

# DEPOSITION OF STEVEN LIPPITT, M.D.

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

## IN THE COURT OF COMMON PLEAS

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

- - -

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

8 BY MR. CARAVONA:

9 Q. Good afternoon, Doctor. I'm Don Caravona. We  
10 introduced ourselves a moment ago.  
11 A. Hello.  
12 Q. And as you know I represent Kenneth Ruttig and his  
13 family in a claim against you. I'm going to be  
14 asking you a series of questions today here at this  
15 deposition, which we are videotaping.  
16 I'm sure you've gone over with your counsel  
17 some of the background on depositions, but if at any  
18 time you want to take a break or stop or don't  
19 understand my questions, take a break or ask me to  
20 rephrase my questions. All right?  
21 A. Yes, sir.  
22 Q. Have you been deposed before?  
23 A. Expert witness several times. There was a --  
24 MS. CARULAS: Just note my objection  
25 to this line of questioning, but go ahead.

5

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

6

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

7

1 emergencies, or is there anything on your mind at  
 2 this particular time?  
 3 A. Not anticipated.  
 4 Q. Okay. When did you come to the Summit County area,  
 5 Doctor, Summit County area?  
 6 A. Well, I did residency in Akron, Ohio. That would  
 7 have been July 1985 until June of 1990. And then I  
 8 did a two-year fellowship in orthopedic specialty  
 9 shoulder and elbow and returned to Akron in July of  
 10 '92 and started practice in August of 1992.  
 11 Q. As we sit here today -- I asked you before we  
 12 started if the curriculum vitae, which you have  
 13 previously forwarded to me is up-to-date. Is it, in  
 14 fact, up-to-date?  
 15 A. To my knowledge.  
 16 Q. It appears in my review of that that your education  
 17 was continual from high school through college  
 18 through medical school, there were no extended  
 19 breaks?  
 20 A. Correct.  
 21 Q. All right. When did you actively engage in the  
 22 practice of medicine?  
 23 MS. CARULAS: You mean after training  
 24 when did he begin the practice of medicine?  
 25 MR. CARAVONA: Mm-hmm.

8

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

9  
 I A. I began in August of 1992.  
 2 Q. For the rest of the deposition is it all right if I  
 3 just refer to the group as Northeast and then --  
 4 A. Sure.  
 5 Q. -- we'll know what we're speaking of? Okay. From  
 6 August of 1992 until the present time, which is  
 7 December of 1999, have you continuously practiced  
 8 medicine?  
 9 A. Yes.  
 10 Q. And that has been with the Northeast Group?  
 11 A. Yes.  
 12 Q. Have you taken any sabbaticals?  
 13 A. No.  
 14 Q. When did you first come to have Kenneth Ruttig as a  
 15 patient, Doctor?  
 16 A. As per my office chart, my first and initial contact  
 17 with Kenneth Ruttig was 12/11/1997.  
 18 Q. And at that time, Doctor, how did he come to you as  
 19 a patient?  
 20 A. It is my understanding that he was referred by John  
 21 VanFossen, M.D. in regard to his right shoulder  
 22 complaints.  
 23 Q. And you know Dr. VanFossen, I would take it?  
 24 A. Yes.  
 25 Q. Do you get quite a bit of referrals from Dr.

10  
 1 VanFossen?  
 2 A. I don't know how to quantitate it.  
 3 Q. Well, let me --  
 4 A. Fairly regularly, yeah, I guess.  
 5 Q. Are the referrals to you or the Northeast Group?  
 6 A. Well, I practice, you know, principally in shoulder  
 7 and elbow, so if their patients have other  
 8 orthopedic problems they may actually utilize other  
 9 consultants in our group.  
 10 Q. Let's talk about your group a little bit. In  
 11 December of 1997, how many people were in the  
 12 Northeast Group that were practicing medicine?  
 13 A. Ten.  
 14 Q. Were all of those people orthopedics?  
 15 A. Yes.  
 16 Q. Can you tell me how many locations the Northeast  
 17 Group had in December of 1997?  
 18 A. We have our main physician office building at Akron  
 19 General Medical Center, 224 West Exchange Street,  
 20 Suite 440 in Akron. We have a satellite office at  
 21 the Akron General Health and Wellness Center, 4125  
 22 Medina Road, Suite 201, Akron. And a satellite  
 23 office at the Professional Center, 33 North Avenue,  
 24 Suite 103, Tallmadge. Also, but I wasn't in this  
 25 office, an office at Munroe Falls, 43 South Main

11  
 1 Street.  
 2 Q. Would the ten physicians that you've described  
 3 rotate between the four areas that you've just  
 4 spoken about?  
 5 A. It varied.  
 6 Q. You indicated you did not have anything to do with  
 7 staffing the Munroe Falls office?  
 8 A. At that time.  
 9 Q. Can you tell me a little bit about the group. Would  
 10 you start out by telling me, first of all, who was  
 11 the senior member of the group in December of 1997?  
 12 A. It recalls -- that requires some history of the  
 13 group, which, you know, I joined later, but Mark  
 14 Leeson, M.D., Paul Reiman, M.D., and David Kay,  
 15 M.D., I believe were the initial founders of that  
 16 nucleus that continued to grow as they recruited.  
 17 Q. Okay. Now, when you were recruited in 1992 to this  
 18 group, what was your position at that time?  
 19 A. One comment first. I was recruited somewhat even  
 20 before I left residency.  
 21 Q. Okay.  
 22 A. They encouraged me as I did my fellowship to  
 23 consider returning to them a possibility.  
 24 Q. And who did this, what individual?  
 25 A. Well, the primary individual was Buel Smith, M.D.,

12  
 1 who was chairman of the orthopedic department and  
 2 also a member of this same Northeast Group --  
 3 Q. Okay.  
 4 A. -- which he's retired.  
 5 Q. Now, in 1992 when you joined, you joined as a staff  
 6 physician?  
 7 A. You join as an employee of the group with the  
 8 opportunity to become a shareholder at a later date.  
 9 Q. As you sit here today are you a shareholder?  
 10 A. Yes.  
 11 Q. When did you become a shareholder?  
 12 A. I'm not sure.  
 13 Q. Were you a shareholder when you were treating  
 14 Kenneth Ruttig in December of 1997?  
 15 MS. CARULAS: Objection, but go ahead.  
 16 A. I believe so.  
 17 Q. (BY MR. CARAVONA) Okay. Can you tell me a little  
 18 bit about the organization as to how many  
 19 shareholders there are, how many employees there  
 20 are?  
 21 A. All the current physicians are shareholders and as I  
 22 understand employees of the corporation. And then I  
 23 think there's 40, at one time as much as 50,  
 24 employees.  
 25 Q. Okay. And the Northeast Group when you joined in

13

1 1992, were all employees shareholders?  
 2 A. Physician?  
 3 Q. Yes.  
 4 A. No. I joined at the same time that Michael Smith,  
 5 M.D. began and John Pinkowski, M.D. and Gordon  
 6 Bennett, M.D. had been there one year prior and were  
 7 not shareholders yet.  
 8 Q. In 1997 you had indicated there were ten physicians  
 9 who were employees of Northeast Group, correct?  
 10 A. Right.  
 11 Q. In 1997 all ten people were shareholders?  
 12 A. No. No, I'm in error there.  
 13 Q. All right. If you find any errors at any time just  
 14 say, stop and go back and correct it because I'm  
 15 here to gather information.  
 16 A. I failed to put in the context of 1997 and I  
 17 understand. Phrase your question once more.  
 18 Q. When you were treating Kenneth Ruttig in 1997,  
 19 December of '97, were all ten of the physicians who  
 20 were employed there shareholders?  
 21 MS. CARULAS: I'm just going to note a  
 22 continuing objection --  
 23 MR. CARAVONA: Sure.  
 24 MS. CARULAS: -- just so I don't  
 25 interrupt. Go ahead.

14

1 A. I believe at that time they all were. We all had  
 2 become shareholders by that time. And the question  
 3 that I previously said is I'm not sure where my date  
 4 was where I joined.  
 5 Q. (BY MR. CARAVONA) Okay. You're still a member of  
 6 the Northeast Group today?  
 7 A. Yes.  
 8 Q. And there are ten people there still, or has it  
 9 grown?  
 10 A. We are minus Gordon Bennett and David Kay as of -- I  
 11 guess it was -- I'm not sure of the effective date.  
 12 Just this past month, December 1, 1999.  
 13 Q. Is this a result of retirement or passing away or  
 14 both?  
 15 A. No, not due to retirement.  
 16 Q. All right. What was their reasons for leaving?  
 17 MS. CARULAS: Objection. Go ahead.  
 18 A. Pursuing different career interests.  
 19 Q. (BY MR. CARAVONA) When you say different career  
 20 interests, outside of medicine or in medicine with a  
 21 different emphasis?  
 22 A. They were foot and ankle specialists and wanted to  
 23 pursue a more foot and ankle collective that they  
 24 thought would be a better career move.  
 25 Q. As you sit here today then there are eight

15

1 shareholders in the Northeast Group?  
 2 A. Paul Reiman, in finishing that question, moved to  
 3 California still practicing orthopedics in, I  
 4 believe March of '99, but I'm not sure. So Dr. Paul  
 5 Reiman, Dr. David Kay and Dr. Bennett three of the  
 6 physicians over the last year have departed.  
 7 Q. So there are seven shareholders? If you had ten and  
 8 three left, that would be seven.  
 9 A. That's my understanding, yes.  
 10 Q. Are you equal shareholders?  
 11 MS. CARULAS: Note an objection.  
 12 THE WITNESS: Answer?  
 13 MS. CARULAS: Yeah, go ahead.  
 14 A. Yes.  
 15 Q. (BY MR. CARAVONA) And you understand my question is  
 16 to equal shareholders?  
 17 A. I think I do. There's a formula in our group,  
 18 but --  
 19 MS. CARULAS: Which I don't want you  
 20 to get into quite frankly. I think this is  
 21 --  
 22 A. We're equal shareholders, yes.  
 23 MR. CARAVONA: You know, we had  
 24 indicated originally that we were going to  
 25 be getting into personal assets and if you

16

1 had a problem with that we would like to  
 2 know, and you never mentioned anything  
 3 about that.  
 4 MS. CARULAS: I don't remember the  
 5 letter ever saying if you have a problem  
 6 let me know. I think you sent a letter  
 7 saying you were thinking about doing that.  
 8 I mean those -- that area of questioning is  
 9 clearly improper and I've researched it.  
 10 In fact, there's case law to say that  
 11 granting protective orders is appropriate.  
 12 MR. CARAVONA: Unless you choose to  
 13 let us do that, yeah. And you're choosing  
 14 not to do that?  
 15 MS. CARULAS: Exactly.  
 16 MR. CARAVONA: Okay.  
 17 MS. CARULAS: Exactly.  
 18 Q. (BY MR. CARAVONA) In December of 1997 would you  
 19 tell me your responsibilities as to the three  
 20 locations that you've indicated to me?  
 21 A. Well, it has changed at times. I'm not sure I know  
 22 recollection of '97, but I think this is the best  
 23 information I can give. You mean, basically my  
 24 weekly schedule?  
 25 Q. Sure. In December of '97 you indicated you didn't

**DEPOSITION OF STEVEN LIPPITT, M.D.**

17

1 go to Munroe Falls?

2 A. Right.

3 Q. Okay. And that was they would send the shoulder and

4 elbow patients to the other three locations?

5 A. Well, Munroe Falls was an office that -- When Dr.

6 Hatherill joined the group that was her office

7 before she joined and she wanted to keep it and she

8 invited anyone that wanted office time there to

9 practice there, but it's fairly close to the

10 Tallmadge office and I was already established at the

11 Tallmadge office and didn't go there. I mean, it's

12 an elective.

13 Q. Sure.

14 A. You can practice at any of these facilities provided

15 office time or conflicts with other physicians and

16 then we work it out.

17 Q. All right. Well, tell me about your schedule in

18 December of '97. Where would you spend the majority

19 of your time or how would you work that out?

20 A. The majority would be at the Akron General office.

21 Monday was usually a half day office at Akron

22 General and then potentially surgery or other

23 fit-ins. Tuesday was generally all day surgery at

24 Akron General or St. Thomas, usually Akron General.

25 Wednesday was morning and afternoon office at Akron

18

1 General. Thursday was half day office at the

2 Wellness Center, and Friday was a half day office at

3 Tallmadge.

4 Q. What hospitals did you have privileges at in

5 December of 1997?

6 A. Akron General, St. Thomas, Children's, and I'm

7 unsure of Barberton because at some point we made

8 the decision to not continue privileges there.

9 Q. Where did you do the majority of your surgery?

10 A. Akron General.

11 Q. Is that true today, also?

12 A. Yes.

13 Q. Out of the -- Did you have an opportunity to finish

14 your schedule?

15 A. Yes.

16 Q. All right. Can you tell me, if you know, did you

17 see Mr. Ruttig at only one location?

18 A. To my knowledge.

19 Q. All right. And what location would that have been?

20 A. Akron General.

21 Q. Did any of your other --

22 A. I should say when I say Akron General, I'm alluding

23 to the Akron General Medical Center Physician Office

24 Building where is, in essence, the Wellness Center

25 is Akron General Wellness Center, so for the record

19

I Akron General Medical Center for that.

2 Q. Let's just say Wellness Center.

3 A. Okay.

4 Q. All right?

5 A. Yes.

6 Q. Can you give me a percentage breakdown in December

7 of 1997 the percentage of time you spent at the

8 Akron General Center, the Wellness Center, and the

9 Tallmadge location?

10 A. Well, I mean the way I'd work that out is look at

11 the half days I just discussed and -- I mean,

12 there's two half days, a working day, ten working

13 units and I would -- I mean, I can do it. Is that

14 what we need to do or --

15 Q. Is it accurate to say that most of your time was

16 spent at the Akron General Center?

17 A. Yes.

18 Q. Okay. Let's now go back to your December 17th visit

19 with Mr. Ruttig. You indicated you received this

20 patient through a referral from Dr. VanFossen,

21 correct?

22 A. Yes.

23 Q. Now, did Dr. VanFossen refer the patient to you or

24 to the group?

25 A. We have a record in the chart where it's the

20

1 information we obtain when an appointment is

2 scheduled.

3 Q. Can you show me what page that is, Doctor? I have a

4 copy here, which we were --

5 A. Well, it wouldn't be, I guess blue on yours, but --

6 MS. CARULAS: Patient registration it

7 says on top.

8 Q. (BY MR. CARAVONA) In the order of your chart, is it

9 towards the --

10 MS. CARULAS: Probably near the front

11 because I think it's in reverse order.

12 A. Yes. And then the backside.

13 Q. (BY MR. CARAVONA) The backside would be something

14 signed by Kenneth with a date of 12/11 on it,

15 correct, and on top of the page is office scheduled

16 appointment?

17 A. Yes.

18 Q. The upper right-hand corner what does that say?

19 Mine's cutoff.

20 A. No shoulder surgery.

21 Q. Do you know whose handwriting that is?

22 A. Most likely the secretary who schedules the

23 patients.

