.
A. I will either have to take time to confirm each one of those, but I really presume that you know that to be true and I agree.
Q. That is fact.
A. Then I agree.
Q. So your testimony is that you were weaning him off this drug as of January 22nd, and your method of weaning him off the drug and not taking the liver test was to give him a prescription for 100 more pills?
MS. CARULAS: Don, he's told you his rationale. He's answered your question. Now all you're doing is giving a speech and arguing with him. What is your question that you haven't asked before?
Q. (BY MR. CARAVONA) Did the insert indicate to you that hepatic dysfunction was a concern?
A. Yes.
Q. Okay. Did you see any indication of hepatic dysfunction on January 22nd?
A. I did not.
Q. Would you show me in your record where it was noted?
A. The record is silent on that.
Q. The record is silent on that. Were you aware on

January 22nd when you prescribed 100 more pills that hepatic dysfunction could occur insidiously without any symptoms, whatsoever?
A. I knew that before Duract was ever done because that can be common to many medicines.
Q. Yet you chose not to run the liver enzyme test on January 22nd or thereafter?
MS. CARULAS: That's already been asked and answered.
A. It's answered.
Q. (BY MR. CARAVONA) Okay. Now, did you come to learn that there was difficulty with this drug at any time after the January 22nd meeting?
MS. BITTENCE: Objection.
A. Yes.
Q. (BY MR. CARAVONA) When?
A. Well, let me start with the record. On 3/24/98 I have a note that I received a voice mail about Mr. Kenneth Ruttig having a liver transplant on 3/22/98 and I recall I was at the orthopedic academy meeting in New Orleans. And I recall when I answered this, that it was ironic to me that I had just heard that there had been cases reported of liver failure.
Q. I'm sorry. When was this?
A. I believe I learned this at the academy meeting.

Q. The first time you heard of it?
A. Of a case report of liver failure.
Q. Are you sure of that answer? That's the first time you heard there was any hepatic dysfunction?
A. No.
Q. Liver failure?
MS. CARULAS: What his precise testimony was first time he'd heard of a case report of a liver failure is what the testimony --
A. I use liver failure. I think we've established that is there elevation of liver enzyme that I knew that back before I prescribed it that that was in the previous studies on the medicine and we understood that to be a risk of the medicine. And I implied that in the anti-inflammatory class in all medicines there can be risk of liver problems.
But if you're asking was I aware that liver failure to this degree could be associated with Duract, it was at the academy meeting because I recall the irony of when this occurred that I wondered if it was related.
Q. (BY MR. CARAVONA) Did you ever receive any correspondence in February from the Wyeth Laboratories?

A. Not to my knowledge.
Q. Did Lynn Renz ever come up to your offices in February and talk to you about the February 6th letter?
A. I can only state a conversation she had had with me. I don't know what she may have done with others.
Q. Handing you what has been marked Plaintiff's Exhibit 1.
(Plaintiff's Deposition Exhibit 1 marked for identification.)
A. Is there a question?
Q. Are you done reading it?
(Witness reviewing document.)
A. Okay. I've read it.
Q. Does that letter refresh your recollection as being sent to your offices, Doctor?
A. I can only recall if it would be sent to me. I can't recall about whether it goes to someone else.
Q. Do you recall Lynn Renz taking a laminated copy of this and walking up to you and saying, Doctor, there's a problem here?
A. No.
Q. Do you recall Lynn Renz saying that the inserts on Duract are going to be changed?
A. No.

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Q. Do you recall anybody in your office -- well, anyone in your office indicating or talking to you from February 6th until Mr. Ruttig's next visit on March 5th that there was liver failure, some requiring transplants as a result of taking Duract?
A. Not that I recall.
Q. How many of your colleagues were utilizing Duract at Northeast during this period of time?
A. I don't know as fact.
Q. Doctor, as we sit here today are you telling us that the first time you ever heard there was severe hepatitis or liver failure or that there was a black box warning on the Duract, was when you were at the meeting in New Orleans for the orthopedic seminars?
A. No. What I said I learned at the academy by a method was that I had heard that there are cases reported of liver failure that are being associated with Duract.
Q. Is that the first time that you ever heard that information?
A. I think I answered that.
Q. At the academy meeting?
A. Right.
Q. Never heard it at all in February?

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A. Not that I recall.
Q. Well, if you would have recalled it and received this letter, you would have acted on something as strong as this letter, wouldn't you?
A. I certainly believe I would.
Q. You're not sure? You believe you would have?
A. I think I used the word certainly.
Q. Now, you agree this letter is dated February 6th, don't you, Doctor?
A. I agree.
Q. There has been testimony sworn under oath that Lynn Renz said that she came up to your office and had a copy and showed it to you: There is further testimony that Wyeth mailed these to all of the physicians. And as you sit here you're saying if you would have received notice of this, you certainly would have done something?
A. I'm not sure of your question.
Q. My question is, therefore, you never received this letter marked Plaintiff's Exhibit 1?
A. I've answered it.
Q. And Lynn Renz never talked to you and you never heard from any of your colleagues at any time prior to the academy meeting in March, that there was severe hepatitis or liver failures associated with

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Duract?

MS. CARULAS: Note my objection to the long compound question, but go ahead if you can answer it.

A. I think you said, you know, in no time during this time did you talk with Lynn Renz and. I mean, I don't recall talking with Lynn Renz about a box warning. That's a part of that question. And then there were others and I can't keep up with compound questions.
Q. (BY MR. CARAVONA) Doctor, would agree that with the box warning of February 6th that you continued Mr. Ruttig on the medication thereafter?
A. With knowledge of the box warning --
Q. No. No.
A. -- or that one existed?
Q. You agree that after February 6th you continued to keep Mr. Ruttig on Duract?
A. We've answered that. We've established --
Q. If you had been aware of the letter, which is marked Plaintiff's Exhibit 1, what would you have done?
A. I would try to follow the recommendations that are in the box warning.
Q. Which are?
A. Duract is indicated for short-term (10 days or less)

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management of acute pain and is not indicated for long-term use.

While not recommended, if a physician determines that the risk of longer use is justified by the potential benefit, the patient's transaminases and bilirubin, must be closely monitored for signs of hepatotoxicity.

Patients should be advised to take this medication as directed.

So I would, in this box warning, have to define not indicated for long-term use. I'd have to define what is long-term use. I'd have to determine the risk of longer use is justified by potential benefit. I would have to make a decision about this knowledge. Now, is it worth the benefit of pain relief in him versus getting him strictly off of it. If the risk of longer use was a certain amount of time and I had exceeded it, I would need to get enzymes. And then I would need to advise the patient to take the medication as directed.
Q. Doctor, as of February 6th was Kenneth Ruttig on Duract more than ten days?
A. Yes.
Q. He was on it substantially longer than ten days, wasn't he?

