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IN THE COURT OF COMMON PLEAS
OF CUYAHOCA COUNTY, OHIO
- - - - -
KEVIN KISS, a minor, by and through his next friend and natural mother, Anne Kiss, et ai.,

Plaintiffs,

vs. Case No.

ANDREAS MARCOTTY, M.D., etal., 402393
Defendants.

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DEPOSITION OF ANDREAS MARCOTTY, M.D.
Friday, March 2, 2001
- - - - -

Deposition of ANDREAS MARCOTTY, M.D., a Defendant herein, called by the Plaintiffs for examination under the statute, taken before me, Karen M. Patterson, a Registered Merit Reporter and Notary Public in and for the State of Ohio, pursuant to notice and stipulations of counsel, at the offices of Mazanec, Raskin & Ryder Co., L.P.A., 34305 Solon Road, Cleveland, Ohio, on the day and date set forth above, at 1:27 o'clock p.m.
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APPEARANCES:
On behalf of the Plaintiffs:
Becker a Mirhkind Co., L.P.A., by
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Cleveland, Ohio 44113
(216) 241-2600

On behalf of the Defendant Andreas Marcotty, M.D.:
Mazanec, Rarkin & Ryder Co., L.P.A., by
BEVERLY HARRIS, ESQ.
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Cleveland, Ohio 44139
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On behalf of the Defendant Cleveland Clinic Foundation:

Roetzel & Andress, by
ANNA CARULAS, ESQ.
1375 East Ninth Street
One Cleveland Center, Tenth Floor
Cleveland, Ohio 44114
(216) 623-0150
On behalf of the Defendant Signature Eye Associates:

Ulmer & Berne LLP, by
PAMELA LOESEL, ESQ.
900 Bond Court Building
1300 East Ninth Street
Cleveland, Ohio 44114
(216) 621-8400
ALSO PRESENT:
Susan Wervey, R.N., B.S.N.

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ANDREAS MARCOTTY, M.D., of lawful age, called for examination, as provided by the Ohio Rules of Civil Procedure, being by me first duly sworn, as hereinafter certified, deposed and said as follows:

EXAMINATION OF ANDREAS MARCOTTY, M.D.

BY MS. TOSTI:

Q. Doctor, would you please state your name for us, please.
A. Andreas Marcotty.
Q. And your home address?
A. 20925 Sydenham, Shaker Heights, Ohio.
Q. Is that a single-family home?
A. Yes.
Q. And could you tell us your zip code, please.
A. 44122.
Q. What is your current business address?
A. 25101 Chagrin Boulevard, Room 150, Beachwood, Ohio, 44122.
Q. And at the time that you rendered care to Kevin Kiss, was that also your business address?
A. Correct.
Q. In 1998, were you seeing patients

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anyplace else besides your professional office?
A. I have a satellite office in the southwest area, and that office has moved locations every so often depending upon the whim of the person I was subleasing from.
Q. Where is it currently located, the satellite?
A. At Strongsville, SouthPark Cleveland Clinic building.
Q. And do you know where it was located in 1998?
A. I believe I saw Kevin in my Beachwood office.
Q. We were discussing your satellite office.
A. I'm sorry, it was at Southwest General Hospital.
Q. Who is your current employer?
A. Cleveland Clinic.
Q. And at the time that you first began caring for Kevin, who was your employer?
A. Signature Eye Associates.
Q. When did your employment change from Signature Eye? Did you change from Signature Eye to Cleveland Clinic as your employer?