24 Q. Okay. Let's go back to the patient registration.

25 Does this document tell you how you received this

1 patient? 21  
 2 A. Dr. VanFossen referred. Part of body had been  
 3 examined, right shoulder. And the relationship with  
 4 Dr. VanFossen during my practice knowing he knows  
 5 that I practice in this, he referred it directly to  
 6 me.  
 7 Q. Okay. Are you familiar with the handwriting that is  
 8 on this patient registration form? Do you know  
 9 whose it is?  
 10 A. I don't recognize it.  
 11 Q. Okay. Can you tell me how many nurses were employed  
 12 at the Northeast Group in December of 1997?  
 13 A. I don't believe there were any nurses.  
 14 Q. Okay. How many -- Well, tell me the staffing other  
 15 than physicians that you had there including  
 16 receptionists, technicians, surgical assistants.  
 17 A. Well, just as you said, we have a receptionist at  
 18 the front desk.  
 19 Q. And who would that have been?  
 20 A. I'm not sure in 1997.  
 21 Q. Would you have any idea as to who -- Is it the same  
 22 person who's there now or someone different? Do you  
 23 change receptionists?  
 24 A. No, we've had turnover.  
 25 Q. Okay.

1 A. I mean -- Well, you know, I'm not sure. 22  
 2 Q. You would have records, though, through your office  
 3 manager --  
 4 A. The office manager --  
 5 Q. -- that would be --  
 6 A. -- yeah.  
 7 Q. All right. If you could get me the name of the  
 8 receptionist. ALL right?  
 9 A. (Indicating.)  
 10 Q. After the office receptionist who would be next in  
 11 your support staff?  
 12 MS. CARULAS: Why don't you make a  
 13 list and send me a request.  
 14 MR. CZACK: I am.  
 15 MS. CARULAS: Okay. I'll forget.  
 16 A. Well, we have the billing office.  
 17 Q. (BY MR. CARAVONA) How many people are in the  
 18 billing office?  
 19 A. I don't know who falls right under the billing role  
 20 versus coding versus who calls insurance. I'd say  
 21 around six.  
 22 Q. Okay.  
 23 A. There would be transcription.  
 24 Q. Were they on-site, the transcriptionist?  
 25 A. Well, we've done different things with that, so I'm

1 not sure in '97. I know we've done it off-site 23  
 2 before and some even have asked to do it at home.  
 3 Q. Okay.  
 4 A. Office managers.  
 5 Q. Who was your -- Office managers? Let's say the  
 6 Akron General Location I'm referring to only now.  
 7 Who was the office manager of the Akron General  
 8 location in 1997?  
 9 A. Brad Humbert.  
 10 Q. How is his last name spelled?  
 11 A. H-u-m-b-e-r-t, to my knowledge.  
 12 Q. Is Brad still with the organization?  
 13 A. Yes.  
 14 Q. Okay. And next?  
 15 A. I believe Valerie -- blanking on her last name --  
 16 was with us at that time.  
 17 Q. And what was her position?  
 18 A. They have different roles or descriptions that I may  
 19 not know the title. Brad would be the operation  
 20 manager, and I think Valerie was office manager,  
 21 which meant she dealt more with the employees and  
 22 Brad dealt more with the office management, computer  
 23 -- different aspects that are not necessarily  
 24 personnel.  
 25 Q. Did you have a personal secretary that would do your

1 appointments for you -- 24  
 2 A. Yes.  
 3 Q. -- while you were there? And who was that in 1997?  
 4 A. Pam Hughes.  
 5 Q. Is she still with you?  
 6 A. No.  
 7 Q. And now would Pam Hughes set up all your scheduled  
 8 patients?  
 9 A. Not all but the great majority. But if she would be  
 10 at lunch or absent or others covering vacation, you  
 11 know, other secretaries generally took that role.  
 12 And then the front desk may do scheduling, but may  
 13 defer to the personal secretary. And if it's a  
 14 follow-up appointment, meaning you've seen the  
 15 patient and you're setting up additional visit,  
 16 generally the follow-up's done by the front desk  
 17 personnel.  
 18 Q. Okay. What about assisting the patients from the  
 19 waiting room to the examining room and getting  
 20 anything for you that you might need in any of the  
 21 examinations, how many people did they have at that  
 22 time in 1997?  
 23 A. Well again, that role might be a front desk person.  
 24 It could also be our office help, which were  
 25 athletic trainers or cast technician.

25

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

26

1 meeting, by a group meeting I mean yourself, Pam and  
 2 maybe one or two of the other physicians, who met  
 3 with her regarding new products?  
 4 A. At one time --  
 5 Q. Yeah.  
 6 A. -- a formal meeting that was organized or set up?  
 7 Q. Right.  
 8 A. Not to my knowledge.  
 9 Q. Can you tell me, generally speaking, between July of  
 10 1997 and December of 1997 the context of the  
 11 interaction you would have had with Lynn Renz during  
 12 that time? Would it be a one-on-one, a stand-up  
 13 call?  
 14 A. It would generally be in the office setting while  
 15 I'm in half day office at Akron General. And, you  
 16 know, if it were lunch time or we had free time, she  
 17 would -- if she were there she would say, are you  
 18 available for discussion? And if we were, we would  
 19 discuss it at that time.  
 20 Q. When you say we, who would that be? You and --  
 21 A. Well, I meant in general for --  
 22 Q. The physicians?  
 23 A. -- the group, yeah. But it can be replaced with --  
 24 That's my method.  
 25 Q. It wouldn't be unusual for her to try to do that

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1 during lunch time and bring up lunch or the office  
 2 staff and yourself and put a spread on the table and  
 3 make her presentation?  
 4 A. I don't recall lunch.  
 5 Q. You never recall her coming up and putting lunch  
 6 down for the whole office and giving her  
 7 presentation at any time between July of '97 and  
 8 December of '97?  
 9 A. Well, you mentioned lunch in a whole spread and when  
 10 I'm in office on Wednesday, I eat on-the-go. I  
 11 mean, I don't sit down at a spread. If she had it  
 12 and it was in our cafeteria or our office has a  
 13 kitchen space, I don't recall that setting.  
 14 Q. Okay. You've never seen that, is that what you're  
 15 saying?  
 16 A. A lunch method, I don't recall.  
 17 Q. Okay.  
 18 A. Have I seen that method before?  
 19 Q. Yes.  
 20 A. Yes.  
 21 Q. Okay. And where have you seen that?  
 22 A. Well, if you're again talking about a meal at lunch  
 23 time, it would be in our kitchen off the office and  
 24 they set it out. And if we're available and can  
 25 come in there, we would come in there. I don't know

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1 that it would be under a guise of a specific  
 2 presentation.  
 3 Q. Okay. The patient registration which you have  
 4 referred to, which is the blue sheet on your page  
 5 here, you said the upper right-hand corner says no  
 6 shoulder surgery. Who would fill this out, that  
 7 portion reason for your visit?  
 8 A. The person making the appointment, which would  
 9 generally be my personal secretary at the time.  
 10 Q. Okay. And would this be done over the telephone or  
 11 would it be done once the patient came in?  
 12 A. Over the telephone making the appointment.  
 13 Q. Okay. And we have in here Dr. VanFossen's referral,  
 14 right shoulder, office scheduled appointment. Were  
 15 x-rays taken, yes. Known allergies. The  
 16 verification of insurance that is not filled out.  
 17 Is there a reason that's not filled out?  
 18 A. I'm not sure. The information I utilize in this  
 19 sheet is what we've just discussed. I don't know if  
 20 there may even be additional form or something that  
 21 we use for that type of information.  
 22 Q. Okay. So then we go to the front of the form and  
 23 that indicates on there a date, does it not,  
 24 12/11/97, 1:30?  
 25 A. Yes.

**DEPOSITION OF STEVEN LIPPITT, M.D.**

1 Q. That's a date that Pam would give to the patient 29  
 2 who's asking?  
 3 A. If Pam indeed made the appointment or she might make  
 4 the appointment and someone notify the patient that  
 5 that's the time that they're given.  
 6 Q. And what --  
 7 A. It usually would be the secretary.  
 8 Q. All right. And once again, you don't recognize  
 9 whether or not that's Pam's handwriting there, the  
 10 12/11/97, the name of Kenneth Ruttig?  
 11 A. I'd just be assuming. I don't specifically note  
 12 anything unique about it or anything that I recall  
 13 that being hers.  
 14 Q. How long was she your secretary?  
 15 A. I think it was two to three years, two and a half to  
 16 three years.  
 17 Q. And when did she leave?  
 18 A. She left as secretary, I think about three months  
 19 ago. And then she returned to our employment about  
 20 a month ago for, you know, a week not in a  
 21 secretarial role.  
 22 Q. In what type of -- She came back on a part-time  
 23 basis for one week?  
 24 A. I think she had a full-time role, but she was put at  
 25 the front desk at that point because that's what

I they needed. 30  
 2 Q. And she didn't like that and left?  
 3 MS. CARULAS: Note an objection. Go  
 4 ahead.  
 5 A. Apparently.  
 6 Q. (BY MR. CARAVONA) Okay. Do you know if she's in  
 7 the area now?  
 8 A. I think she's in Canton or works in Canton. I'm not  
 9 sure with what.  
 10 Q. And her last name is spelled H-u-g-h-e-s?  
 11 A. Yeah. She's married and she retained her ma den  
 12 name and we so rarely alluded to her married name.  
 13 It's a hyphenated that I'm blanking on what hat is.  
 14 Q. Okay. The other information that is written on the  
 15 patient registration we see here, there's a  
 16 difference in handwriting, would you not agree,  
 17 Doctor?  
 18 A. Yes.  
 19 Q. All right. Do you know whose handwriting that is?  
 20 A. I think that might be the patient's. When they  
 21 actually come, we give them the blue sheet -- the  
 22 blue sheet in the waiting room and then they fill  
 23 out the employer information, job title, their  
 24 address, home and phone number, so they provide that  
 25 I think when they come.

1 Q. Okay. And then we have a release of information 31  
 2 assignment of benefits on the back of the page?  
 3 A. Yes.  
 4 Q. And that was executed by Mr. Ruttig on December 11th  
 5 of 1997?  
 6 A. Yes.  
 7 Q. All right. Do you have any independent recollection  
 8 of this first meeting of Mr. Ruttig without  
 9 referring to your notes?  
 10 A. I think I have a recollection of it because I've  
 11 reviewed my notes.  
 12 Q. Okay. Can you tell me what portion of this document  
 13 that you have as your office chart refers to the  
 14 December 11th visit, each and every page which would  
 15 refer to the December 11th, '97 visit of Kenneth  
 16 Ruttig?  
 17 A. I'm not sure I understand your question.  
 18 Q. You have a packet of several pages before you, do  
 19 you not, Doctor?  
 20 A. Yes, I do.  
 21 Q. All right. We've spoken about the patient  
 22 registration?  
 23 A. Yes.  
 24 Q. All right. Would you agree this page that we have  
 25 here, which is two-sided, dated December 11th of

1 '97, is a document which pertains to his first 32  
 2 visit, correct?  
 3 A. Yes.  
 4 Q. What other documents in your office chart refer to  
 5 the December 11th visit?  
 6 A. I wouldn't know without looking at each page.  
 7 Q. Well, did you examine him on that date?  
 8 A. I would refer to my chart to answer that.  
 9 Q. Okay. Well, refer to your chart.  
 10 A. All right. The date of exam I have is 12/11/97 per  
 11 my dictated office record.  
 12 Q. Okay. And this is a letter that was authored on  
 13 what date, Doctor?  
 14 A. What do you mean by authored? The day I dictated  
 15 it?  
 16 Q. What's the date of the letter?  
 17 A. The date on the top would be the date that it was  
 18 transcribed.  
 19 Q. Okay. Let me ask you about that. Do you dictate  
 20 immediately upon seeing the patient and hold the  
 21 transcription? There's a date of exam of December  
 22 11th, correct?  
 23 A. Correct.  
 24 Q. All right. Tell me what your process is when you  
 25 take a history from the patient. Do you take



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

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1 home working on his 20 acre farm in late September  
 2 1997. He was doing fence work involving 80 to 90  
 3 pound posts.  
 4 He apparently was carrying one of the posts on  
 5 his right shoulder when he stepped in a hole causing  
 6 a jerking motion of the beam against his right  
 7 shoulder. He had initial discomfort in the  
 8 shoulder, as well as the posterior scapular region  
 9 and low back. He presented for medical evaluation a  
 10 few days later, and was treated by initial sling  
 11 immobilization, ice, and heat modalities, as well as  
 12 a C-spine collar for some of the neck pain.  
 13 Symptoms resolved except for persistent  
 14 somewhat diffuse anterolateral right shoulder pain.  
 15 He states pain is fairly constant including night  
 16 discomfort interfering with sleep if he turns onto  
 17 his right side. Provocative activities include any  
 18 lifting or use of the arm for activities of daily  
 19 living. No associated numbness or tingling.  
 20 Current treatment included Soma with Codeine  
 21 and Relafen anti-inflammatory medication. He's had  
 22 trigger point injections in the posterior shoulder  
 23 with mild relief. No formal physical therapy.  
 24 Work up includes radiographs dated 10/2/97,  
 25 consisting of an AP view right shoulder and internal

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

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

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1 A. I was alluding to the history I've taken. This is  
 2 the --  
 3 Q. The totality of the history?  
 4 A. -- totality of it, yeah. And before I went to  
 5 physical exam, I felt like I did not completely  
 6 answer how I've obtained a history.  
 7 Q. So before seeing the patient you review the medical  
 8 history here, you ask the patient questions, also,  
 9 and then after doing that history, you then proceed  
 10 to the exam?  
 11 A. Yes.  
 12 Q. You did that here?  
 13 A. Yes.  
 14 Q. And what were your findings?  
 15 A. On physical exam?  
 16 Q. Yeah.  
 17 A. Exam reveals local tenderness in the cervical spine,  
 18 but no radiating pain into the right shoulder with  
 19 range of motion or axial compression. Right  
 20 shoulder has a normal contour without swelling,  
 21 ecchymosis or atrophy. Biceps with normal contour.  
 22 Slight tenderness about right AC joint. Subacromial  
 23 motion is essentially smooth.  
 24 There is diffuse tenderness about the  
 25 coracoacromial arch. Positive impingement and

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

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1 A. I've alluded to impingement radiographs. Those are  
 2 radiographs angled in such a way in the context of  
 3 rotator cuff problems or impingement. Impingement  
 4 radiographs right shoulder include an AC joint view,  
 5 a type II curved acromion morphology. There is some  
 6 inferior spurring of the AC joint with some  
 7 subchondral bone sclerosis. Glenohumeral joint  
 8 space unremarkable. No apparent separation of the  
 9 AC joint with a normal coracoclavicular distance.  
 10 Q. Any other diagnostic testing, Doctor?  
 11 A. No.  
 12 Q. After doing your history, after doing the  
 13 examination, and reviewing the radiographs, did you  
 14 then relate to the patient what your impression was?  
 15 A. Yes.  
 16 Q. All right. What did you tell the patient your  
 17 impression was?  
 18 A. Rotator cuff tendonitis and AC joint arthrosis right  
 19 shoulder.  
 20 Q. And that's what you told Kenneth Ruttig in those  
 21 words?  
 22 A. Well, that is what I have in the record and  
 23 impression.  
 24 Q. No. My question to you, Doctor, was after doing  
 25 your history, after doing your exam, and after

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1 looking at the radiographs, did you form an  
 2 impression and your answer is yes, correct?  
 3 A. Yes. And when I form an impression, I inform the  
 4 patient as to what that impression is.  
 5 Q. And is that what you told the patient, what you just  
 6 read?  
 7 A. As a bare minimum it would be the rotator cuff and  
 8 AC joint arthrosis, but there would be more  
 9 discussion.  
 10 Q. Tell me what you discussed with Kenneth at that time  
 11 to expound on the arthrosis of the rotator cuff  
 12 tendonitis and AC joint arthrosis. Did he say to  
 13 you, what is that?  
 14 A. I don't specifically recall.  
 15 Q. Normally would your patients understand the  
 16 impression that you have documented in your report?  
 17 A. No, but --  
 18 Q. What normally would you tell a patient as to the  
 19 impression that you found on Kenneth Ruttig?  
 20 A. Well, sir, the problem I hope you understand that  
 21 I'm having is I can speak in general terms about how  
 22 I presented rotator cuff and AC joint arthritis, but  
 23 you're asking me what did I specifically say to him  
 24 two years ago, and I'm saying, well, what -- I mean,  
 25 I don't recall what the first sentence would be,

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1 what the second sentence would be, what the third  
 2 sentence would be, what he asked between the first  
 3 and second sentence.  
 4 Q. And, Doctor, I want to be fair with you. All right?  
 5 And I understand that two years ago you cannot give  
 6 me every specific item that you talked to him about.  
 7 I'm asking you, can you tell me generally what would  
 8 you tell a patient --  
 9 A. Sure.  
 10 Q. -- based on this impression?  
 11 A. Rotator cuff tendonitis is inflammation of the  
 12 tendons that connect the muscles on your shoulder  
 13 blade. The AC joint is the joint at the end of your  
 14 collar bone. Rotator cuff functions in raising your  
 15 arm generally to shoulder level or higher especially  
 16 pushing, pulling or lifting-type activity. It's 50  
 17 percent of the power of raising the arm. It is --  
 18 AC joint is, again, a joint that if we lean on it,  
 19 et cetera, may elicit symptoms. I mean, it would be  
 20 in the context of helping him understand what a  
 21 diagnosis means anatomically, where is it, so I  
 22 would point to it. We would bring a shoulder model  
 23 in often.  
 24 Q. Show it to the patient?  
 25 A. Right.