A. What's substantial? I mean, we can do the math.
Q. Well, if you would have been aware of this warning where they say, if you determine the risk is longer, please have certain testing done. If you would have known of the information in this letter on February 6th, would you have called Ken Ruttig and told him to go have his liver enzymes checked?
A. The goal would be to follow this warning, yes.
Q. Would you have continued to prescribe Duract with this if you had knowledge of this warning?
A. I cannot expect that I'd do that.
Q. All right. So, Doctor, based upon your actions, which were you never did a liver enzyme test, did you?
A. No.
Q. You never discontinued the Duract after February 6th, did you? I mean, you continued to prescribe it after February 6th, agreed?
A. Yes.
Q. Can we, therefore, conclude that you never received warning from Wyeth via the letter of February 6th or by any of your colleagues or by any representative?

MS. BITTENCE: Objection.

A. Yes.
Q. (BY MR. CARAVONA) And if you would have been aware

on February 6th of what is contained in Plaintiff's Exhibit 1, you would have taken the steps to, No. 1, discontinue the medication?
A. I think I've stated what I expect I would do given this piece of information.
Q. Discontinue the medication and have his liver enzymes checked, correct?
A. It says, while not recommended, if a physician determines the risk of longer use is justified by the potential benefit, the enzymes transaminases and bilirubin --
Q. Must?
A. -- must be closely monitored.
Q. Excuse me.
A. I'll read it word-for-word then.
Q. Yeah.
A. While not recommended, if a physician determines that the risk of longer use is justified by the potential benefit, the patient's transaminases (particularly ALT), and bilirubin, must be closely monitored for signs of hepatotoxicity. I believe your question was given this warning would I discontinue the medicine, meaning strictly. It doesn't say to strictly stop it.

It says, if the physician determines that the

risk of longer use. That means there's an option for the physician to use it longer. But if he chooses to use it longer justified by the potential benefit, then he -- patient's transaminases and bilirubin must be closely monitored. I think your question was you'd have to stop it. I don't see that it says you must stop it.
Q. But you must have his liver enzymes checked?
A. That's their statement.
Q. Would you comply with that?
A. And if we're to follow the recommendations we would do it, and I've already stated that I would expect to do that.
Q. And if you did that and found them highly elevated, would you then discontinue the medication?
A. Well, what's highly? I mean, there's upper limit, normal, borderline elevation, three times normal, eight times normal. And I mean, there's different degrees of elevated liver enzyme.
Q. Okay. Let's talk about the degree that devastated Kenneth Ruttig.
A. Is there a question?
Q. Yeah. When you became aware in March that Mr. Ruttig had a severe problem and you kind of associated it with Duract, did you make -- How did

you become aware of it on March 24th?

MS. CARULAS: Wait a minute now. Are we --

MR. CARAVONA: Let's go --

Q. (BY MR. CARAVONA) How did you become aware that Mr. Ruttig had a problem?
A. The record dated 3/24/98, upon returning from the academy meeting on Monday evening 3/23/98, I received or checked my voice mail. But it says I received a voice mail regarding a patient Mr. Kenneth Ruttig. I contacted Joan Hoak, who is the patient's sister, and learned that the patient has had recent medical problems of liver failure and was transferred from Akron General to Cleveland Clinic and has apparently undergone a liver transplant on 3/22/98.

The etiology of the liver failure apparently is still pending per Joan who is a nurse. She is aware of the recent notification by the drug company that Duract has indeed had some case reports of liver problems, although, they are unsure if this is playing a role. The patient has been off the Duract medication per my last evaluation dated March 17th, '98.

Q. That's an error, isn't it?

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A. The last evaluation was on March 5th and the transcription is March 17th, '98, so -- and alluding to the record that it exists, yes.
Q. What did you do after receiving that information?
A. I contacted Joan Hoak. I called her.
Q. And you wrote the note?
A. Right.
Q. What did you do after receiving information that one of your patients had a severe case of liver disease and it was suspected it was from a medication that you gave him?
A. I brought it to the attention of Lynn Renz and asked what process that we do appropriate reporting.
Q. When did you call her?
A. What I recall is bringing it to her attention in the office, and I believe it was immediately close to when this occurred.
Q. You waited for her to come in the office?
A. Well, I didn't know that Duract was implicated yet. I just read that in the note. I think that once I understood that it could be in talking with Lynn and her stating that it's had cases of liver failure, as you've heard, that it was then, how do we report this? The record is silent on what day that is.
Q. The record is silent. Would you agree when you

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dictated this note on March 24th, that there was a very severe situation with one of your patients?
A. Absolutely.
Q. And as you sit here you can't tell me whether or not you sought out that drug rep immediately or she -- you waited until she came in?
A. Well, I took it --
MS. CARULAS: He's just asking if you have a specific recollection of the date.
A. I don't know the date, but I took it very seriously and was pursuing the method we do it and -- I mean, I --
Q. (BY MR. CARAVONA) What was your method? What was your method?
A. Well, I was awaiting, I guess Cleveland Clinic to see if indeed Duract was implicated. I mean --
Q. Did you have any other --
A. The etiology of the liver failure apparently is still pending per Joan, who is a nurse, meaning she's got some medical background to know where we are with this.
Q. Yeah.
A. She is aware of the recent notification of the drug company that Duract has indeed played some role. I mean, it's not the first case it's ever

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happened, so they're aware of it.
Q. So let me ask you this, Doctor. You wrote that she was aware that Duract had case reports of liver problems. What did you do to investigate her statement that there were other liver problems?
A. Well, I had already heard there were liver problems at the academy meeting before she said that.
Q. Did you do anything to notify your patients who were on Duract?
MS. CARULAS: I'm going to object as to anything with any other patients. I don't think that's an appropriate question to get into other patient's care.
MR. CARAVONA: I think it's very appropriate.
Q. (BY MR. CARAVONA) Did you notify your other patients?
MS. CARULAS: I disagree. We're not going to start guessing and getting into charts in issue of other patients and his recollection. We're here to talk about Ken Ruttig, so that's not an appropriate question.
Q. (BY MR. CARAVONA) Doctor, did you send other patients to Akron General Hospital to have their

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liver enzymes checked in the month of March?
MS. CARULAS: I do not want you to guess about other patients.
MR. CARAVONA: He doesn't have to guess.
A. What's the question?
Q. (BY MR. CARAVONA) Did you send other patients of yours who were taking Duract to Akron General Hospital to have their liver enzymes checked?
A. No.
MS. CARULAS: Answer it only if you can.
Q. (BY MR. CARAVONA) No? Did you send patients of yours to any other medical facility to have their liver enzymes checked as a result of taking Duract?
MS. CARULAS: Objection.
A. No.
Q. (BY MR. CARAVONA) In your group, Doctor, how often do you and your fellow colleagues meet to discuss cases tha't you're handling?
A. I don't know that we formally meet to discuss cases on the --
Q. Were you in the office from -- in the month of February?
A. To my knowledge.