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1 Q. All right. One of the questions I'm sure the  
 2 patients would ask you, well, doctor is this going  
 3 to go away?  
 4 A. Yes.  
 5 Q. So this impression that you had was not a permanent  
 6 injury to Kenneth Ruttig?  
 7 A. Well, I was answering yes to I think he would likely  
 8 ask that question, but the answer to it would be,  
 9 generally, rotator cuff tendonitis and AC joint  
 10 arthrosis responds to non-operative measures.  
 11 Q. There was an indication no shoulder surgery on the  
 12 patient registration. Do you recall that, Doctor?  
 13 A. Yes.  
 14 Q. Do you know if that was the patient saying that or  
 15 your words that he does not need surgery?  
 16 A. What that is is the secretary asks certain questions  
 17 with the initial contact with the patient in  
 18 scheduling. And I have indicated to her that if the  
 19 patient has had previous surgery, we'd like to  
 20 identify it so that they would have time to get  
 21 those records and bring them to the office for the  
 22 evaluation.  
 23 Q. All right. So that's not a statement as to no, I  
 24 don't want shoulder. It's just so you know there is  
 25 no previous shoulder surgery?

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1 A. It means no previous shoulder surgery.  
 2 Q. All right. The previous treatment that you  
 3 mentioned, the Soma and the Codeine, the Relafen and  
 4 the trigger point injections, did that have any  
 5 significance on your impression in that apparently  
 6 these modalities and prescriptions were used and  
 7 there was no relief of pain? Was that of  
 8 importance?  
 9 A. For making the diagnostic impression --  
 10 Q. And treatment.  
 11 A. -- or just how it was being treated?  
 12 Q. How it was being treated.  
 13 A. It made a definite impression about how it was being  
 14 treated.  
 15 Q. Were you in agreement with the previous treatment  
 16 that was given to Mr. Ruttig for his shoulder, which  
 17 was Soma and Codeine, Relafen, and trigger point  
 18 injections?  
 19 A. I didn't provide that treatment. I just took it t  
 20 face value that that's what he had.  
 21 Q. Did you find it unusual that he was still  
 22 symptomatic from a September injury when you saw him  
 23 in December of '97?  
 24 A. Not particularly.  
 25 Q. Okay. At that time did you feel the condition that

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1 he had in his shoulder was permanent?  
 2 A. No.  
 3 Q. Did you feel that he would need surgical  
 4 intervention to relieve the symptomology that  
 5 he explained to you on December 11th?  
 6 A. I don't know that I would render -- The general is  
 7 that we would exhaust on operative measures before  
 8 considering surgery. And then depending on how he  
 9 progresses in that algorithm of treatment would  
 10 define whether he's becoming a surgical candidate.  
 11 Q. Okay. Now, in your practice you've treated hundreds  
 12 and hundreds of people with shoulder injuries  
 13 similar to Mr. Ruttig's, have you not?  
 14 A. I don't know that I've treated anyone that has  
 15 carried 80 to 90 pound posts, stepped in a hole and  
 16 caused a jerking motion of the beam against his  
 17 right shoulder. Is that what you mean, that type  
 18 of injury?  
 19 Q. No. You've treated several people who have rotator  
 20 cuff tendonitis with AC joint arthrosis in the right  
 21 shoulder?  
 22 A. Yes.  
 23 Q. Hundreds and hundreds of cases, I would imagine?  
 24 A. Certainly rotator cuff tendonitis. Rotator cuff  
 25 along with AC joint would be a lesser segment of

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

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1 A. Well, you're making an assumption which I'm not  
 2 making. I don't know which part of his history with  
 3 that is necessarily the thing, but he's attributing  
 4 the major force on his shoulder to stepping in the  
 5 hole, yes. I'm saying as a physician I recognize  
 6 also that lifting 80 to 90 pound poles may have  
 7 fatigued the shoulder or set it up in such a way  
 8 that stepping in the hole was a more likely injury.  
 9 Q. Would you agree based on just the bold statement  
 10 that the man was outside working lifting 80 to 90  
 11 pounds over his shoulder with fence posts and  
 12 walking around with them, that he was fairly  
 13 actively and physically fit before he fell in the  
 14 hole in September of 1997?  
 15 A. I wouldn't make an assumption about physical fit  
 16 given his history.  
 17 Q. All right. Did you find any other problems  
 18 orthopedically that Mr. Ruttig had other than the  
 19 rotator cuff tendonitis and AC joint arthrosis of  
 20 the right shoulder when you examined him on December  
 21 11th of 1997?  
 22 A. No.  
 23 Q. Low back was fine?  
 24 A. He had initial discomfort in the shoulder as well as  
 25 the posterior scapular region and low back.

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

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1 improvement with the comfort on forward elevation  
 2 and with impingement and cuff testing. He had  
 3 persistent tenderness about the AC joint.  
 4 The patient was prescribed physical therapy for  
 5 stretching and strengthening exercises and was  
 6 instructed on modification of repetitive or  
 7 strenuous overhead use of the arm. He was  
 8 recommended discontinuing the Soma with Codeine and  
 9 was given Duract for pain. He is to follow up in  
 10 six weeks and we will see the effect of the  
 11 Cortisone injection.  
 12 Q. Okay. Thank you. What were the treatment options  
 13 that you discussed with him?  
 14 A. First option is no treatment or live with it.  
 15 Second option would be the Cortisone injection that  
 16 I discussed. It is an elective procedure and the  
 17 patient may not wish to have the injection.  
 18 Q. He did wish to have it obviously?  
 19 A. Yes.  
 20 Q. Did you tell them that would be direct treatment for  
 21 this or would it be indirect as to alleviating  
 22 symptomology?  
 23 A. You might have to define direct and indirect.  
 24 Q. When you told him you were going to give him a  
 25 Cortisone injection, did you indicate to him that

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 1 after giving this injection it will take about three  
 2 or four days for it to take, the inflammation will  
 3 go down and you'll feel better?  
 4 A. Well, let me say what I did say. I just didn't know  
 5 what you meant by direct and indirect. The  
 6 injection was used as both a diagnostic test and a  
 7 therapeutic treatment. The Marcaine is a local  
 8 anesthetic agent. The Celestone is a Cortisone  
 9 preparation for joint injection. The Marcaine  
 10 allows a diagnostic test of re-examining him after  
 11 the injection to see if the symptoms of rotator cuff  
 12 tendonitis are relieved.  
 13 Q. That is if you get it in the right spot and he  
 14 immediately states it feels better, you know that's  
 15 the area of the problem?  
 16 A. Yes.  
 17 Q. Okay.  
 18 A. And then the Celestone is a treatment, which as  
 19 you've mentioned, requires 24 to 48 hours to be  
 20 absorbed to the point of expecting symptomatic  
 21 change if it's going to occur.  
 22 Q. And can you tell me a little bit about that. What  
 23 are the dynamics of the injection working on the  
 24 shoulder to make it asymptomatic days down the road?  
 25 A. It is a Cortisone family anti-inflammatory. It will

50  
 1 be locally effective by direct deposit by injection  
 2 into the bursa, diffuse into the anatomical area of  
 3 the rotator cuff tendons and have a medical effect  
 4 on reducing inflammation within the tendon.  
 5 Q. Now, this inflammation in the tendon, which is  
 6 reduced by the cortico steroid, doesn't occur  
 7 immediately. It will occur after the tendon  
 8 decreases with inflammation and then at that time  
 9 hopefully the pain will go away, is that accurate?  
 10 A. The pain that's due to the inflammation, yes.  
 11 Q. All right. Why did you discontinue the Codeine with  
 12 Soma?  
 13 A. I don't prefer a Codeine narcotic level medication  
 14 for this diagnostic category or categories.  
 15 Q. So you thought the pain medication was too high for  
 16 the severity of the injury there, is that accurate?  
 17 A. Well, the record is silent on this, but I think I  
 18 learned not only was he on Soma Compound with  
 19 Codeine, but he had been on it for a period of time.  
 20 I believe a couple months or more.  
 21 Q. And what are the problems with that?  
 22 A. Again, Soma is a combination drug. There's Soma.  
 23 There's Soma Compound and Soma Compound with  
 24 Codeine, so Soma is a muscle relaxant.  
 25 Q. Okay.

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 1 A. So I've not identified muscle spasm or a muscle  
 2 strain, specifically. I have identified tendonitis.  
 3 And on exam I didn't identify tight muscle, muscle  
 4 tenderness, et cetera to the point that a muscle  
 5 relaxant would be my preferred treatment.  
 6 Q. Okay.  
 7 A. Soma Compound has aspirin. That's an  
 8 anti-inflammatory. Probably no opinion on that  
 9 regard.  
 10 Q. You already have that working with the injection,  
 11 correct, the anti-inflammatory?  
 12 A. Yes.  
 13 Q. Okay.  
 14 A. That wouldn't exclude using it or not. It's just  
 15 your statement is correct. The Codeine would be the  
 16 main issue in that that is a narcotic level medicine  
 17 and I would object to -- or I would not choose to  
 18 renew or continue that medicine because I didn't  
 19 feel a narcotic was needed for this.  
 20 Q. And that the pain wasn't severe enough to warrant a  
 21 narcotic medication such as someone who's just  
 22 post-surgical for an achilles tendon, an abdominal  
 23 wound, ACL?  
 24 A. Again the record is silent, but I recall that it  
 25 wasn't that he was on it for two days because of

52  
 1 severe pain until he could get in to see an  
 2 orthopedic surgeon to see again what modalities we  
 3 may do. He'd been on it sometime. Codeine level  
 4 medicine I wouldn't want to continue knowing that  
 5 it's habit forming, other side effects of that  
 6 category of medicine for a longer period of time.  
 7 Q. Okay. Did you know what he did for a living, what  
 8 his occupation was?  
 9 A. The record, I believe identified that he was a  
 10 manufacturing engineer, but let me check. Employed  
 11 as a manufacturing engineer.  
 12 Q. Is that somewhat of a desk job, in your opinion,  
 13 Doctor? Do you know what the duties are?  
 14 A. I don't know. The record is silent on what the  
 15 specific duties are.  
 16 Q. You didn't tell him to refrain from working, did  
 17 you?  
 18 A. Patient was instructed on modification of repetitive  
 19 or strenuous overhead use of the arm. So we want  
 20 him to understand whether the rotator cuff is being  
 21 used on the job or at home or whatever, the common  
 22 denominator is what stress you're putting on the  
 23 rotator cuff and we'd like to modify that. We  
 24 don't necessarily stop it all together unless  
 25 symptoms warrant it.

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1 Q. Certainly writing wouldn't effect that, would it,  
2 writing?

3 A. Well, let me -- If I may -- May I finish?

4 Q. Sure. I'm sorry. If I do cut you off, stop me  
5 again. I want you to be able to answer in entirety.

6 A. You're correct in that we have to look at the job in  
7 terms of what duties he's required to perform with  
8 it. It would be very hard to discuss that we  
9 recommend that you modify repetitive reaching and  
10 strenuous pushing, pulling, or lifting without  
11 obviously that factor being considered.

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

22 Q. Okay.

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

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1 Q. Did you feel that he was suffering from a severe  
2 debilitating injury when he left your office on  
3 December 11th of 1997?

4 A. I believe he was still functioning at work, so if --  
5 I mean, you might have to define severe disabling,  
6 but --

7 Q. Severe debilitating injury. In the realm of the  
8 patients you see, would you say this was a very  
9 moderate injury, an average injury, or a severe  
10 injury?

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

13 A. I understand your question.

14 Q. (BY MR. CARAVONA) Okay.

15 A. You know, I'm wading through information.

16 Q. Well, it wasn't bad enough that you wanted to keep  
17 him on Codeine because he was on Codeine for a while  
18 and you didn't think the pain was that bad where he  
19 would need Codeine, correct?

20 A. You may need to rephrase that because if that's the  
21 angle you are taking, I would need to know  
22 specifically what the question is.

23 Q. The question is, was it a moderate, average, or  
24 severe injury in the realm of your practice, which  
25 is --

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1 A. But what you're just asking me was it moderate or  
2 whatever in relation to Codeine. So on that  
3 question the severity would probably not swayed me  
4 wanting to prescribe Codeine. Because I've already  
5 told you this category of diagnosis whether it be  
6 mild, moderate, severe by whatever definition --

7 Q. Let's forget the Codeine.

8 A. I'd like to finish --

9 Q. All right.

10 A. -- if I might.

11 Q. All right.

12 A. If the diagnosis of rotator cuff tendonitis of  
13 whatever severity by your definition or mine,  
14 especially given the individual characteristics in  
15 this patient, I would have not preferred to have  
16 used a narcotic level medication.

17 Q. Okay.

18 A. And your assumption was that if it was severe,  
19 obviously I'd be more likely to use Codeine. And  
20 I'd like to point 'out that that assumption isn't  
21 correct.

22 Q. Okay. Thank you. Let's get back to my question.  
23 Moderate, average, or severe?

24 A. Okay. Then that's when I was saying I'm wading  
25 through which variable of how we measure it. There

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

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

15 Q. You didn't think he needed to be hospitalized, did  
16 you?

17 A. No.

18 Q. Your re-appointment was in six weeks?

19 A. My plan as of the first visit he's to fo low-up in  
20 six weeks.

21 Q. And if you were very concerned and felt t to be a  
22 severely debilitating injury, would you et him go  
23 six weeks without re-appointment?

24 A. Are there situations where the symptoms are more  
25 severe than this individual Mr. Ruttig where I might

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1 bring them back, yes, but six weeks for this  
 2 condition is by far and away the most common thing I  
 3 do.  
 4 Q. You indicated to me that in addition to the  
 5 treatment you rendered, which was the injection, you  
 6 prescribed Duract for pain and I think that's what  
 7 you have in your report, correct?  
 8 A. Yes.  
 9 Q. What was your rationale for utilizing Duract for  
 10 pain?  
 11 A. Well, he's presenting in pain and that's why I'm  
 12 seeing him. The goal oriented treatment has to be  
 13 to address pain. What physicians or what I  
 14 individually would like to do is to treat the  
 15 underlying condition to remove the pain.  
 16 Q. I'd like you to go back six months from this date,  
 17 Doctor, to June of 1997 and present the exact same  
 18 type of patient, exact same symptomatology. What  
 19 would you have prescribed for that man for pain at  
 20 that time?  
 21 A. I wasn't done with what I was saying on the  
 22 question.  
 23 Q. Oh. Okay. Well, finish then.  
 24 A. You might need to repeat the question. About -- you  
 25 said I gave Duract for pain and --

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1 Q. What was your rationale for that?  
 2 A. Okay. I was trying to outline for you exactly what  
 3 the rationale was, so --  
 4 Q. Please do so.  
 5 A. -- the first point was he's in pain and I need to  
 6 address pain, but what I'd like to do is treat the  
 7 underlying disorder. So I'm going to modify  
 8 activity and I'm going to stretch a tight tendon.  
 9 I'm going to strengthen a weak muscle tendon unit  
 10 and I'm going to try to treat inflammation. And  
 11 that would generally be the tools of initial  
 12 conservative management, but because he's on a  
 13 narcotic level medicine, Codeine on presentation, I  
 14 recognize that if I don't -- if I recommend he  
 15 discontinue Soma with Codeine, I've not addressed  
 16 the level of pain that he has already been treated.  
 17 In other words, I'm losing ground on that one.  
 18 So I now have to make an individual decision about  
 19 if we discontinue Soma with Codeine, what do we  
 20 subsequently treat in its place. So I'd like a  
 21 non-narcotic, non-addicting pain medicine, which is  
 22 why I chose Duract.  
 23 Q. Thank you. You had mentioned several times that you  
 24 were very concerned and you were very aware that for  
 25 two months this man was on Codeine, correct?

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1 A. I don't know how many times I've mentioned it. I  
 2 said I think I recall in the history, but the chart  
 3 is silent. I don't have that information that he  
 4 had been on it for sometime.  
 5 Q. Sometime.  
 6 A. And the example I gave is if he had been on it three  
 7 days, I might not actually have as much reservation  
 8 about just stopping it cold turkey.  
 9 Q. Okay. You would agree it's important to know the  
 10 duration of time a person's on medication?  
 11 A. And I'm saying I believe at the time I made these  
 12 treatment recommendations I did.  
 13 Q. Do you agree it's important to know --  
 14 A. Yes.  
 15 Q. -- the duration of time one is on a particular  
 16 medication?  
 17 A. Yes.  
 18 Q. Thank you. Go back to June of 1997. Same history,  
 19 same exam, same radiographs, same impression, what  
 20 would you do for that patient as to a prescription  
 21 for pain?  
 22 A. June 19 --  
 23 Q. '97.  
 24 A. -- '97 versus?  
 25 Q. December of 1997.

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1 MS. CARULAS: Just note my objection.  
 2 Go ahead. You can answer.  
 3 A. Does that -- I mean -- I don't know. Is that --  
 4 Q. (BY MR. CARAVONA) How long have you been  
 5 prescribing Duract as of December 1997?  
 6 A. Well, that's why I paused. I mean, was the medicine  
 7 out in June or was it -- I mean --  
 8 Q. Well, let me ask you this, when you prescribed that  
 9 medication in December of 1997, were you familiar  
 10 with it?  
 11 A. I was familiar with it. It was relatively new.  
 12 Q. How long had you been prescribing it, years?  
 13 A. It hadn't been out for years.  
 14 Q. Okay. Well, do you know how long it had been out?  
 15 A. I don't know to the day. I think it was probably  
 16 around the date you just mentioned, but I don't  
 17 know.  
 18 Q. It came out in July of 1997.  
 19 A. Okay. So --  
 20 Q. You weren't aware of that?  
 21 A. I don't carry that figure in my head. My chart's  
 22 silent on that. I could easily answer it by  
 23 obtaining that information.  
 24 Q. You didn't look when it was brought on the market  
 25 when you were looking over your chart for this

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1 deposition?

2 A. I believe I did. I just didn't commit it to memory.

3 Q. When was it taken off the market? That would be

4 important for you to know.

5 A. It took them several more months after the

6 unfortunate incident with Mr. Ruttig.

7 Q. Well, I submit to you, Doctor, in July of 1997 is

8 when Duract hit the market. Let's go to June. What

9 would you have prescribed?

10 A. In this scenario a non-narcotic, non-addicting

11 medicine choice would be Ultram.

12 Q. Okay. And had you been prescribing that for some

13 period of time in June of 1997?

14 A. I would presume so, yes.

15 Q. Okay. What gave you reason to move from Ultram to

16 Duract?

17 A. My understanding that Duract was more effective with

18 less side effects in regard to Ultram.

19 Q. More effective, less side effects. Where did you

20 get this information?

21 A. I think the principle but not sole source, but

22 principal source was the drug representative Lynn

23 Renz.

24 Q. And where else?

25 A. The insert in the sample medication. I don't think

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1 there was a PDR supplement, you know, until the new

2 year, whatever.

3 Q. When you're changing from one prescribed drug like

4 Ultram to Duract, am I correct in my statement that

5 you relied upon a drug salesman's presentation to

6 make that change?

7 A. I rely on me to assimilate the information, but I --

8 Q. Well, what did you assimilate on Duract other than

9 listening to the drug sales rep and reading the

10 insert?

11 MS. CARULAS: You know, Don, the one

12 thing you do a lot is you're just

13 continually cutting him off. Maybe you

14 could just try to not do that.

15 MR. CARAVONA: And when he's says he's

16 cut off, I let him go back.

17 Q. (BY MR. CARAVONA) Did I cut you off, Doctor?

18 A. I'm developing thinking, but --

19 MS. CARULAS: I think the last word he

20 said was but, but go ahead. I mean --

21 A. We better repeat the question now, please.

22 MR. CARAVONA: Why don't you read that

23 back.

24 (Question and answer read back by reporter.)

25 A. So where are we in this process now again?

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1 Q. (BY MR. CARAVONA) Let's go here in the process.

2 Doctor, do you agree that at one time you were

3 prescribing Ultram for pain?

4 A. Yes.

5 Q. And at some point in time you switched from Ultram

6 to Duract?

7 A. Switched meaning 100 percent never used Ultram again

8 or --

9 Q. No.

10 A. Well, I mean switched to me is you leave one and

11 completely go to another. I started incorporating

12 Duract into my armamentarium of what medicines I

13 might choose to use and trial and see what the

14 clinical effectiveness would be.

15 Q. Well, why did you arm Mr. Ruttig with Duract as

16 opposed to Ultram?

17 A. I believe I've answered that.

18 Q. I'd like you to answer it again.

19 MS. CARULAS: Just note an objection.

20 Go ahead.

21 A. Because I felt that my understanding of Duract at

22 the time I prescribed it was such that it was the

23 potential to be effective in that patient more than

24 Ultram.

25 Q. (BY MR. CARAVONA) Because it was more effective and

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1 had less side effects?

2 A. Yes. That's what I include as part of effective,

3 yeah.

4 Q. Where did you get this information that you've just

5 given to me?

6 A. The principle source by the time I'm prescribing

7 this medicine to Kenneth Ruttig was the drug

8 representative Lynn Renz, but it was not the only

9 source.

10 Q. What were the other source or sources?

11 A. The --

12 MS. CARULAS: Just note my objection

13 because I think we've been over this, but

14 go ahead.

15 A. The sample medication, the insert. It depends on

16 the point in time, but the medicine had been out for

17 sometime and there are ways to learn about how it

18 has done so far in my community or amongst peers.

19 Q. (BY MR. CARAVONA) Did you do that?

20 A. The record is silent on that. I generally make a

21 strong effort to do that.

22 Q. When you say --

23 A. And part of that would be with Lynn Renz because as

24 she discusses the merits of the medicine I might

25 ask, well, are people using this, and what are you



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1 finding, and are they receptive to it, and are they  
 2 continuing to use it? And I would have those  
 3 similar questions in general with colleagues.  
 4 Q. Did you have conversations before December 11th of  
 5 1997 with colleagues about Duract?  
 6 A. I don't recall, specifically.  
 7 Q. Lynn Renz's sample medication is another thing that  
 8 you said you relied upon?  
 9 A. Well, she brings the medication in when she's  
 10 discussing it.  
 11 Q. How does that teach you more about the medication --  
 12 A. The --  
 13 Q. -- if you would?  
 14 A. The box, the insert, the information that comes with  
 15 the medication.  
 16 Q. Okay. The insert then that's one of the principle  
 17 -- other than Lynn Renz, is that one of the  
 18 principle methods of gathering information about a  
 19 drug?  
 20 A. Again, I think I've answered it. And what I said  
 21 was the principle method was Lynn Renz and that  
 22 there were other methods that I take into account.  
 23 Q. So first and foremost would have been Lynn Renz, but  
 24 you also would read the insert, wouldn't you?  
 25 A. Yes.

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1 Q. And why would you do that?  
 2 A. It's an additional source of information on the drug  
 3 that discusses it.  
 4 Q. Well, I mean, Doctor, you know Lynn Renz works for  
 5 an organization that is manufacturing Duract, you  
 6 knew that, correct?  
 7 A. Yes.  
 8 Q. And you knew that she was selling that, and based  
 9 upon her selling it she would get commissions?  
 10 MS. BITTENCE: Objection.  
 11 Q. (BY MR. CARAVONA) Didn't you know that?  
 12 THE WITNESS: Do I answer the  
 13 question? There was an objection.  
 14 MS. CARULAS: Yeah, you can go ahead  
 15 and answer it.  
 16 A. I don't know anything about whether she gets  
 17 commission or not.  
 18 Q. (BY MR. CARAVONA) Doctor, in your general every day  
 19 living when someone is selling you something, isn't  
 20 it normal for them to magnify the benefits and  
 21 minimize the detriments?  
 22 MS. CARULAS: Note my objection, but  
 23 go ahead.  
 24 MS. BITTENCE: Objection.  
 25 A. I don't assume that strongly about people and I make

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1 individual decisions about the person that I'm  
 2 dealing with.  
 3 Q. (BY MR. CARAVONA) So your decision to give Kenneth  
 4 Ruttig Duract as opposed to Ultram was based upon  
 5 presentations by Lynn Renz?  
 6 A. Principally at the time that this prescription was  
 7 made. And then as I gained additional information  
 8 about the medicine and clinical practice and talk  
 9 with peers about what are we finding as continued  
 10 experience, I continued to modify or strengthen that  
 11 position.  
 12 Q. Okay. Did you modify *or* strengthen the position  
 13 from December 11th, 1997?  
 14 A. I can say in this individual case it's exceeded in  
 15 getting us off Soma with Codeine, which was again  
 16 one of the main goals I did. And I would say, in  
 17 general, I was pleased that the medicine seemed to  
 18 have effective pain relief with less identified side  
 19 effects than what I recalled with Ultram.  
 20 Q. Okay. What were the side effects with Ultram that  
 21 you were worried about?  
 22 A. It's a centrally acting non-narcotic medicine so it  
 23 tends to have central nervous system-type side  
 24 effects as the most common. So the most common side  
 25 effect was often lightheadedness or dizziness. The,

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1 again, central nervous system being how it acts is  
 2 seizures had been reported, and actually, I recall  
 3 it come out, you know, as a potential problem with  
 4 the medication, I think I recall that having a  
 5 history of epilepsy or being on anti-depressant  
 6 medicines would be a greater risk for that.  
 7 Q. Was Mr. Ruttig on anti-depressant medication or did  
 8 he have --  
 9 A. Not to my knowledge.  
 10 Q. Did he have a history of epilepsy?  
 11 A. Not to my knowledge.  
 12 Q. Is it -- What was your understanding of the side  
 13 effects of Duract?  
 14 A. Principally central nervous system and  
 15 lightheadedness. Also understanding that there can  
 16 be allergic reactions, which is common to all  
 17 medicines. That all medicines have to be  
 18 metabolized in the body, principally, via liver or  
 19 kidney. And that Ultram may have, I believe some GI  
 20 side effects, but not being an anti-inflammatory  
 21 class were not as profound.  
 22 MS. CARULAS: No. I think his  
 23 question was about Duract. I think you  
 24 answered Ultram.  
 25 A. Oh. I was talking about Ultram.

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1 Q. (BY MR. CARAVONA) Yeah.

2 A. I apologize.

3 Q. So from what you've told me Duract effects the

4 central nervous system, also, correct?

5 A. No.

6 MS. CARULAS: His answer was about

7 Ultram.

8 A. I was in error. I was answering Ultram. I thought

9 we were still on that theme of why -- what were the

10 side effects of Ultram. I thought we were still

11 developing that theme.

12 Q. (BY MR. CARAVONA) Well, I want to make sure that I

13 have this clear from you.

14 A. Okay.

15 Q. The side effects of Ultram was central nervous

16 system, dizziness, lightheaded, right?

17 A. Yes.

18 Q. GI irritation?

19 A. Could but not as high as anti-inflammatory class.

20 Q. Which would be Duract?

21 A. Duract is in the anti-inflammatory class.

22 Q. So Duract would have more effect on the GI system

23 than Ultram?

24 A. In that category.

25 Q. Okay. So far we have light, dizzy, and lightheaded

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1 on Ultram. What else?

2 A. Are we talking of Ultram?

3 Q. Yes.

4 A. Back to Ultram, which I made that error?

5 Q. Yeah, Ultram.

6 A. Well, the additional is despite that it's

7 non-addictive, non-narcotic is that we were

8 cautioned in use if dependent or history of narcotic

9 addiction or use. I think it actually states if,

10 for example, you've been on Codeine or a narcotic it

11 may not be the best choice.

12 Q. Anything else?

13 MS. CARULAS: You had mentioned

14 earlier seizures, which you didn't mention

15 here, but go ahead.

16 THE WITNESS: Seizures for Ultram.

17 MS. CARULAS: Right.

18 THE WITNESS: Right.

19 Q. (BY MR. CARAVONA) Anything else?

20 A. Well, I -- I mean -- You mean is that all that can

21 be associated with the medicine, a whole host of

22 things can occur with the medicine, but those are

23 the principle ones.

24 Q. Dizzy, lightheaded?

25 A. Central nervous system, allergic reactions, GI

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1 caution inpatients with narcotic usage.

2 Q. What was your understanding of the side effects with

3 Duract?

4 A. Duract was in the class of an anti-inflammatory

5 medicine. Again, all medicines we have to be aware

6 of allergic reactions. Anti-inflammatory medicines,

7 non-steroidal anti-inflammatory, their principles

8 are the GI system, gastrointestinal. All medicines

9 are metabolized by liver and excreted by kidneys,

10 and that Duract had risk of elevation of liver

11 enzymes. An allergic how it's metabolized,

12 anti-inflammatory class, and then again recognizing

13 that medicines can have many other side effects and

14 some unforeseen.

15 Q. Are you finished?

16 A. Those are the principle, yeah.

17 Q. Maybe I'm missing something, but from what you've

18 told me if I've got to take the two pills, not

19 knowing what I know now, doesn't it seem like the

20 Ultram has less side effects than the Duract?

21 MS. CARULAS: Objection.

22 THE WITNESS: Do I answer?

23 Q. (BY MR. CARAVONA) Well, sure.

24 MS. CARULAS: Go ahead.

25 A. No, that wasn't my impression. It would depend on

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1 incidents. Common things happen commonly, rare

2 things happen rare and we have to take those into

3 account when we give them medicine.