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Q. Is there any chance that you could have been out of the United States?
A. No.
Q. Did you ever talk with any pharmacists at any time regarding the Duract medication?
A. I would if I'd call in the prescription.
Q. Did anyone ever indicate to you that you might be prescribing too much?
A. No.
Q. Did you ever have any discussions after Mr. Ruttig's episode with any pharmacist?
A. I'm not sure. Have I talked to pharmacists after this happened --
Q. About Duract.
A. -- about Duract?
Q. About Duract.
A. I don't recall that I have.
Q. Did you continue to prescribe Duract after March 24th of 1998?
A. No.
Q. So on that day you quit?
A. I would say that I did not prescribe it after this event.
Q. Of March 24th?
A. As of gaining this information, yes.

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MR. CARAVONA: Mark this Plaintiff's Exhibit 2.
(Plaintiff's Deposition Exhibit 2 marked for identification.)
(Witness reviewing document.)
A. Okay.
Q. (BY MR. CARAVONA) Doctor, Plaintiff's Exhibit 2 did you recall receiving that correspondence from Wyeth-Ayerst Laboratories?
A. I don't recall whether I received it, but I recall reading this. I don't know how it was brought to my attention or where it came from. I think in the context of my interest of Duract by this point I was seeking this type stuff.
MS. BITTENCE: Can we have some identification of what that is, date, to, from?
MR. CARAVONA: Yeah. That's the letter of June 22nd, 1998. Exhibit 2 is the February 6th letter, I believe.
MS. BITTENCE: Thank you.
(Plaintiff's Deposition Exhibit 3 marked for identification.)
Q. (BY MR. CARAVONA) Doctor, handing you what has been marked Exhibit 3, do you recognize that?

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(Witness reviewing document.)
A. Yes.
Q. Okay. And what is that?
A. It's an adverse experience record.
Q. And do you know who filled that out?
A. I did.
Q. And how did you come about filling this out?
A. I brought this knowledge of Mr. Ruttig's liver failure with possible association to Duract at that time to Lynn Renz and asked, what do we do? How do we bring this to attention or what should we do? And she, as I recall, told me that someone will be in contact with you for information. And I have a note in the chart that a Dr. Rick Jones at 610-971-4172, so I called on 4/9/98. I believe I gave some information from the chart at that time. And then this adverse experience record came, I think as a result of that, which I filled out on 5/20/98.
Q. Now, I know you don't know exactly when you met with Lynn Renz, but you met with her and indicated the difficulty with Mr. Ruttig, correct?
A. Yes.
Q. Thinking back can you tell me what her reaction was at that time?

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A. That it was unfortunate and sad.
Q. Did she ask you how long you had been prescribing the medication?
A. I don't recall that. I think it was how's he doing and what do you know and then what are we supposed to do? I don't --
Q. Well, let me ask you this, Doctor. When you called her, can you paraphrase it as best you can what you said to her?
MS. CARULAS: Note an objection.
A. I'm not sure I called her. I think I talked with her in the office at a date very close to when I was, again, pursuing what do I do here with this information.
Q. (BY MR. CARAVONA) Did she inquire as to how long Mr. Ruttig had been on the medication?
A. I don't recall that. You know --
Q. That would have been very pertinent, wouldn't it?
A. Well, I think that was --
MS. CARULAS: Note my objection. I think this is very argumentative, but go ahead.
A. -- the context of the discussion was, you know, Lynn, we understand this is a patient of mine I prescribed Duract. That's why I'm bringing it to

your attention. I acknowledged that we've had Duract in the picture and, you know, what is going on with these liver cases? What do you know? Is it only in a certain length of time or is it with other medicines or is it elderly or is it when they have another disease or do we know? And I think --

Q. (BY MR. CARAVONA) What was her response to that?

A. I don't recall that we knew. I don't -- It was there's early case reports that may be associated and then -- well, then what do we do, report it and how do we go about that?

Q. Did she indicate to you, my God, Doctor, we had a letter February 6th sent to you, Plaintiff's Exhibit 1, did she say anything about that on that date?

A. I don't recall that. That was not the mood of the discussion.

Q. There was no discussion about the black box letter on February 6th when you brought that to her attention?

A. Not to my knowledge.

Q. Did you indicate to her that the first time you heard of any liver failures or transplants with Duract or problems severe in nature were at the academy at the end of March?

A. I don't know that I recall the specifics of that

discussion that specific.

Q. Would you have recalled if she would have said, Doctor, here's the letter, I brought it up and showed it to you --

A. Yes.

Q. -- it was mailed to your offices?

A. Yes, I'd remember that.

Q. On February 6th we warned you people about this.

A. Yes. What's your question?

Q. That never occurred?

A. I don't --

Q. She never made that comment to you?

A. I do not recall that comment.

MR. CARAVONA: I'm going to take about four minutes and we'll be pretty close to being done, five minutes.

(Short recess taken.)

Q. (BY MR. CARAVONA) Doctor, I think I can get this wrapped up pretty soon now. There's some other areas I want to get into. Did you ever hear of a Dr. Nickels from this area?

A. That name doesn't do much for me.

Q. Okay. The reason I brought that name up is Lynn Renz told me that she would have several seminars at Brandywine, different areas, and Dr. Nickels would

be the guest speaker who would talk to the group. It would either be physicians or secretaries or staff nurses who would go in and they would talk about Duract. You never heard the name Dr. Nickels?

A. I don't recall it.

Q. Okay. When did you first learn of that Plaintiff's Exhibit 1, which I gave you, which was the February 6th letter?

MS. CARULAS: Don't guess. If you know.

A. I mean, it's in general after the learning about liver failure. We've established that. I would say actually understanding a box warning would be, I think when legal proceedings were coming into the picture.

Q. (BY MR. CARAVONA) You mean when I filed the complaint, which is contained in your file, is the first time you ever saw that February 6th letter?

A. I don't know what you mean by you filed a complaint. It's when I learned that he was seeking -- Mr. Ruttig was seeking counsel or I was being notified that they were that I started to look more into what's, you know, going on with this medicine.