4 MS. CARULAS: Do you mind if we take a

5 break?

6 MR. CARAVONA: No, You can take a

7 break. That's fine.

8 (Short recess taken.)

9 Q. (BY MR. CARAVONA) Doctor, have I given you ample

10 opportunity to explain what you believe are all the

11 benefits and detriments of Ultram and all the

12 benefits and detriments of Duract as you knew them

13 on December 11th of 1997?

14 MS. CARULAS: Just note my objection.

15 A. I think in terms of us trying to help you understand

16 the decision making of why I would use Duract

17 instead of Ultram, I think I've given the principle

18 factors that were involved in that.

19 Q. (BY MR. CARAVONA) Okay. After December 11th of

20 1997 you still prescribed Ultram, did you not?

21 A. I believe I did.

22 Q. Can you give me a percentage of pain relievers that

23 you -- was it 50/50 Ultram/Duract? Was it 80/20?

24 MS. CARULAS: Objection.

25 A. I don't know.

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1 Q. (BY MR. CARAVONA) You have no idea?  
 2 A. Not in the context of that time. I don't know.  
 3 Q. Well, do you have any independent recollection when  
 4 you first started to prescribe Duract?  
 5 A. Well, I made an effort to use it to start to see how  
 6 it was effective in my practice. And then --  
 7 Q. Well, when was that?  
 8 A. For Duract?  
 9 Q. Yeah.  
 10 A. Well, it was released in --  
 11 Q. July.  
 12 A. -- July. I don't recall, specifically, but I don't  
 13 tend to use new medicines right off the bat. I  
 14 would guess October when I started prescribing.  
 15 Q. And you made the statement, I made an effort to use  
 16 it to see if it was effective in my practice.  
 17 A. Mm-hmm. When indicated.  
 18 Q. Before you gave it to your patients -- I'm kind of  
 19 confused. Before giving it to your patients, you  
 20 were totally familiar with the drug, the benefits of  
 21 it and the side effects of it, were you not?  
 22 MS. CARULAS: Note my objection.  
 23 A. I felt I had enough information about a new medicine  
 24 to make judgments about when it should be prescribed  
 25 on an individual basis.

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

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1 I think she alluded to the studies that had been  
 2 done on Duract for its approval.  
 3 Q. Have you ever done any studies for drug companies?  
 4 A. No.  
 5 Q. Do you watch television?  
 6 A. Yes.  
 7 Q. Did you watch television Sunday?  
 8 A. I was coming -- No. I didn't get home until eight.  
 9 I mean, I guess I watched TV in there somewhere.  
 10 Q. Okay. You're aware that studies for drug companies  
 11 are done by individual physicians, correct,  
 12 researchers?  
 13 A. I understand that they're done by researchers, some  
 14 are Ph.D. some are M.D.  
 15 Q. And they're given a grant?  
 16 A. That's a method.  
 17 Q. They sign a contract?  
 18 A. I'm not sure of your question.  
 19 Q. Well, it has been shown that many of the researchers  
 20 on the drug signed a contract of confidentiality and  
 21 if the studies are not what the drug company wants  
 22 them to be, they can't release the information.  
 23 Have you ever heard that before?  
 24 MS. BITTENCE: Objection.  
 25 A. I'm confused by what you're saying.

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1 Q. (BY MR. CARAVONA) Well, here. All right. Well,  
 2 Doctor, I would like you to entertain this  
 3 hypothetical question. Wyeth Laboratories hires you  
 4 to study Duract and they pay you a grant of \$500,000  
 5 per year. Now, you enter in a contract to spend  
 6 sometime studying that drug. And in the contract it  
 7 says to you, Dr. Lippitt anything you find is  
 8 confidential between Wyeth Laboratories and you.  
 9 That's it.  
 10 Now you study this drug and you find out that  
 11 hepatic dysfunction is quite rapid in the study of  
 12 Duract. And you go to Wyeth and say, you know, this  
 13 is terrible. Hepatic dysfunction is showing up  
 14 after five weeks, six weeks. And they say to you,  
 15 no, Doctor, your data is wrong. And you go, no.  
 16 No, it isn't. I want to publish this. And they  
 17 say, well, we remind you, Doctor, you signed a  
 18 confidentiality agreement here. Did you ever hear  
 19 of that?  
 20 MS. CARULAS: Objection.  
 21 MS. BITTENCE: Objection.  
 22 MS. CARULAS: I think that's an  
 23 impossible question to answer.  
 24 Q. (BY MR. CARAVONA) Did you watch 60 Minutes last  
 25 night?

1 A. No.

2 Q. It was on there.

3 MS. CARULAS: There's no question in

4 front of you right now.

5 Q. (BY MR. CARAVONA) All right. Let me pose a

6 question to you, Doctor. So getting back. You said

7 you tend not to use drugs when they're brand new?

8 A. Yes.

9 Q. Why?

10 A. Because I don't like to get on the train in the

11 beginning. I like to get on it a little further

12 back to see what we're running into with the

13 medicine.

14 Q. Okay. And you felt that waiting two and a half,

15 three months was getting on the train a little

16 later with Duract?

17 A. Well, I remember with Duract that -- you know, as an

18 orthopedic surgeon and patients with pain and pain

19 that lasts a while, we don't have a lot of choices

20 and so we're always looking in that category for

21 what might be effective.

22 Q. Pain that lasts a while?

23 A. Yes.

24 Q. Is it your understanding that Duract was for pain

25 that lasted a while?

1 A. You'd have to define a while.

2 Q. Well, what did you mean by you're an orthopedic

3 surgeon, you have patients who have pain that lasts

4 a while? Define that for me.

5 A. Well, after orthopedic surgery they have

6 post-operative surgical pain, which may require

7 narcotic level medication for, you know, a period of

8 time or three weeks.

9 Q. Is that a while?

10 A. It's a while for narcotic medicine.

11 Q. Okay.

12 A. I don't understand your question. The time frame is

13 I'd want to use medicines in the proper indications

14 on an individual basis for the period of time it

15 would be appropriate.

16 Q. What was your understanding on December 11th of 1997

17 as to what was the appropriate period of time to

18 prescribe Duract?

19 A. The way that I prescribed it is what I thought was

20 an appropriate length of time to prescribe it.

21 Q. Did you come to learn at a later time it was

22 inappropriate?

23 MS. CARULAS: Objection.

24 A. I don't think I've learned that it's inappropriate.

25 I'm coming to understand that it's much more "clear"

1 to everyone now that it was ten days.

2 Q. (BY MR. CARAVONA) What did you perceive to be an

3 appropriate duration of time to prescribe Duract on

4 December 11th of 1997?

5 MS. CARULAS: Just note my objection.

6 I think he's just answered that.

7 A. That's what I was going to say.

8 Q. (BY MR. CARAVONA) What was the appropriate period

9 of time to prescribe it, ten days?

10 A. There were many variables that I would take into

11 account some of which are individual basis. And in

12 this particular individual, Mr. Kenneth Rutting, who

13 had been on a narcotic level medicine, I felt I

14 would need a medicine that could help with pain for

15 a period of time that would be realistic.

16 Q. How long?

17 A. In the context of appropriate use of the medicine.

18 So the way that I prescribed it is the -- was what I

19 felt was appropriate to the medicine with my

20 understanding at that time.

21 Q. How long?

22 A. What was the prescription for?

23 Q. How much did you give him?

24 A. The initial prescription for Duract is twenty-five

25 milligram tablet, fifty tablets, one to two tablets

1 Q to six hours, PRN pain.

2 Q. Now, did you give him any samples before that?

3 A. The record is silent on that. We generally do and

4 my recollection is that we did.

5 Q. Why didn't you document in there how many of the

6 samples you gave him?

7 A. It hadn't been my practice to -- How many samples?

8 Q. Mm-hmm.

9 A. I do recall often using the sentence a sample and

10 prescription of the medicine was provided. I

11 obviously don't all the time.

12 Q. Well, you're not denying that you gave him samples,

13 are you?

14 A. I'm saying the record is silent on whether a sample

15 was given to him or not, but in general on initial

16 drug exposure, we give samples.

17 Q. Okay. Now, when you gave the sample and you wrote

18 your first script, you've indicated 25 milligrams,

19 50 pills, correct?

20 A. Yes.

21 Q. When you gave him that prescription, was there a

22 refill on there?

23 A. Yes.

24 Q. What were you relying on as to the length of time

25 you were going to keep him on this medication?

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

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

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

1 A. I think I answered that.  
 2 Q. Yes or no?  
 3 MS. CARULAS: Don this is probably  
 4 about the 10th or 5th time you've asked  
 5 this question.  
 6 Q. (BY MR. CARAVONA) Is it primarily you relied upon  
 7 her?  
 8 A. I think I've used the word principally.  
 9 Q. Okay. Do you know her educational background?  
 10 A. No.  
 11 Q. Do you know if she's a -- You know nothing about her  
 12 educational background?  
 13 A. No.  
 14 Q. Okay. You know that she works for the company that  
 15 manufactures Duract?  
 16 A. Yes.  
 17 Q. Okay. Was there any indication if you used it more  
 18 than four weeks something should be done?  
 19 MS. CARULAS: You're talking --  
 20 A. What time frame?  
 21 Q. (BY MR. CARAVONA) At any time you started using the  
 22 drug.  
 23 A. At four weeks it was recommended that you consider  
 24 liver enzyme testing.  
 25 Q. Did you do that?

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1 A. No.

2 Q. Why not?

3 A. I saw him at six weeks, not four weeks, with return.

4 In that office visit we learned that we were off the

5 Codeine. I wanted to start an anti-inflammatory

6 medicine, which was Lodine and get off the Duract.

7 So I didn't order or pursue laboratory testing

8 because the plan was to get off the medicine that

9 would require that.

10 Q. The plan was to get off the Duract on January 22nd?

11 A. The record January 22nd, 1998 last paragraph, which

12 is treatment, patient was recommended and given a

13 selective injection of Marcaine and Celestone of the

14 right AC joint. Plan is to see the effect of the

15 injection, along with additional exercises. He was

16 given Lodine XL anti-inflammatory medication along

17 with Duract. And what I'm saying is the plan that I

18 was formulating, which if we look at his follow-up

19 we'll see that it happened, is basically given

20 Lodine XL anti-inflammatory medication in lieu of or

21 as we come off Duract.

22 Q. Doctor, you know, maybe I've got a problem with

23 reading. Would you read, he was given Lodine XL?

24 Read the whole sentence.

25 A. I did read it.

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1 Q. What does it say?

2 A. That he was given Lodine XL anti-inflammatory

3 medication along with the Duract.

4 Q. So on January 22nd you indicated that he's still

5 taking Duract, you knew that?

6 A. Yes.

7 Q. And as a matter of fact, Doctor, on January 23rd he

8 had another prescription filled?

9 A. He was given the prescription that day, January

10 22nd.

11 Q. So you weren't taking him off it?

12 A. I identified that the plan --

13 Q. Doctor, were you taking him off the Duract on

14 January 22nd?

15 MS. CARULAS: He's trying to explain.

16 A. I was taking him off of it. You're saying taking

17 him off of it means that second, that minute. I'm

18 coming off of it.

19 Q. (BY MR. CARAVONA) Where does it indicate in here

20 you tell him to reduce the amount of Duract he's

21 taking?

22 A. Well, you're asking me again -- I'm trying to tell

23 you the record says what we've read twice now. What

24 I'm telling you is I know what my plan was and the

25 plan, which I even went back to the beginning, is to

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1 on not treat pain, but treat the disorder. So as

2 soon as I can get off of pain medicine, I don't have

3 to have Duract in the picture and then I'll replace

4 it with an anti-inflammatory if we still have

5 trouble. So I've replaced -- He's off the Codeine,

6 which we identified on this day, 1/22/98.

7 Q. Doctor, he was off the Codeine when he saw you on

8 December 17th. You took him off it, didn't you?

9 A. Yes.

10 Q. And you put him on Duract?

11 A. I didn't give him the Codeine. He may have some at

12 home and he could get it from family doctors or

13 other sources, so I ask, are you off Codeine? And

14 the answer is, yes in my history, which was the goal

15 of what I wanted to do with Duract. If you're

16 asking do patients come in and say, actually, I

17 still take Codeine with the Duract, yeah, it

18 happens.

19 Q. Doctor, what was your plan to get him off the

20 Duract? What was the day?

21 A. On 1/22/98 my plan with the Lodine anti-inflammatory

22 was given in the context of will now come off the

23 Duract.

24 Q. And that plan was carried out by the fact that you

25 gave him --

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1 A. By next visit.

2 Q. By next visit. Next visit being six weeks away?

3 A. During that time to come off of it and take the

4 Lodine. The next visit was six weeks.

5 Q. Right. So that's 12 weeks of being on the Duract?

6 A. I think it would only be 12 weeks if we had renewed

7 it or something over that time, which he'd have to

8 contact us about.

9 Q. How many pills did you give him in addition to the

10 samples, Doctor? Why don't you count it up.

11 A. Are you asking me to count them up?

12 Q. You gave him 300. Check it.

13 A. Well, I presume if you have that that's what the

14 number is.

15 Q. Yeah. You gave him samples and you gave him 300

16 pills. What was the maximum dosage of Duract that

17 one should have taken a day?

18 A. One hundred and fifty.

19 Q. So that's six pills a day, right?

20 A. Of twenty-five milligram.

21 Q. So that gives him fifty days of pills, does it not,

22 Doctor, in addition to the samples you gave him?

23 MS. CARULAS: Is this a math test

24 right now?

25 A. Yeah, give me paper and pencil and --

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1 MR. CARAVONA: I just want to make  
 2 sure that somebody else in his group didn't  
 3 write the other prescriptions. That's all.  
 4 A. Well, if that's your question that's not math. No  
 5 one else, to my knowledge, wrote the prescription  
 6 for Ouract.  
 7 Q. (BY MR. CARAVONA) Well, when you write the  
 8 prescription you look back to see how long, like you  
 9 were talking with the Soma with Codeine, how long  
 10 he's been on this particular medication, don't you?  
 11 A. Yes.  
 12 Q. And you know how many pills you're giving him, don't  
 13 you?  
 14 A. Yes.  
 15 Q. Except you didn't write down how many samples you  
 16 gave him?  
 17 A. It's a sample or you know --  
 18 Q. Okay. It's a sample?  
 19 A. It's one sample. I mean, you know --  
 20 Q. But we know for a fact that you prescribed for this  
 21 man 300 pills of Duract.  
 22 A. Is there a question?  
 23 Q. How many days of medication would that be?  
 24 A. Have we not answered this? I prescribed it on  
 25 1/22/98. We understand that that prescription would

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

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

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1 Q. Okay. And how does one get a person off of a  
 2 medication?  
 3 A. Well, the method I used is one method because he was  
 4 off of it by next visit, so I guess I could start  
 5 there.  
 6 Q. Well, Doctor, when you saw him on the 22nd you gave  
 7 him a prescription for 100 more pills. Is that  
 8 getting him off it?  
 9 A. Did it get him off of it by next visit? I've  
 10 answered this.  
 11 Q. Yeah, seven weeks later. Yeah, you did. You got  
 12 him off --  
 13 A. Seven weeks later from 1/22?  
 14 Q. December 11 is when he started on it?  
 15 A. Well, you said seven weeks later in the context of  
 16 when I gave this prescription on 1/22. I merely  
 17 asked is that what you meant?  
 18 Q. No. Doctor, you gave him a prescription on December  
 19 11th, didn't you?  
 20 A. I've answered that.  
 21 Q. All right. You gave him a prescription on December  
 22 11th and at the pharmacy he filled 50 of them on  
 23 December 12th. He filled 50 on December 18th. He  
 24 filled 50 on December 24th. He filled 50 on  
 25 January 9th. He filled 50 on January 23rd, and he

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

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

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

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



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1 Q. Do you recall anybody in your office -- well, anyone  
 2 in your office indicating or talking to you from  
 3 February 6th until Mr. Ruttig's next visit on March  
 4 5th that there was liver failure, some requiring  
 5 transplants as a result of taking Duract?  
 6 A. Not that I recall.  
 7 Q. How many of your colleagues were utilizing Duract at  
 8 Northeast during this period of time?  
 9 A. I don't know as fact.  
 10 Q. Doctor, as we sit here today are you telling us that  
 11 the first time you ever heard there was severe  
 12 hepatitis or liver failure or that there was a  
 13 black box warning on the Duract, was when you were  
 14 at the meeting in New Orleans for the orthopedic  
 15 seminars?  
 16 A. No. What I said I learned at the academy by a  
 17 method was that I had heard that there are cases  
 18 reported of liver failure that are being associated  
 19 with Duract.  
 20 Q. Is that the first time that you ever heard that  
 21 information?  
 22 A. I think I answered that.  
 23 Q. At the academy meeting?  
 24 A. Right.  
 25 Q. Never heard it at all in February?

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

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1 Duract?  
 2 MS. CARULAS: Note my objection to the  
 3 long compound question, but go ahead if you  
 4 can answer it.  
 5 A. I think you said, you know, in no time during this  
 6 time did you talk with Lynn Renz and. I mean, I  
 7 don't recall talking with Lynn Renz about a box  
 8 warning. That's a part of that question. And then  
 9 there were others and I can't keep up with compound  
 10 questions.  
 11 Q. (BY MR. CARAVONA) Doctor, would agree that with the  
 12 box warning of February 6th that you continued Mr.  
 13 Ruttig on the medication thereafter?  
 14 A. With knowledge of the box warning --  
 15 Q. No. No.  
 16 A. -- or that one existed?  
 17 Q. You agree that after February 6th you continued to  
 18 keep Mr. Ruttig on Duract?  
 19 A. We've answered that. We've established --  
 20 Q. If you had been aware of the letter, which is marked  
 21 Plaintiff's Exhibit 1, what would you have done?  
 22 A. I would try to follow the recommendations that are  
 23 in the box warning.  
 24 Q. Which are?  
 25 A. Duract is indicated for short-term (10 days or less)

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1 management of acute pain and is not indicated for  
 2 long-term use.  
 3 While not recommended, if a physician  
 4 determines that the risk of longer use is justified  
 5 by the potential benefit, the patient's  
 6 transaminases and bilirubin, must be closely  
 7 monitored for signs of hepatotoxicity.  
 8 Patients should be advised to take this  
 9 medication as directed.  
 10 So I would, in this box warning, have to define  
 11 not indicated for long-term use. I'd have to define  
 12 what is long-term use. I'd have to determine the  
 13 risk of longer use is justified by potential  
 14 benefit. I would have to make a decision about this  
 15 knowledge. Now, is it worth the benefit of pain  
 16 relief in him versus getting him strictly off of it.  
 17 If the risk of longer use was a certain amount of  
 18 time and I had exceeded it, I would need to get  
 19 enzymes. And then I would need to advise the  
 20 patient to take the medication as directed.  
 21 Q. Doctor, as of February 6th was Kenneth Ruttig on  
 22 Duract more than ten days?  
 23 A. Yes.  
 24 Q. He was on it substantially longer than ten days,  
 25 wasn't he?

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1 A. What's substantial? I mean, we can do the math.  
 2 Q. Well, if you would have been aware of this warning  
 3 where they say, if you determine the risk is longer,  
 4 please have certain testing done. If you would have  
 5 known of the information in this letter on February  
 6 6th, would you have called Ken Ruttig and told him  
 7 to go have his liver enzymes checked?  
 8 A. The goal would be to follow this warning, yes.  
 9 Q. Would you have continued to prescribe Duract with  
 10 this if you had knowledge of this warning?  
 11 A. I cannot expect that I'd do that.  
 12 Q. All right. So, Doctor, based upon your actions,  
 13 which were you never did a liver enzyme test, did  
 14 you?  
 15 A. No.  
 16 Q. You never discontinued the Duract after February  
 17 6th, did you? I mean, you continued to prescribe it  
 18 after February 6th, agreed?  
 19 A. Yes.  
 20 Q. Can we, therefore, conclude that you never received  
 21 warning from Wyeth via the letter of February 6th or  
 22 by any of your colleagues or by any representative?  
 23 MS. BITTENCE: Objection.  
 24 A. Yes.  
 25 Q. (BY MR. CARAVONA) And if you would have been aware

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

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

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1 you become aware of it on March 24th?  
 2 MS. CARULAS: Wait a minute now. Are  
 3 we --  
 4 MR. CARAVONA: Let's go --  
 5 Q. (BY MR. CARAVONA) How did you become aware that Mr.  
 6 Ruttig had a problem?  
 7 A. The record dated 3/24/98, upon returning from the  
 8 academy meeting on Monday evening 3/23/98, I  
 9 received or checked my voice mail. But it says I  
 10 received a voice mail regarding a patient Mr.  
 11 Kenneth Ruttig. I contacted Joan Hoak, who is the  
 12 patient's sister, and learned that the patient has  
 13 had recent medical problems of liver failure and was  
 14 transferred from Akron General to Cleveland Clinic  
 15 and has apparently undergone a liver transplant on  
 16 3/22/98.  
 17 The etiology of the liver failure apparently is  
 18 still pending per Joan who is a nurse. She is aware  
 19 of the recent notification by the drug company that  
 20 Duract has indeed had some case reports of liver  
 21 problems, although, they are unsure if this is  
 22 playing a role. The patient has been off the Duract  
 23 medication per my last evaluation dated March 17th,  
 24 '98.  
 25 Q. That's an error, isn't it?

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

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

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

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1 liver enzymes checked in the month of March?  
 2 MS. CARULAS: I do not want you to  
 3 guess about other patients.  
 4 MR. CARAVONA: He doesn't have to  
 5 guess.  
 6 A. What's the question?  
 7 Q. (BY MR. CARAVONA) Did you send other patients of  
 8 yours who were taking Duract to Akron General  
 9 Hospital to have their liver enzymes checked?  
 10 A. No.  
 11 MS. CARULAS: Answer it only if you  
 12 can.  
 13 Q. (BY MR. CARAVONA) No? Did you send patients of  
 14 yours to any other medical facility to have their  
 15 liver enzymes checked as a result of taking Duract?  
 16 MS. CARULAS: Objection.  
 17 A. No.  
 18 Q. (BY MR. CARAVONA) In your group, Doctor, how often  
 19 do you and your fellow colleagues meet to discuss  
 20 cases that you're handling?  
 21 A. I don't know that we formally meet to discuss cases  
 22 on the --  
 23 Q. Were you in the office from -- in the month of  
 24 February?  
 25 A. To my knowledge.

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1 Q. Is there any chance that you could have been out of  
2 the United States?  
3 A. No.  
4 Q. Did you ever talk with any pharmacists at any time  
5 regarding the Duract medication?  
6 A. I would if I'd call in the prescription.  
7 Q. Did anyone ever indicate to you that you might be  
8 prescribing too much?  
9 A. No.  
10 Q. Did you ever have any discussions after Mr. Ruttig's  
11 episode with any pharmacist?  
12 A. I'm not sure. Have I talked to pharmacists after  
13 this happened --  
14 Q. About Duract.  
15 A. -- about Duract?  
16 Q. About Duract.  
17 A. I don't recall that I have.  
18 Q. Did you continue to prescribe Duract after March  
19 24th of 1998?  
20 A. No.  
21 Q. So on that day you quit?  
22 A. I would say that I did not prescribe it after this  
23 event.  
24 Q. Of March 24th?  
25 A. As of gaining this information, yes.

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

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1 (Witness reviewing document.)  
2 A. Yes.  
3 Q. Okay. And what is that?  
4 A. It's an adverse experience record.  
5 Q. And do you know who filled that out?  
6 A. I did.  
7 Q. And how did you come about filling this out?  
8 A. I brought this knowledge of Mr. Ruttig's liver  
9 failure with possible association to Duract at that  
10 time to Lynn Renz and asked, what do we do? How do  
11 we bring this to attention or what should we do?  
12 And she, as I recall, told me that someone will be  
13 in contact with you for information. And I have a  
14 note in the chart that a Dr. Rick Jones at  
15 610-971-4172, so I called on 4/9/98. I believe I  
16 gave some information from the chart at that time.  
17 And then this adverse experience record came, I  
18 think as a result of that, which I filled out on  
19 5/20/98.  
20 Q. Now, I know you don't know exactly when you met with  
21 Lynn Renz, but you met with her and indicated the  
22 difficulty with Mr. Ruttig, correct?  
23 A. Yes.  
24 Q. Thinking back can you tell me what her reaction was  
25 at that time?

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

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1 your attention. I acknowledged that we've had  
 2 Duract in the picture and, you know, what is going  
 3 on with these liver cases? What do you know? Is it  
 4 only in a certain length of time or is it with other  
 5 medicines or is it elderly or is it when they have  
 6 another disease or do we know? And I think --  
 7 Q. (BY MR. CARAVONA) What was her response to that?  
 8 A. I don't recall that we knew. I don't -- It was  
 9 there's early case reports that may be associated  
 10 and then -- well, then what do we do, report it and  
 11 how do we go about that?  
 12 Q. Did she indicate to you, my God, Doctor, we had a  
 13 letter February 6th sent to you, Plaintiff's Exhibit  
 14 1, did she say anything about that on that date?  
 15 A. I don't recall that. That was not the mood of the  
 16 discussion.  
 17 Q. There was no discussion about the black box letter  
 18 on February 6th when you brought that to her  
 19 attention?  
 20 A. Not to my knowledge.  
 21 Q. Did you indicate to her that the first time you  
 22 heard of any liver failures or transplants with  
 23 Duract or problems severe in nature were at the  
 24 academy at the end of March?  
 25 A. I don't know that I recall the specifics of that

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1 discussion that specific.  
 2 Q. Would you have recalled if she would have said,  
 3 Doctor, here's the letter, I brought it up and  
 4 showed it to you --  
 5 A. Yes.  
 6 Q. -- it was mailed to your offices?  
 7 A. Yes, I'd remember that.  
 8 Q. On February 6th we warned you people about this.  
 9 A. Yes. What's your question?  
 10 Q. That never occurred?  
 11 A. I don't --  
 12 Q. She never made that comment to you?  
 13 A. I do not recall that comment.  
 14 MR. CARAVONA: I'm going to take about  
 15 four minutes and we'll be pretty close to  
 16 being done, five minutes.  
 17 (Short recess taken.)  
 18 Q. (BY MR. CARAVONA) Doctor, I think I can get this  
 19 wrapped up pretty soon now. There's some other  
 20 areas I want to get into. Did you ever hear of a  
 21 Dr. Nickels from this area?  
 22 A. That name doesn't do much for me.  
 23 Q. Okay. The reason I brought that name up is Lynn  
 24 Renz told me that she would have several seminars at  
 25 Brandywine, different areas, and Dr. Nickels would

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1 be the guest speaker who would talk to the group.  
 2 It would either be physicians or secretaries or  
 3 staff nurses who would go in and they would talk  
 4 about Duract. You never heard the name Dr. Nickels?  
 5 A. I don't recall it.  
 6 Q. Okay. When did you first learn of that Plaintiff's  
 7 Exhibit 1, which I gave you, which was the February  
 8 6th letter?  
 9 MS. CARULAS: Don't guess. If you  
 10 know.  
 11 A. I mean, it's in general after the learning about  
 12 liver failure. We've established that. I would say  
 13 actually understanding a box warning would be, I  
 14 think when legal proceedings were coming into the  
 15 picture.  
 16 Q. (BY MR. CARAVONA) You mean when I filed the  
 17 complaint, which is contained in your file, is the  
 18 first time you ever saw that February 6th letter?  
 19 A. I don't know what you mean by you filed a complaint.  
 20 It's when I learned that he was seeking -- Mr.  
 21 Ruttig was seeking counsel or I was being notified  
 22 that they were that I started to look more into  
 23 what's, you know, going on with this medicine.  
 24 Q. Okay. So if I'm accurate then, when you met with  
 25 Lynn she never brought that letter up?

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1 MS. CARULAS: Objection. It's been  
 2 asked and answered.  
 3 A. Yeah, I think I've answered that.  
 4 Q. (BY MR. CARAVONA) But she did indicate there were  
 5 some problems with liver failures at that meeting?  
 6 A. Right.  
 7 Q. All right. Did you go to any of your colleagues and  
 8 say, hey, guys, have you heard about this?  
 9 A. I think that was very much the mode right after I  
 10 learned about it.  
 11 Q. What did they say?  
 12 A. It was --  
 13 MS. CARULAS: Note an objection, but  
 14 go ahead.  
 15 A. It was news to whoever I spoke to.  
 16 Q. (BY MR. CARAVONA) Okay. And that's what I want to  
 17 find out. As of March 24th what you're telling me  
 18 is yourself and your colleagues at the Northeast  
 19 Group, none of you knew about this February 6th  
 20 letter?  
 21 A. Well, my --  
 22 MS. CARULAS: Note an objection. Go  
 23 ahead.  
 24 A. -- day-to-day exposure is not just NOA. I mean, it  
 25 was hospital and the cafeteria and other stuff that

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

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

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

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

15 MS. BITTENCE: Objection.

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

22 Q. (BY MR. CARAVONA) Okay.

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

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1 another one.

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

4 MS. CARULAS: This has been asked and  
5 answered.

6 MR. CARAVONA: Yeah.

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

10 A. Not that I recall.

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

13 A. I think I used that term.

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

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

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

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

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1 Q. No one said that to you?

2 A. Not that I recall.

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

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

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

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

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

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

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

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

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

14 A. Not to my knowledge.

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

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

20 Q. You don't have it?

21 A. Right.

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

1 A. Well, understand that Don Qualters was a rep for <sup>121</sup>  
 2 this medicine as well.  
 3 Q. Okay.  
 4 A. And a face or an image of him doesn't come to mind  
 5 with that name.  
 6 Q. But Lynn was the one you contacted when you found  
 7 out about the liver failure with Ken?  
 8 A. Yes.  
 9 Q. Is it accurate to say that Lynn serviced the  
 10 Northeast Group more regularly than Don Qualters?  
 11 A. I don't know that information.  
 12 Q. Who gave --  
 13 A. I'm in office on Wednesday and I don't know if  
 14 that's a variable. I mean -- So is Tuesday or  
 15 Monday a better day for someone else, I don't know,  
 16 but I'm regularly there on Wednesday.  
 17 Q. Let's talk about you.  
 18 A. Okay.  
 19 Q. The rep that you relied upon most to learn about  
 20 Duract and the precautions and the use of it?  
 21 A. The way it worked out with who I had the exposure  
 22 with and started with and then continued that  
 23 relationship was Lynn.  
 24 Q. Did you ever talk to Don Qualters about Duract?  
 25 A. I don't recall.