Q. Okay. So if I'm accurate then, when you met with Lynn she never brought that letter up?

MS. CARULAS: Objection. It's been asked and answered.

A. Yeah, I think I've answered that.

Q. (BY MR. CARAVONA) But she did indicate there were some problems with liver failures at that meeting?

A. Right.

Q. All right. Did you go to any of your colleagues and say, hey, guys, have you heard about this?

A. I think that was very much the mode right after I Learned about it.

Q. What did they say?

A. It was --

MS. CARULAS: Note an objection, but go ahead.

A. It was news to whoever I spoke to.

Q. (BY MR. CARAVONA) Okay. And that's what I want to find out. As of March 24th what you're telling me is yourself and your colleagues at the Northeast Group, none of you knew about this February 6th letter?

A. Well, my --

MS. CARULAS: Note an objection. Go ahead.

A. -- day-to-day exposure is not just NOA. I mean, it was hospital and the cafeteria and other stuff that

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-- I was, you know, probably -- you know, recall being open about it and asking and inquiring, but I don't remember specifically.

Q. (BY MR. CARAVONA) And no one knew of this letter of February 6th?

MS. CARULAS: Objection as to the mind set of other people. He's already told you he doesn't recall the specifics, so I don't think that's a fair question.

Q. (BY MR. CARAVONA) And, Doctor, I want to be fair with you. I guess what I'm getting at is you found out on March 24th and shortly thereafter after talking a rep that there was a liver dysfunction problem with Duract, correct?

MS. BITTENCE: Objection.

A. Yes, but if I could be specific, I learned that a patient of mine had liver failure and I learned in -- at the academy meeting prior to it that not liver dysfunction, but liver failure even to the point of transplant. I don't know about fatal or not at that point.

Q. (BY MR. CARAVONA) Okay.

A. And I brought that information of liver failure to Lynn and she mentioned that, yes, she does know that some cases have been done. And I said, this is

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another one.

Q. Okay. With this liver failure of your patient, you did discuss it with your colleagues, didn't you?

MS. CARULAS: This has been asked and answered.

MR. CARAVONA: Yeah.

Q. (BY MR. CARAVONA) Well, did any of them say to you, well, yeah, we got information on that back in February?

A. Not that I recall.

Q. Did it appear news to all of your colleagues that you talked to?

A. I think I used that term.

Q. Did you discuss it with personnel at the hospital?

A. Who do you mean by personnel? I don't know, specifically, who I talked with with. I talked. I talked. I was open. I said, I'm seeking information. I'm learning. I'm asking, you know, what -- you know --

Q. And at no time during all of that information you were seeking did anyone say, well, yeah, they changed the insert, there's a black box warning on that drug?

A. I understand your question and I have answered it. That -- Correct.

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Q. No one said that to you?

A. Not that I recall.

Q. When you prescribed Duract to Ken, did you go over the side effects with him?

A. Just to start the record is silent on what discussion would be. What I do recall, specifically, is discussing the nature of I'd like to use a non-narcotic, non-addicting medicine and get you off Soma that has Codeine. And the reason I like to get you off Codeine is it can be habit forming, it can have its own side effects in the narcotic category, and I'd rather use a non-narcotic for your pain.

You've been on medicines. Medicines -- You know, what did I specifically say after that. I know what I generally say. What I recall in this discussion is understanding he was already on some medicines that have risks that he's been on. And so I take the discussion of these additional medicines in that context and discuss --

Q. Did you ever mention to him anything about hepatic dysfunction?

A. Well, I wouldn't use that term. Generally, I'll say that all medicines have side effects. They can be allergic and they're metabolized by kidney and liver

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and there can be problems. Specifically, did I say that or hepatic dysfunction with him, I don't recall.

Q. Did you ask him to notify you if anything occurred?

A. What I generally do is ask, No. 1, are there any questions when we're done. And I generally say if there's any problems, call. That's a general statement meaning with therapy, with the injection, anything we've done. And I often say, you know, call me or medical doctor.

Q. Do you have with you or does the group have the promotional materials that were given to them by Lynn Renz?

A. Not to my knowledge.

Q. Who would have knowledge as to whether or not they still exist at your group?

A. Well, I think you requested that in the Interrogatories and we pursued it and -- so we don't have it.

Q. You don't have it?

A. Right.

Q. Okay, In the Interrogatories that you mentioned you used the word representatives, plural and the only name we've been talking about is Lynn Renz. Is there another representative that you know of?

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A. Well, understand that Don Qualters was a rep for this medicine as well.
Q. Okay.
A. And a face or an image of him doesn't come to mind with that name.
Q. But Lynn was the one you contacted when you found out about the liver failure with Ken?
A. Yes.
Q. Is it accurate to say that Lynn serviced the Northeast Group more regularly than Don Qualters?
A. I don't know that information.
Q. Who gave --
A. I'm in office on Wednesday and I don't know if that's a variable. I mean -- So is Tuesday or Monday a better day for someone else, I don't know, but I'm regularly there on Wednesday.
Q. Let's talk about you.
A. Okay.
Q. The rep that you relied upon most to learn about Duract and the precautions and the use of it?
A. The way it worked out with who I had the exposure with and started with and then continued that relationship was Lynn.
Q. Did you ever talk to Don Qualters about Duract?
A. I don't recall.

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Q. I know you indicated you had no conversations with the pharmacist at Giant Eagle before you had notice of Ken's liver failure. Did you have any discussions with the pharmacist at Giant Eagle after the liver failure?
A. I think we answered, but not to my knowledge.
Q. Did you attempt to check how many doses you gave him of the Duract, or how many he filled?
A. Of Mr. Ruttig?
Q. Yeah.
A. I checked the prescriptions in our record in the chart. I understood in my last note identified that he was not taking it. I don't think I totaled them up. I understood that what he's taking in the past he's taken.
Q. Okay.
A. And he's off of it.
Q. In one of the Interrogatories I asked you the number of people you prescribed Duract to and your response was, unable to determine at this time. As you sit here today, have you been able to calculate the number of people you did do that for?
A. No.
Q. Did you attempt to?
A. I don't know how you'd definitely go about that.

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Q. There's no way for your -- You're computerized at your system, are you not --
A. Yeah.
Q. -- with patients? There would be no way to pull up all patients who have been prescribed a certain drug?
A. Well, I'm not saying I don't recognize a method. I didn't know I was challenged to do so. I just stated that I hadn't. And then after we answered it that way, I didn't know I was challenged to go figure out how to do it. There's the altruistic method of you just check every chart, which is cumbersome.
Q. Did you do that after you found out one of your patients had liver failure?
A. Check --
Q. Every chart?
A. -- every chart --
Q. Yeah.
A. -- of mine or --
Q. Yeah.
A. I didn't understand that I was recommended or instructed to do so.
Q. Do you think it would have been prudent to do that with one of your patients having liver failure?