1 Q. I know you indicated you had no conversations with <sup>122</sup>  
 2 the pharmacist at Giant Eagle before you had notice  
 3 of Ken's liver failure. Did you have any  
 4 discussions with the pharmacist at Giant Eagle after  
 5 the liver failure?  
 6 A. I think we answered, but not to my knowledge.  
 7 Q. Did you attempt to check how many doses you gave him  
 8 of the Duract, or how many he filled?  
 9 A. Of Mr. Ruttig?  
 10 Q. Yeah.  
 11 A. I checked the prescriptions in our record in the  
 12 chart. I understood in my last note identified that  
 13 he was not taking it. I don't think I totaled them  
 14 up. I understood that what he's taking in the past  
 15 he's taken.  
 16 Q. Okay.  
 17 A. And he's off of it.  
 18 Q. In one of the Interrogatories I asked you the number  
 19 of people you prescribed Duract to and your response  
 20 was, unable to determine at this time. As you sit  
 21 here today, have you been able to calculate the  
 22 number of people you did do that for?  
 23 A. No.  
 24 Q. Did you attempt to?  
 25 A. I don't know how you'd definitely go about that.

1 Q. There's no way for your -- You're computerized at <sup>123</sup>  
 2 your system, are you not --  
 3 A. Yeah.  
 4 Q. -- with patients? There would be no way to pull up  
 5 all patients who have been prescribed a certain  
 6 drug?  
 7 A. Well, I'm not saying I don't recognize a method. I  
 8 didn't know I was challenged to do so. I just  
 9 stated that I hadn't. And then after we answered it  
 10 that way, I didn't know I was challenged to go  
 11 figure out how to do it. There's the altruistic  
 12 method of you just check every chart, which is  
 13 cumbersome.  
 14 Q. Did you do that after you found out one of your  
 15 patients had liver failure?  
 16 A. Check --  
 17 Q. Every chart?  
 18 A. -- every chart --  
 19 Q. Yeah.  
 20 A. -- of mine or --  
 21 Q. Yeah.  
 22 A. I didn't understand that I was recommended or  
 23 instructed to do so.  
 24 Q. Do you think it would have been prudent to do that  
 25 with one of your patients having liver failure?

1 MS. CARULAS: Just note my objection. <sup>124</sup>  
 2 I mean, clearly we're here to talk about  
 3 Ken Ruttig.  
 4 MR. CARAVONA: Okay. I understand. I  
 5 know.  
 6 MS. CARULAS: And I -- To my  
 7 knowledge you don't have a class action  
 8 suit going here, so I don't think we can  
 9 get into what he did as to all other  
 10 patients.  
 11 MR. CARAVONA: I'm asking what he did  
 12 once he found out one of his patients had  
 13 liver failure. Did he contact them and  
 14 notify them of the problem?  
 15 MS. CARULAS: Well, it has no  
 16 relevance to this case.  
 17 MR. CARAVONA: Oh, I think it does.  
 18 MS. CARULAS: How?  
 19 MR. CARAVONA: I don't have to explain  
 20 that to you. If you want to object to it  
 21 we can do that, but it's not privileged and  
 22 I'm not asking him for the names. I'm  
 23 asking if he found out who those people  
 24 were and did he contact them.  
 25 MS. CARULAS: I understand what you

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1 are saying, but my understanding is any  
 2 evidence has to be reasonably calculated to  
 3 lead to the discovery of admissible  
 4 evidence. And I don't see how in any  
 5 remote fashion that can.  
 6 MR. CARAVONA: Well, if he --  
 7 MS. CARULAS: If you want to --  
 8 MR. CARAVONA: If he sent them for  
 9 blood test it did.  
 10 Q. (BY MR. CARAVONA) Doctor, did you try to find out  
 11 who was on Duract?  
 12 MS. CARULAS: Note my objection. I  
 13 guess his question is, did you go through  
 14 every single chart to find out who was on  
 15 Duract? And I object to it, but go ahead.  
 16 A. No.  
 17 Q. (BY MR. CARAVONA) Did you know and call any of your  
 18 patients who were on Duract and warn them of what  
 19 you had learned?  
 20 MS. CARULAS: Objection.  
 21 A. I understand your question and I will give the best  
 22 answer I can. But as of the 3/24 -- or give me a  
 23 second -- 3/24/98 as this information is coming to  
 24 head, I can honestly say I feel as if I very  
 25 responsibly began to react to this information.

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1 What I don't know at this point in time is, No. 1,  
 2 is indeed Duract implicated in my patient Mr.  
 3 Ruttig. I didn't know if it was hepatitis A or B or  
 4 sorosis. I didn't know if it's a matter of if you  
 5 have these four things, then Duract is a variable.  
 6 So I'm gathering information.  
 7 I wouldn't know -- I mean, rare things can  
 8 occur with medicine. I did not check every chart to  
 9 call every patient on Duract to say, stop it,  
 10 because -- that isn't what it had evolved to. I  
 11 mean, if it was that evident the manufacture itself  
 12 didn't take it off for several more months.  
 13 Q. (BY MR. CARAVONA) Is it your testimony that when  
 14 you did bring this to Lynn's attention, she didn't  
 15 indicate to you that there was any necessity to  
 16 monitor people who had been on for extended periods  
 17 of time?  
 18 MS. CARULAS: Note an objection.  
 19 A. I don't recall that specific question, but again,  
 20 I've answered that I'm not using it anymore at that  
 21 point, so -- I'm not prescribing it.  
 22 Q. (BY MR. CARAVONA) But you knew one of your patients  
 23 in all probability, based upon the conversations  
 24 with Lynn and the conversation with Ken's sister, in  
 25 all probability had a liver failure due to the

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1 Duract?  
 2 MS. CARULAS: Objection.  
 3 A. I didn't know, as my note says, the etiology of the  
 4 liver failure apparently is still pending.  
 5 Q. (BY MR. CARAVONA) Well, what about on Exhibit 3  
 6 when you filled that out? To your right hand.  
 7 A. You mean on May 20th?  
 8 Q. Yeah.  
 9 A. I -- Yeah, by then I knew that the reason why  
 10 filling out an adverse experience record was that it  
 11 was warranted that Duract could be associated.  
 12 Q. And you didn't find it necessary to contact any of  
 13 your patients, based upon the information you had in  
 14 March, who were on Duract to go have their liver  
 15 enzymes checked?  
 16 MS. CARULAS: Objection. That's  
 17 already been asked and answered.  
 18 Q. (BY MR. CARAVONA) All right. One more time and  
 19 I'll let you alone.  
 20 MS. CARULAS: Objection.  
 21 A. I think I've answered it. There's six more days in  
 22 March.  
 23 Q. (BY MR. CARAVONA) What about the people who were on  
 24 it for a period of time and could have been  
 25 progressing to the stage of liver failure, did you

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1 worry about them if they had been on it for more  
 2 than ten days?  
 3 MS. CARULAS: Objection.  
 4 A. I worried plenty, believe me.  
 5 Q. (BY MR. CARAVONA) But did nothing?  
 6 A. I did a lot.  
 7 MS. CARULAS: Don't answer that.  
 8 Okay. We're not going to answer that.  
 9 Q. (BY MR. CARAVONA) What did you do? What did you  
 10 do?  
 11 MS. CARULAS: He's already discussed  
 12 with you what he did, who he contacted, the  
 13 forms he filled out. Okay?  
 14 MR. CARAVONA: He filled out forms.  
 15 MS. CARULAS: Right.  
 16 Q. (BY MR. CARAVONA) But you did nothing for any of  
 17 your other patients, did you, to notify them?  
 18 MS. CARULAS: Doctor, don't answer  
 19 that. We've been round and round about  
 20 this whole line of questioning. It is not  
 21 appropriate or admissible in the first  
 22 place.  
 23 Q. (BY MR. CARAVONA) Did you ever call Dr. VanFossen  
 24 back and talk to him about the liver failure of Ken  
 25 Ruttig?



DEPOSITION OF STEVEN LIPPITT, M.D.

1 MS. CARULAS: Note my objection. Go 129  
2 ahead.  
3 A. I don't believe I did, no.  
4 Q. (BY MR. CARAVONA) Did he ever call you?  
5 A. Not to my knowledge.  
6 Q. Did you ever talk to Pam Hughes about what happened  
7 to Ken Ruttig?  
8 A. I don't recall specific conversation.  
9 Q. When you came to learn of the February 6th letter,  
10 was she there and did you say to her, hey, why  
11 didn't I get this letter?  
12 MS. CARULAS: Objection.  
13 A. I don't understand the question.  
14 Q. (BY MR. CARAVONA) Well, you came to learn there was  
15 a letter sent out to all of the physicians regarding  
16 this drug?  
17 A. I don't understand it's to all physicians, because  
18 I'm trying to tell you, and the only one I can  
19 answer for is me, that I don't know that I had it.  
20 Q. I understand that. But did you eventually learn  
21 that physicians did, in fact, receive this letter?  
22 A. Yes.  
23 Q. Okay. Did you ever go to Pam and say, Pam, why  
24 didn't I get this letter?  
25 MS. CARULAS: Note an objection.

1 A. I don't think I held the letter that I could have 130  
2 taken to her and said, this letter. I don't think I  
3 had it in my hand.  
4 Q. (BY MR. CARAVONA) Did you ever go to any  
5 representative at Wyeth and say, why, didn't you  
6 notify me by the Letter or by something in writing?  
7 MS. CARULAS: Objection.  
8 A. I think I've answered it. This form --  
9 Q. (BY MR. CARAVONA) Exhibit 3?  
10 A. -- the adverse experience record, Exhibit 3, is what  
11 I'm understanding as I communicated with  
12 Wyeth-Ayerst about what we need to be doing. I  
13 mean, if there's an accompanying letter that says,  
14 do one, two, three, four, five things, I would  
15 respond appropriately.  
16 Q. Well, I guess my question, Doctor, is did you ever  
17 sit back and say, my gosh, this poor guy has gone  
18 into liver failure and you, the drug manufacturer,  
19 never let us know about all these problems that  
20 could occur? Now you have this letter you're  
21 claiming, what is going on here? Did you ever do  
22 that?  
23 MS. CARULAS: Objection.  
24 A. What I did in my mind is understand that cases are  
25 being reported about liver failure as problems

1 unforeseen and we're in the process of gathering 131  
2 information.  
3 Q. (BY MR. CARAVONA) Doctor, they weren't unforeseen,  
4 were they?  
5 MS. CARULAS: Objection. I don't  
6 understand the question.  
7 MS. BITTENCE: Objection.  
8 Q. (BY MR. CARAVONA) Doesn't that letter of February  
9 6th indicate that there are reported cases and that  
10 you must monitor the liver enzymes after extended  
11 use?  
12 A. I think I've answered that, yes.  
13 Q. Yeah. So there's no question they knew -- everybody  
14 knew about it on February 6th?  
15 MS. CARULAS: Objection. I don't know  
16 -- Wait a minute. Wait a minute. I mean,  
17 the question to you is everybody knew?  
18 Who's everybody?  
19 MR. CARAVONA: Well, he's indicating  
20 that it was still not sure whether or not  
21 there were liver problems with Duract. And  
22 I'm indicating to him that this company  
23 sent out a notice on February 6th, so there  
24 was no question as to whether or not there  
25 was a problem with Duract. They knew there

1 was. 132  
2 MS. BITTENCE: Objection.  
3 MS. CARULAS: I don't think there's a  
4 question in front of you right now.  
5 Q. (BY MR. CARAVONA) You never questioned anybody  
6 later on to say, why wasn't I notified about these  
7 enzyme test must be done?  
8 MS. CARULAS: Objection.  
9 Q. (BY MR. CARAVONA) Did you ever question anybody  
10 about that?  
11 MS. CARULAS: Don, you've asked this  
12 question now probably five times. He's  
13 answered it and now all you're doing is  
14 arguing. I mean, let's save it for the  
15 Jury. This is a bit over and over and over  
16 again.  
17 Q. (BY MR. CARAVONA) Where is Dr. Bennett now?  
18 A. With the Crystal Clinic.  
19 Q. That's in Akron here, right?  
20 A. Yeah.  
21 Q. What about Dr. Kay?  
22 A. Same.  
23 Q. We're getting the Duces Tecum that you were sent,  
24 Doctor. Did you go through these items? And I'll  
25 go through them briefly.

1 MS. CARULAS: Let me find my copy, if <sup>133</sup>  
 2 you will.  
 3 Q. (BY MR. CARAVONA) Doctor, on your report of March  
 4 17th where there's an exam of March 5th, 1998 if  
 5 you'd go to your record there.  
 6 A. When?  
 7 Q. The March 5th exam.  
 8 A. Yes.  
 9 Q. All right. Can you tell me how you authored that  
 10 report? Do you have office -- written office notes?  
 11 A. I would have generally taken notes, and then when I  
 12 dictate not use those as part of the record.  
 13 Q. You'd utilize those in preparing your report?  
 14 A. On a follow-up visit I may take notes, but there  
 15 isn't a set form like I use for my initial history  
 16 and physical. If I feel I need notes and then use  
 17 that to dictate this record.  
 18 Q. And once you get the hard copy, you throw the notes  
 19 away?  
 20 A. Yeah.  
 21 Q. Okay.  
 22 A. Yeah. Yes.  
 23 Q. Is it pretty safe to say that on March -- Strike  
 24 that. In April of 1998 you knew that Mr. Ruttig had  
 25 severe liver failure, had a liver transplant?

1 A. On when? <sup>134</sup>  
 2 Q. In February -- Strike that. In April.  
 3 MS. CARULAS: Don, we have --  
 4 A. I knew it on 3/24.  
 5 Q. (BY MR. CARAVONA) You knew it on 3/24. All right.  
 6 And did you --  
 7 A. Or I may have known it on 3/23 by voice mail,  
 8 3/23/98.  
 9 Q. All right. So you knew that he had the liver  
 10 failure and the transplant at that time?  
 11 A. Yes.  
 12 Q. Did you expect him to make that 5/7/98 appointment  
 13 where you were put in no show?  
 14 A. The need to treat his shoulder or the need involved  
 15 with treating his shoulder was still there.  
 16 Q. And the condition that man was in with liver failure  
 17 and a transplant?  
 18 A. I guess I don't understand your question. You mean  
 19 I should have cancelled the appointment knowing that  
 20 he wouldn't come, or we left it open that he could  
 21 come if he wanted to pursue medical treatment about  
 22 his shoulder.  
 23 Q. What is the recovery period for an individual who  
 24 has a liver transplant, Doctor?  
 25 A. I'm not an authority on recovery for liver

1 transplants. <sup>135</sup>  
 2 Q. Did you think he would be ambulatory in May to come  
 3 to your offices?  
 4 A. I see patients that aren't ambulatory. They come in  
 5 wheelchairs. They again --  
 6 Q. Did you save the message that you received from  
 7 Ken's sister on March 24th?  
 8 A. No -- Well, don't they like delete after so many  
 9 days when they're stored anyway? I mean, I don't  
 10 know if I hit delete, but I don't have it or didn't  
 11 store it.  
 12 Q. So you didn't tape record that when you heard it?  
 13 A. No.  
 14 Q. Who did you go to the academy meeting in New Orleans  
 15 with?  
 16 A. I think I roomed alone.  
 17 Q. Did you go with anybody else from the Northeast  
 18 Group?  
 19 A. Was anyone else of the Northeast Group at the  
 20 academy meeting?  
 21 Q. No. Did you go the same flight with anybody from  
 22 the Northeast Group? When you left and got on the  
 23 airplane, was one of your colleagues with you?  
 24 A. Not that I know of.  
 25 Q. You made no arrangements to go with any other

1 colleague, you went by yourself? <sup>136</sup>  
 2 A. Right.  
 3 Q. Okay. Are you married?  
 4 A. Yes.  
 5 Q. Did your wife go?  
 6 A. No. Well -- No.  
 7 MR. CARAVONA: Off the record.  
 8 (Discussion had off the record.)  
 9 Q. (BY MR. CARAVONA) Were any of your colleagues  
 10 there?  
 11 A. I think I answered that. I don't know. There's  
 12 been, what is it, a year and however long it's been.  
 13 Q. Do you have any information from that academy  
 14 meeting that you would be able to give your counsel  
 15 to give to me to show what meeting that was and when  
 16 it was, specifically?  
 17 A. I usually keep a -- There's a shoulder and elbow  
 18 specialty day. There's specialty societies and they  
 19 give the agenda or whatever and I usually keep that.  
 20 Q. Okay. Could you give that to your counsel to  
 21 provide to me?  
 22 A. If indeed I have it.  
 23 Q. Okay. Were you given any dinners, vacations, perks,  
 24 as they say in the business, to prescribe Duract?  
 25 A. No.