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MS. CARULAS: Just note my objection. I mean, clearly we're here to talk about Ken Ruttig.
MR. CARAVONA: Okay. I understand. I know.
MS. CARULAS: And I -- To my knowledge you don't have a class action suit going here, so I don't think we can get into what he did as to all other patients.
MR. CARAVONA: I'm asking what he did once he found out one of his patients had liver failure. Did he contact them and notify them of the problem?
MS. CARULAS: Well, it has no relevance to this case.
MR. CARAVONA: Oh, I think it does.
MS. CARULAS: How?
MR. CARAVONA: I don't have to explain that to you. If you want to object to it we can do that, but it's not privileged and I'm not asking him for the names. I'm asking if he found out who those people were and did he contact them.
MS. CARULAS: I understand what you

are saying, but my understanding is any evidence has to be reasonably calculated to lead to the discovery of admissible evidence. And I don't see how in any remote fashion that can.

MR. CARAVONA: Well, if he --

MS. CARULAS: If you want to --

MR. CARAVONA: If he sent them for blood test it did.

Q. (BY MR. CARAVONA) Doctor, did you try to find out who was on Duract?

MS. CARULAS: Note my objection. I guess his question is, did you go through every single chart to find out who was on Duract? And I object to it, but go ahead.

A. No.

Q. (BY MR. CARAVONA) Did you know and call any of your patients who were on Duract and warn them of what you had learned?

MS. CARULAS: Objection.

A. I understand your question and I will give the best answer I can. But as of the 3/24 -- or give me a second -- 3/24/98 as this information is coming to head, I can honestly say I feel as if I very responsibly began to react to this information.

What I don't know at this point in time is, No. 1, is indeed Duract implicated in my patient Mr. Ruttig. I didn't know if it was hepatitis A or B or sorosis. I didn't know if it's a matter of if you have these four things, then Duract is a variable. So I'm gathering information.

I wouldn't know -- I mean, rare things can occur with medicine. I did not check every chart to call every patient on Duract to say, stop it, because -- that isn't what it had evolved to. I mean, if it was that evident the manufacture itself didn't take it off for several more months.

Q. (BY MR. CARAVONA) Is it your testimony that when you did bring this to Lynn's attention, she didn't indicate to you that there was any necessity to monitor people who had been on for extended periods of time?

MS. CARULAS: Note an objection.

A. I don't recall that specific question, but again, I've answered that I'm not using it anymore at that point, so -- I'm not prescribing it.

Q. (BY MR. CARAVONA) But you knew one of your patients in all probability, based upon the conversations with Lynn and the conversation with Ken's sister, in all probability had a liver failure due to the

Duract?

MS. CARULAS: Objection.

A. I didn't know, as my note says, the etiology of the liver failure apparently is still pending.

Q. (BY MR. CARAVONA) Well, what about on Exhibit 3 when you filled that out? To your right hand.

A. You mean on May 20th?

Q. Yeah.

A. I -- Yeah, by then I knew that the reason why filling out an adverse experience record was that it was warranted that Duract could be associated.

Q. And you didn't find it necessary to contact any of your patients, based upon the information you had in March, who were on Duract to go have their liver enzymes checked?

MS. CARULAS: Objection. That's already been asked and answered.

Q. (BY MR. CARAVONA) All right. One more time and I'll let you alone.

MS. CARULAS: Objection.

A. I think I've answered it. There's six more days in March.

Q. (BY MR. CARAVONA) What about the people who were on it for a period of time and could have been progressing to the stage of liver failure, did you

worry about them if they had been on it for more than ten days?

MS. CARULAS: Objection.

A. I worried plenty, believe me.

Q. (BY MR. CARAVONA) But did nothing?

A. I did a lot.

MS. CARULAS: Don't answer that. Okay. We're not going to answer that.

Q. (BY MR. CARAVONA) What did you do? What did you do?

MS. CARULAS: He's already discussed with you what he did, who he contacted, the forms he filled out. Okay?

MR. CARAVONA: He filled out forms.

MS. CARULAS: Right.

Q. (BY MR. CARAVONA) But you did nothing for any of your other patients, did you, to notify them?

MS. CARULAS: Doctor, don't answer that. We've been round and round about this whole line of questioning. It is not appropriate or admissible in the first place.

Q. (BY MR. CARAVONA) Did you ever call Dr. VanFossen back and talk to him about the liver failure of Ken Ruttig?

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MS. CARULAS: Note my objection. Go ahead.

A. I don't believe I did, no.

Q. (BY MR. CARAVONA) Did he ever call you?

A. Not to my knowledge.

Q. Did you ever talk to Pam Hughes about what happened to Ken Ruttig?

A. I don't recall specific conversation.

Q. When you came to learn of the February 6th letter, was she there and did you say to her, hey, why didn't I get this letter?

MS. CARULAS: Objection.

A. I don't understand the question.

Q. (BY MR. CARAVONA) Well, you came to learn there was a letter sent out to all of the physicians regarding this drug?

A. I don't understand it's to all physicians, because I'm trying to tell you, and the only one I can answer for is me, that I don't know that I had it.

Q. I understand that. But did you eventually learn that physicians did, in fact, receive this letter?

A. Yes.

Q. Okay. Did you ever go to Pam and say, Pam, why didn't I get this letter?

MS. CARULAS: Note an objection.

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A. I don't think I held the letter that I could have taken to her and said, this letter. I don't think I had it in my hand.

Q. (BY MR. CARAVONA) Did you ever go to any representative at Wyeth and say, why, didn't you notify me by the Letter or by something in writing?

MS. CARULAS: Objection.

A. I think I've answered it. This form --

Q. (BY MR. CARAVONA) Exhibit 3?

A. -- the adverse experience record, Exhibit 3, is what I'm understanding as I communicated with Wyeth-Ayerst about what we need to be doing. I mean, if there's an accompanying letter that says, do one, two, three, four, five things, I would respond appropriately.

Q. Well, I guess my question, Doctor, is did you ever sit back and say, my gosh, this poor guy has gone into liver failure and you, the drug manufacturer, never let us know about all these problems that could occur? Now you have this letter you're claiming, what is going on here? Did you ever do that?

MS. CARULAS: Objection.

A. What I did in my mind is understand that cases are being reported about liver failure as problems

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unforeseen and we're in the process of gathering information.

Q. (BY MR. CARAVONA) Doctor, they weren't unforeseen, were they?

MS. CARULAS: Objection. I don't understand the question.

MS. BITTENCE: Objection.

Q. (BY MR. CARAVONA) Doesn't that letter of February 6th indicate that there are reported cases and that you must monitor the liver enzymes after extended use?

A. I think I've answered that, yes.

Q. Yeah. So there's no question they knew -- everybody knew about it on February 6th?

MS. CARULAS: Objection. I don't know -- Wait a minute. Wait a minute. I mean, the question to you is everybody knew? Who's everybody?

MR. CARAVONA: Well, he's indicating that it was still not sure whether or not there were liver problems with Duract. And I'm indicating to him that this company sent out a notice on February 6th, so there was no question as to whether or not there was a problem with Duract. They knew there

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was.

MS. BITTENCE: Objection.

MS. CARULAS: I don't think there's a question in front of you right now.

Q. (BY MR. CARAVONA) You never questioned anybody later on to say, why wasn't I notified about these enzyme test must be done?

MS. CARULAS: Objection.

Q. (BY MU. CARAVONA) Did you ever question anybody about that?

MS. CARULAS: Don, you've asked this question now probably five times. He's answered it and now all you're doing is arguing. I mean, let's save it for the Jury. This is a bit over and over and over again.

Q. (BY MR. CARAVONA) Where is Dr. Bennett now?

A. With the Crystal Clinic.

Q. That's in Akron here, right?

A. Yeah.

Q. What about Dr. Kay?

A. Same.

Q. We're getting the Duces Tecum that you were sent, Doctor. Did you go through these items? And I'll go through them briefly.

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MS. CARULAS: Let me find my copy, if you will.
Q. (BY MR. CARAVONA) Doctor, on your report of March 17th where there's an exam of March 5th, 1998 if you'd go to your record there.
A. When?
Q. The March 5th exam.
A. Yes.
Q. All right. Can you tell me how you authored that report? Do you have office -- written office notes?
A. I would have generally taken notes, and then when I dictate not use those as part of the record.
Q. You'd utilize those in preparing your report?
A. On a follow-up visit I may take notes, but there isn't a set form like I use for my initial history and physical. If I feel I need notes and then use that to dictate this record.
Q. And once you get the hard copy, you throw the notes away?
A. Yeah.
Q. Okay.
A. Yeah. Yes.
Q. Is it pretty safe to say that on March -- Strike that. In April of 1998 you knew that Mr. Ruttig had severe liver failure, had a liver transplant?

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A. On when?
Q. In February -- Strike that. In April.
MS. CARULAS: Don, we have --
A. I knew it on 3/24.
Q. (BY MR. CARAVONA) You knew it on 3/24. All right. And did you --
A. Or I may have known it on 3/23 by voice mail, 3/23/98.
Q. All right. So you knew that he had the liver failure and the transplant at that time?
A. Yes.
Q. Did you expect him to make that 5/7/98 appointment where you were put in no show?
A. The need to treat his shoulder or the need involved with treating his shoulder was still there.
Q. And the condition that man was in with liver failure and a transplant?
A. I guess I don't understand your question. You mean I should have cancelled the appointment knowing that he wouldn't come, or we left it open that he could come if he wanted to pursue medical treatment about his shoulder.
Q. What is the recovery period for an individual who has a liver transplant, Doctor?
A. I'm not an authority on recovery for liver transplants.

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Q. Did you think he would be ambulatory in May to come to your offices?
A. I see patients that aren't ambulatory. They come in wheelchairs. They again --
Q. Did you save the message that you received from Ken's sister on March 24th?
A. No -- Well, don't they like delete after so many days when they're stored anyway? I mean, I don't know if I hit delete, but I don't have it or didn't store it.
Q. So you didn't tape record that when you heard it?
A. No.
Q. Who did you go to the academy meeting in New Orleans with?
A. I think I roomed alone.
Q. Did you go with anybody else from the Northeast Group?
A. Was anyone else of the Northeast Group at the academy meeting?
Q. No. Did you go the same flight with anybody from the Northeast Group? When you left and got on the airplane, was one of your colleagues with you?
A. Not that I know of.
Q. You made no arrangements to go with any other

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colleague, you went by yourself?
A. Right.
Q. Okay. Are you married?
A. Yes.
Q. Did your wife go?
A. No. Well -- No.
MR. CARAVONA: Off the record.
(Discussion had off the record.)
Q. (BY MR. CARAVONA) Were any of your colleagues there?
A. I think I answered that. I don't know. There's been, what is it, a year and however long it's been.
Q. Do you have any information from that academy meeting that you would be able to give your counsel to give to me to show what meeting that was and when it was, specifically?
A. I usually keep a -- There's a shoulder and elbow specialty day. There's specialty societies and they give the agenda or whatever and I usually keep that.
Q. Okay. Could you give that to your counsel to provide to me?
A. If indeed I have it.
Q. Okay. Were you given any dinners, vacations, perks, as they say in the business, to prescribe Duract?
A. No.

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Q. Have you ever been given any, as they say, theater tickets, dinners, golf outings to prescribe a drug?

MS. CARULAS: Objection. Go ahead.

A. No.

Q. (BY MR. CARAVONA) What about your staff, do you know if your staff -- whether or not your staff had received any perks of any type in order to have you prescribe Duract?

MS. CARULAS: Are you talking like doughnuts in the kitchen or -- I mean, what --

MR. CARAVONA: No. A little more than doughnuts in the kitchen. Dinners out, days at Firestone, the Diamond Grill for the whole office. Not doughnuts in the kitchen, no.

A. I understand your question. The thing about the question is, you know, has there been a dinner which was to prescribe a medicine. If it would be a dinner, it would be to learn about the product, to learn more about it. And then I would have to individually decide with that information then of whether I want to prescribe it. I just want to clear that I want equate that if I go to the dinner, I must prescribe it.

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Q. Were there any dinners to inform you as to Duract?

A. That I attended?

Q. Yeah.

A. Not that I know of.

Q. Okay. Doctor, in the Duces Tecum I'm just going to run down these quickly. We asked for No. 5, the billing statement for Kenneth Ruttig.

MS. CARULAS: We've provided you with that. Mike's shaking his head yes.

Q. (BY MR. CARAVONA) No. 6 a list of all the books, periodicals in both your business and personal library referring prescription drugs or your medical speciatty.

MS. CARULAS: You know, I don't even know how anyone could begin to go through and list out everything in one's business.

Q. (BY MR. CARAVONA) Doctor, when you have a question about a particular drug or any adverse effects, where do you go to get the information?