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1 Q. Have you ever been given any, as they say, theater  
2 tickets, dinners, golf outings to prescribe a drug?  
3 MS. CARULAS: Objection. Go ahead.  
4 A. No.  
5 Q. (BY MR. CARAVONA) What about your staff, do you  
6 know if your staff -- whether or not your staff had  
7 received any perks of any type in order to have you  
8 prescribe Duract?  
9 MS. CARULAS: Are you talking like  
10 doughnuts in the kitchen or -- I mean,  
11 what --  
12 MR. CARAVONA: No. A little more than  
13 doughnuts in the kitchen. Dinners out,  
14 days at Firestone, the Diamond Grill for  
15 the whole office. Not doughnuts in the  
16 kitchen, no.  
17 A. I understand your question. The thing about the  
18 question is, you know, has there been a dinner which  
19 was to prescribe a medicine. If it would be a  
20 dinner, it would be to learn about the product, to  
21 learn more about it. And then I would have to  
22 individually decide with that information then of  
23 whether I want to prescribe it. I just want to  
24 clear that I want equate that if I go to the dinner,  
25 I must prescribe it.

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1 Q. Were there any dinners to inform you as to Duract?  
2 A. That I attended?  
3 Q. Yeah.  
4 A. Not that I know of.  
5 Q. Okay. Doctor, in the Duces Tecum I'm just going to  
6 run down these quickly. We asked for No. 5, the  
7 billing statement for Kenneth Ruttig.  
8 MS. CARULAS: We've provided you with  
9 that. Mike's shaking his head yes.  
10 Q. (BY MR. CARAVONA) No. 6 a list of all the books,  
11 periodicals in both your business and personal  
12 library referring prescription drugs or your medical  
13 specialty.  
14 MS. CARULAS: You know, I don't even  
15 know how anyone could begin to go through  
16 and list out everything in one's business.  
17 Q. (BY MR. CARAVONA) Doctor, when you have a question  
18 about a particular drug or any adverse effects,  
19 where do you go to get the information?  
20 MS. CARULAS: I'm going to object just  
21 because I think this was asked about three  
22 and a half, four hours ago, but go ahead.  
23 A. I mean, there's a general reply, but -- I mean, it  
24 depends on, you know, a patient came in the office  
25 on Talasin. I don't think I'd really use that

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1 medicine. And so I, even in that office visit,  
2 consult with a PDR in that setting to know more  
3 about it, why they're there. But in another setting  
4 it would be something different. I mean --  
5 Q. (BY MR. CARAVONA) After you learned of the liver  
6 failure with Kenneth Ruttig, did you consult your  
7 PDR?  
8 A. I'm pretty sure I used all the sources I've talked  
9 about. I mean, we had the samples and had the  
10 insert, and I think I was reviewing all that again.  
11 Q. After you learned of the liver failure?  
12 A. After learning about this, yeah.  
13 Q. Did you notice any change in the information that  
14 you had in the beginning of the prescribing of  
15 Duract until later on?  
16 A. I don't recall any. In the March time frame?  
17 Q. Mm-hmm.  
18 A. I don't recall any.  
19 Q. All right. Rather than going down through all of  
20 these. Doctor, if you and your counsel would look  
21 at No. 7, the brochures advertising, we've gone over  
22 that and you said none of those exist. Do you  
23 maintain copies of all the articles that you have  
24 been published in?  
25 MS. CARULAS: You know just to back

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1 up, Don, we did bring something here. The  
2 way I read 7, okay, is, you know --  
3 MR. CARAVONA: Brochures,  
4 advertisements --  
5 MS. CARULAS: Well, there's a sheet  
6 here that the group has regarding  
7 anti-inflammatories. Whether or not this  
8 was actually given to Mr. Ruttig, we aren't  
9 sure, but that's how I read that. So I'm  
10 trying to be as complete as we can in  
11 providing you information.  
12 Q. (BY MR. CARAVONA) Doctor, the anti-inflammatories  
13 this sheet refers to, can you tell me which  
14 anti-inflammatories that refers to?  
15 A. It would refer to any medicines that are in the  
16 anti-inflammatory class that you felt appropriate to  
17 provide this information.  
18 Q. Naprosyn?  
19 A. Yes.  
20 Q. Feldene?  
21 A. Yes.  
22 Q. Relafen?  
23 A. Yes.  
24 Q. Duract?  
25 A. It's in the anti-inflammatory class.

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1 Q. And this is what you would give the patients?

2 A. I don't know that we gave that to the patient.

3 MS. CARULAS: We don't even know,

4 quite frankly, if this was -- You had asked

5 us to do a search as I read this, so we did

6 a search of this. We don't even know if

7 this was something that was in use at the

8 time, quite frankly, because it doesn't

9 have a date at the bottom.

10 MR. CZACK: Who would know that from

11 the company?

12 MS. CARULAS: I don't know, but we can

13 look into it and find out.

14 Q. (BY MR. CARAVONA) You indicated that Duract is in

15 the anti-inflammatory family in response to that?

16 A. Yes.

17 Q. As is Naprosyn, Relafen, Feldene?

18 A. Yes.

19 Q. Do you see any difference in the two medications in

20 their use, in the medications and their use those

21 two groups?

22 MS. CARULAS: Now or then?

23 Q. (BY MR. CARAVONA) When they first came out in July

24 of '97 between Naprosyn and Duract?

25 A. Yes. If I wanted anti-inflammatory effect, I would

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1 -- Well, I wanted a non-narcotic, non-addicting and

2 I've said it was between Ultram and Duract. And

3 then if I wanted an anti-inflammatory effect, I

4 would probably not use Duract, which was in this

5 individual case why I prescribed Lodine XL. So if I

6 only wanted Duract for anti-inflammatory effect, I

7 wouldn't need Lodine XL.

8 Q. Was it your understanding that Duract was to be used

9 as an anti-inflammatory or as a short-term pain

10 medication?

11 A. Well, my understanding was it was to be used as a

12 non-narcotic, non-addicting pain medicine that's

13 more effective and less side effects than Ultram.

14 Q. The articles, No. 8, copies of any and all articles,

15 studies or other documents authored by you that have

16 been published?

17 MS. CARULAS: My position on that is

18 you have his CV and so it would be just as

19 easy for you to get them off the Internet

20 or go to the library and punch them up as

21 it would for me to go copy them for you.

22 MR. CARAVONA: He doesn't have them

23 all in one group?

24 MS. CARULAS: Neatly organized to

25 copy, uhn-uhn.

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1 MR. CARAVONA: All records or

2 documents submitted by you on behalf to any

3 hospital peer review committee in

4 connection with obtainin hospital

5 privileges?

6 MS. CARULAS: Well, any kind of peer

7 review committee --

8 MR. CARAVONA: No. I'm talking about

9 the packet that he would submit to a

10 hospital at Akron Genera when he wanted

11 privileges. What he would submit to

12 them regarding --

13 MS. CARULAS: That's something you

14 would have to get from Akron General. I

15 mean, if he did, I don't think there's any

16 question about his privileges or anything

17 of that nature.

18 Q. (BY MR. CARAVONA) You don't have anything, Doctor,

19 that you would -- Let's assume that you moved to

20 Cleveland and you wanted to practice out of St.

21 Vincent's or another hospital that you have packaged

22 together that you would give to that hospital to say

23 here's why I should be given privileges here?

24 A. I don't have anything prepared. I don't know what

25 that process would be, but I'd pursue it if that's,

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1 you know --

2 Q. You would pursue it based upon the hospital's

3 request for certain data?

4 A. Right.

5 Q. All right.

6 A. Yes.

7 Q. The policy and procedure manual for Northeast Ohio

8 Orthopedic Group?

9 MS. CARULAS: There is none. I mean,

10 other than there's something for

11 secretaries and how many sick days they get

12 and that sort of thing, but I assume that's

13 not what you're interested in.

14 MR. CARAVONA: So there is none for

15 the partners or employees who are

16 physicians?

17 MS. CARULAS: There's not.

18 Q. (BY MR. CARAVONA) Doctor, do we have in Exhibit 3

19 all of the written communications, documents, or

20 reports that you have submitted or sent to the FDA,

21 Wyeth-Ayerst, or American Home Products which relate

22 to you prescribing the drug Duract at any time?

23 A. Yes.

24 Q. A copy of all written communication sent to you by

25 Northeast Ohio Orthopedic Associates from the FDA,

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

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1 Ruttig case?  
 2 MS. CARULAS: Note my objection to  
 3 that and don't answer that. If there was  
 4 that would be clearly protected and not  
 5 discoverable.  
 6 Q. (BY MR. CARAVONA) Doctor, we've asked you in  
 7 Interrogatories for the face sheet of the insurance  
 8 policies you have in your practice and it's been  
 9 indicated that there's one policy for you. Is there  
 10 any policy in excess to cover the group?  
 11 MS. CARULAS: Note my objection to  
 12 this type of questioning on the record. My  
 13 understanding is there is not. I mean,  
 14 that is -- my understanding is the limits  
 15 here are two million per occurrence, four  
 16 million aggregate. Okay? So that's the  
 17 coverage for this case only for the purpose  
 18 of answering your question.  
 19 MS. BITTENCE: Did that get marked so  
 20 it will be --  
 21 MR. CARAVONA: Let's mark this Exhibit  
 22 4.  
 23 (Plaintiff's Deposition Exhibit 4  
 24 marked for identification.)  
 25 Q. (BY MR. CARAVONA) And, Doctor, let's go through the

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1 exhibits on the record so we have them in order.  
 2 All right? If you would put them in numerical order  
 3 so we have those on the record.  
 4 A. What do I do?  
 5 Q. Okay. Starting with No. 1 just identify on the  
 6 record --  
 7 A. Okay. Exhibit I letter dated February 6th, 1998  
 8 from Wyeth-Ayerst Laboratories with the information  
 9 about the box warning.  
 10 Q. Okay. Exhibit No. 2?  
 11 A. Letter dated June 22nd, 1998 Wyeth-Ayerst  
 12 Laboratories.  
 13 Q. Concerning the withdrawal of the drug?  
 14 A. Concerning the withdrawal of the Duract medication.  
 15 Q. And that's two pages, Doctor?  
 16 A. Yes.  
 17 Q. Okay.  
 18 A. Exhibit 3 is the adverse experience record on  
 19 5/20/98.  
 20 Q. That you prepared?  
 21 A. That I prepared.  
 22 Q. Okay.  
 23 A. And Exhibit 4 is a document from Northeast Ohio  
 24 Orthopedic Associates instructions for  
 25 anti-inflammatory drugs.

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

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

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1 A. I don't without seeing it.  
 2 MR. CARAVONA: Mary, do you have a  
 3 copy of that Exhibit 3 that he sent in  
 4 with Page 2?  
 5 MS. BITTENCE: I only have Page 1. I  
 6 only have one page.  
 7 MS. CARULAS: Oh, yeah. What Dave  
 8 pointed out, if you look at the bottom  
 9 here, just to save us all since I'm getting  
 10 very fatigued here for four hours. At the  
 11 very bottom it says, yes, no. If yes,  
 12 please complete part two of this form. So  
 13 this is telling him he should only do --  
 14 MR. CARAVONA: I have no further  
 15 questions. Thank you, Doctor.  
 16 MR. MOSS: I just have a couple  
 17 questions.  
 18 CROSS-EXAMINATION  
 19 BY MR. MOSS:  
 20 Q. Doctor I just have a few questions. As of your  
 21 last visit with Mr. Rutting on March the 5th of 1998  
 22 he was no longer taking the Duract at that time, is  
 23 that correct?  
 24 A. As I understand from the record in my history, first  
 25 paragraph, he is no longer taking the Duract

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1 medication:  
 2 Q. So he must have told you that he had stopped?  
 3 A. Yes.  
 4 Q. Okay. Do you have a specific recollection of that  
 5 discussion outside what you put in your record?  
 6 A. I may not have heard you.  
 7 Q. I'm sorry. Do you have any specific recollection of  
 8 that discussion with Mr. Rutting outside of what's in  
 9 your record?  
 10 A. Well, it fits perfectly in the framework of what the  
 11 plan and let's get off of it and let's give Lodine.  
 12 I mean --  
 13 Q. Okay. But the fact that you noted in your record  
 14 that he was no longer taking it indicates to you  
 15 that he must have told you that he was no longer  
 16 taking it?  
 17 A. And then I would have specifically questioned him  
 18 that as just part of the history, yes.  
 19 Q. Okay. And if you had any doubt that he was still  
 20 taking it, you would have followed up with that and  
 21 you would have made some reference to that in your  
 22 chart?  
 23 A. Yes.  
 24 Q. All right. And at that point in time you renewed  
 25 only his Lodine prescription?

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1 A. On 3/5/98 the only prescription record consistent  
 2 with my dictated note is Lodine XL.  
 3 MR. MOSS: Okay. That's all I have.  
 4 Thank you.  
 5 MS. CARULAS: Okay. You have the  
 6 right to read over the transcript to make  
 7 sure everything has been taken down  
 8 accurately and I always recommend that you  
 9 do so, so we won't waive signature.  
 10 THE VIDEOGRAPHER: Doctor, you also  
 11 have the right to view the videotape in its  
 12 entirety at this time, or do you waive that  
 13 right?  
 14 MS. CARULAS: You can waive that. You  
 15 don't need to do that.  
 16 THE WITNESS: I waive that right.  
 17 (Plaintiff's Deposition Exhibit 5  
 18 marked for identification.)  
 19 - - -  
 20 (Deposition concluded at 6:00 p.m.)  
 21 - - -  
 22  
 23  
 24  
 25

1 I have read the foregoing transcript of my deposition  
2 taken on Tuesday, December 21st, 1999 from page 1 to page  
3 152 and note the following corrections:

4  
5 PAGE: LINE: CORRECTION: REASON:

6  
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18  
19 STEVEN LIPPITT, M.D.  
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25

1 THE STATE OF OHIO, }  
2 COUNTY OF CUYAHOGA. } ss: CERTIFICATE

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

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

19  
20 Kerri L. Simmons, Notary Public  
21 Within and for the State of Ohio  
22 1511 Terminal Tower  
23 Cleveland, Ohio 44113

24 My Commission Expires: October 26, 2002.  
25

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