MS. CARULAS: I'm going to object just because I think this was asked about three and a half, four hours ago, but go ahead.

A. I mean, there's a general reply, but -- I mean, it depends on, you know, a patient came in the office on Talasin. I don't think I'd really use that

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medicine. And so I, even in that office visit, consult with a PDR in that setting to know more about it, why they're there. But in another setting it would be something different. I mean --

Q. (BY MR. CARAVONA) After you learned of the liver failure with Kenneth Ruttig, did you consult your PDR?

A. I'm pretty sure I used all the sources I've talked about. I mean, we had the samples and had the insert, and I think I was reviewing all that again.

Q. After you learned of the liver failure?

A. After learning about this, yeah.

Q. Did you notice any change in the information that you had in the beginning of the prescribing of Duract until later on?

A. I don't recall any. In the March time frame?

Q. Mm-hmm.

A. I don't recall any.

Q. All right. Rather than going down through all of these. Doctor, if you and your counsel would look at No. 7, the brochures advertising, we've gone over that and you said none of those exist. Do you maintain copies of all the articles that you have been published in?

MS. CARULAS: You know just to back

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up, Don, we did bring something here. The way I read 7, okay, is, you know --

MR. CARAVONA: Brochures, advertisements --

MS. CARULAS: Well, there's a sheet here that the group has regarding anti-inflammatories. Whether or not this was actually given to Mr. Ruttig, we aren't sure, but that's how I read that. So I'm trying to be as complete as we can in providing you information.

Q. (BY MR. CARAVONA) Doctor, the anti-inflammatories this sheet refers to, can you tell me which anti-inflammatories that refers to?

A. It would refer to any medicines that are in the anti-inflammatory class that you felt appropriate to provide this information.

Q. Naprosyn?

A. Yes.

Q. Feldene?

A. Yes.

Q. Relafen?

A. Yes.

Q. Duract?

A. It's in the anti-inflammatory class.

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Q. And this is what you would give the patients?
A. I don't know that we gave that to the patient.
MS. CARULAS: We don't even know, quite frankly, if this was -- You had asked us to do a search as I read this, so we did a search of this. We don't even know if this was something that was in use at the time, quite frankly, because it doesn't have a date at the bottom.
MR. CZACK: Who would know that from the company?
MS. CARULAS: I don't know, but we can look into it and find out.
Q. (BY MR. CARAVONA) You indicated that Duract is in the anti-inflammatory family in response to that?
A. Yes.
Q. As is Naprosyn, Relafen, Feldene?
A. Yes.
Q. Do you see any difference in the two medications in their use, in the medications and their use those two groups?
MS. CARULAS: Now or then?
Q. (BY MR. CARAVONA) When they first came out in July of '97 between Naprosyn and Duract?
A. Yes. If I wanted anti-inflammatory effect, I would

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-- Well, I wanted a non-narcotic, non-addicting and I've said it was between Ultram and Duract. And then if I wanted an anti-inflammatory effect, I would probably not use Duract, which was in this individual case why I prescribed Lodine XL. So if I only wanted Duract for anti-inflammatory effect, I wouldn't need Lodine XL.
Q. Was it your understanding that Duract was to be used as an anti-inflammatory or as a short-term pain medication?
A. Well, my understanding was it was to be used as a non-narcotic, non-addicting pain medicine that's more effective and less side effects than Ultram.
Q. The articles, No. 8, copies of any and all articles, studies or other documents authored by you that have been published?
MS. CARULAS: My position on that is you have his CV and so it would be just as easy for you to get them off the Internet or go to the library and punch them up as it would for me to go copy them for you.
MR. CARAVONA: He doesn't have them all in one group?
MS. CARULAS: Neatly organized to copy, uhn-uhn.

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MR. CARAVONA: All records or documents submitted by you on behalf to any hospital peer review committee in connection with obtainin hospital privi1eges?
MS. CARULAS: Well, any kind of peer review committee --
MR. CARAVONA: No. I'm talking about the packet that he would submit to a hospital at Akron Genera when he wanted privileges. What he wou d submit to them regarding --
MS. CARULAS: That's something you would have to get from Akron General. I mean, if he did, I don't think there's any question about his privileges or anything of that nature.
Q. (BY MR. CARAVONA) You don't have anything, Doctor, that you would -- Let's assume that you moved to Cleveland and you wanted to practice out of St. Vincent's or another hospital that you have packaged together that you would give to that hospital to say here's why I should be given privileges here?
A. I don't have anything prepared. I don't know what that process would be, but I'd pursue it if that's,

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you know --
Q. You would pursue it based upon the hospital's request for certain data?
A. Right.
Q. All right.
A. Yes.
Q. The policy and procedure manual for Northeast Ohio Orthopedic Group?
MS. CARULAS: There is none. I mean, other than there's something for secretaries and how many sick days they get and that sort of thing, but I assume that's not what you're interested in.
MR. CARAVONA: So there is none for the partners or employees who are physicians?
MS. CARULAS: There's not.
Q. (BY MR. CARAVONA) Doctor, do we have in Exhibit 3 all of the written communications, documents, or reports that you have submitted or sent to the FDA, Wyeth-Ayerst, or American Home Products which relate to you prescribing the drug Duract at any time?
A. Yes.
Q. A copy of all written communication sent to you by Northeast Ohio Orthopedic Associates from the FDA,

Wyeth-Ayerst, and American Home Products which relate to the drug Duract, do we have all those communications?
A. Yes. Which one are we on?
Q. No. 12.
A. Yes.
Q. Did they give you any sample drug receipts or things titled similarly which pertain to samples of Duract, which were Left and given to you or any physicians at Northeast Ohio Orthopedics from July of '97 through June '98?
MS. CARULAS: Yeah, he doesn't have any -- he does not have possession of that, but I'm checking on this for you to see if the office does have any receipts.
Q. (BY MR. CARAVONA) And No. 14 we talked about in the deposition. If you'd read that, Doctor, promotional documents, items, brochures, documents of any nature given to you or other employees of Northeast Ohio Orthopedics by pharmaceutical sales reps in an effort to sell or promote Duract from July of '97 through June of '98.
A. Not that I know of.
Q. Is there any investigation performed by the Northeast Ohio Group as to the facts surrounding the

Ruttig case?
MS. CARULAS: Note my objection to that and don't answer that. If there was that would be clearly protected and not discoverable.
Q. (BY MR. CARAVONA) Doctor, we've asked you in Interrogatories for the face sheet of the insurance policies you have in your practice and it's been indicated that there's one policy for you. Is there any policy in excess to cover the group?
MS. CARULAS: Note my objection to this type of questioning on the record. My understanding is there is not. I mean, that is -- my understanding is the limits here are two million per occurrence, four million aggregate. Okay? So that's the coverage for this case only for the purpose of answering your question.
MS. BITTENCE: Did that get marked so it will be --
MR. CARAVONA: Let's mark this Exhibit 4.
(Plaintiff's Deposition Exhibit 4 marked for identification.)
Q. (BY MR. CARAVONA) And, Doctor, let's go through the

exhibits on the record so we have them in order. All right? If you would put them in numerical order so we have those on the record.
A. What do I do?
Q. Okay. Starting with No. 1 just identify on the record --
A. Okay. Exhibit I letter dated February 6th, 1998 from Wyeth-Ayerst Laboratories with the information about the box warning.
Q. Okay. Exhibit No. 2?
A. Letter dated June 22nd, 1998 Wyeth-Ayerst Laboratories.
Q. Concerning the withdrawal of the drug?
A. Concerning the withdrawal of the Duract medication.
Q. And that's two pages, Doctor?
A. Yes.
Q. Okay.
A. Exhibit 3 is the adverse experience record on 5/20/98.
Q. That you prepared?
A. That I prepared.
Q. Okay.
A. And Exhibit 4 is a document from Northeast Ohio Orthopedic Associates instructions for anti-inflammatory drugs.

Q. And, Doctor, I'd like to mark your file as Exhibit 5 and have her copy the papers that are contained in there.
MS. CARULAS: What's that now? I'm sorry.
MR. CARAVONA: His file, I'd like to have that marked as Exhibit 5.
MS. CARULAS: Oh, just mark it. He can take it?
MR. CARAVONA: Yeah.
Q. (BY MR. CARAVONA) One second, Doctor. One question here. Doctor, in the upper left-hand side is a paper clip with a white piece of paper. What is that?
A. That's a document as we place on the chart that has to do with phoned-in refills of the medication, in this case the renewal of Duract on 1/9/98.
Q. That's information that the pharmacy told you he phoned in a refill on the Duract?
A. No. The patient calls our office stating that he is requesting a refill of Duract. And then that's brought to my attention and I review the chart and we make a decision about whether we call that in. And if we call it in it's -- this is indicating that that's occurred.

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Q. Okay. And what's the date on there, Doctor?
A. 1/9/98.
Q. And do you indicate on there that there's also another refill which can be had from that afterwards?
A. One refill.
Q. Okay. And that's for twenty-five milligrams?
A. Twenty-five milligram tablet.
Q. Fifty pills for each refill?
A. Yes.
Q. A hundred pills?
A. If they're refilled, yes.
Q. Okay. What's your present home address, Doctor?
A. 339 North Medina Line Road.
Q. Your Social Security number?
A. 233-04-6391.
Q. Where is Page 2 of Exhibit 2, Doctor? It says part one of two on the top.
A. I don't know if there was two. You know, do they just need me to fill out one. I don't know.
Q. Okay. Do you have the original? I mean, did you copy the backside of it or -- It says Page 1 of 2.
A. I think the original would go to Wyeth-Ayerst.
Q. But you see it clearly says Page 1 of 2. Do you know what's on the backside of that?

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A. I don't without seeing it.

MR. CARAVONA: Mary, do you have a copy of that Exhibit 3 that he sent in with Page 2?

MS. BITTENCE: I only have Page 1. I only have one page.

MS. CARULAS: Oh, yeah. What Dave pointed out, if you look at the bottom here, just to save us all since I'm getting very fatigued here for four hours. At the very bottom it says, yes, no. If yes, please complete part two of this form. So this is telling him he should only do --

MR. CARAVONA: I have no further questions. Thank you, Doctor.

MR. MOSS: I just have a couple questions.

CROSS-EXAMINATION

BY MR. MOSS:

Q. Doctor I just have a few questions. As of your last v sit with Mr. Ruttig on March the 5th of 1998 he was no longer taking the Duract at that time, is that correct?
A. As I understand from the record in my history, first paragraph, he is no longer taking the Duract

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medication:
Q. So he must have told you that he had stopped?
A. Yes.
Q. Okay. Do you have a specific recollection of that discussion outside what you put in your record?
A. I may not have heard you.
Q. I'm sorry. Do you have any specific recollection of that discussion with Mr. Ruttig outside of what's in your record?
A. Well, it fits perfectly in the framework of what the plan and let's get off of it and let's give Lodine. I mean --
Q. Okay. But the fact that you noted in your record that he was no longer taking it indicates to you that he must have told you that he was no longer taking it?
A. And then I would have specifically questioned him that as just part of the history, yes.
Q. Okay. And if you had any doubt that he was still taking it, you would have followed up with that and you would have made some reference to that in your chart?
A. Yes.
Q. All right. And at that point in time you renewed only his Lodine prescription?

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A. On 3/5/98 the only prescription record consistent with my dictated note is Lodine XL.

MR. MOSS: Okay. That's all I have. Thank you.

MS. CARULAS: Okay. You have the right to read over the transcript to make sure everything has been taken down accurately and I always recommend that you do so, so we won't waive signature.

THE VIDEOGRAPHER: Doctor, you also have the right to view the videotape in its entirety at this time, or do you waive that right?

MS. CARULAS: You can waive that. You don't need to do that.

THE WITNESS: I waive that right.

(Plaintiff's Deposition Exhibit 5 marked for identification.)

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(Deposition concluded at 6:00 p.m.)

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I have read the foregoing transcript of my deposition taken on Tuesday, December 21st, 1999 from page 1 to page 152 and note the following corrections:

PAGE:	LINE:	CORRECTION:	REASON:

STEVEN LIPPITT, M.D.

THE STATE OF OHIO, }
COUNTY OF CUYAHOGA. } SS: CERTIFICATE

I, Kerri L. Simmons, a Stenographic Reporter and Notary Public within and for the State of Ohio, duly commissioned and qualified, do hereby certify that STEVEN LIPPITT, M.D., was by me, before the giving of his deposition, first duly sworn to testify the truth, the whole truth and nothing but the truth; that the deposition as above set forth was reduced to writing by me by means of Stenotype and was subsequently transcribed into typewriting by means of cornputer-aided transcription under my direction; and that I am not a relative or attorney of either party or otherwise interested in the event of this action.

IN WITNESS WHEREOF, I hereunto set my hand and seal of office at Cleveland, Ohio, this 6th day of January, 2000.

Kerri L. Simmons, Notary Public
Within and for the State of Ohio
1511 Terminal Tower
Cleveland, Ohio 44113

My Commission Expires: October 26, 2002.

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