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A. The entire Signature Eye Associates group joined the Cleveland Clinic.
Q. When did that occur?
A. January of 99, I think.
Q. Cleveland Clinic bought out Signature Eye Associates?
A. I'm not sure of the technical aspect of it, but we joined the Clinic.
Q. Were you a partner in Signature Eye?
A. Yes.
Q. Did you receive any type of remuneration or monies? Did you realize any monies as a result of their acquisition?
A. Hard assets.
Q. Hard assets?
A. Correct.
Q. What does that refer to, hard assets?
A. Equipment.
Q. Prior to the time that Signature Eye was acquired by Cleveland Clinic, did you or, to your knowledge, Signature Eye have any type of professional business association with Cleveland Clinic?
A. We would -- we had one of the Cleveland Clinic retina doctors come into our

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office. They do consultative work.
Q. Who was that?
A. Again, it varied depending upon the time or -- there were two individuals.
Q. Who were they?
A. Dr. Rob Foster and Dr. Hilel Lewis.
Q. Aside from the consultation work that Dr. Foster and Dr. Lewis did in your offices, did you have any type of relationship with Cleveland Clinic that you would see patients from Cleveland Clinic?
A. No.
Q. Do you know whether Signature Eye had any type of a relationship that Cleveland Clinic patients would be seen at Signature Eye?
A. Only those patients that were referred to see Foster and Lewis and perhaps their own individual patients because it was convenient for them -- it's speculation -- and, otherwise, no.
Q. Do you currently provide professional services for any other entity besides the Cleveland Clinic?
A. No.
Q. And in 1998, did you provide any professional services for any entity aside from

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Signature Eye Associates or Cleveland Clinic if there was a transition to Cleveland Clinic?
A. No.
Q. Have you ever had your deposition taken before?
A. Once.
Q. And why was your deposition being taken in that case?
A. I was asked to give an opinion regarding double vision.
Q. Was that in a medical negligence case?
A. No. It was in a Workmen's Compensation case.
Q. Were you asked by the Plaintiff's attorney or by the employer?
A. I was asked by the Plaintiff's attorney.
Q. Do you recall who that was?
A. No.
Q. When did you give that deposition?
A. Too long ago to remember exactly. I don't know if it was five, seven or ten years.
Q. I'm sure counsel has had an opportunity to speak with you a little bit about

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depositions. I want to go over some of the ground rules with you. This is a question-and-answer session. It's under oath. It's important that you understand my questions. If you don't understand my questions, let me know, I'll rephrase the question or repeat it if you would like. Otherwise, I'm going to assume that you understood my question and that you're able to answer it.

If at any point in time you would like to refer to medical records -- I see you have some sitting in front of you that I assume are the records -- please feel free to do so.

It's important that you give **all** of your answers verbally because our court reporter cannot take down head nods or hand motions.

At some point, counsel may choose to enter an objection for the record. You are still required to answer my question unless your counsel instructs you not to do so. Do you understand those instructions?
A. I do.
Q. Have you ever been named **as** a Defendant in a medical negligence suit?
A. No.

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Q. Have you ever acted as an expert in a a medical negligence suit?
A. No,
Q. Doctor, you are licensed to practice medicine in the State of Ohio; correct?
A. Correct.
Q. And you were also so licensed at the time that you cared for Kevin Kiss; correct?
A. Correct.
Q. Have you ever been licensed in any other state?
A. Michigan, Wisconsin.
Q. Are those currently active?
A. No.
Q. Has your license in Ohio or any other state ever been suspended, revoked or called into question?
A. No.
Q. Doctor, are you board certified in any particular area in medicine?
A. Yes.
Q. What area?
A. Ophthalmology.
Q. Any other area?
A. No.

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Q. Is there any subspecialty or additional credentials given in pediatric ophthalmology?
A. I'm just -- there are no credentials, though I'm a fellow of the Association of Pediatric Ophthalmology and Strabismus.
Q. Your ophthalmology board certification, when did you receive that?
A. Approximately 1982 or 83.
Q. Did you pass that on the first attempt?
A. Yes.
Q. Where do you currently have hospital privileges, or I guess I should ask, do you currently have hospital privileges?
A. Yes.
Q. Where?
A. Cleveland Clinic and at Hillcrest.
Q. And when you first started treating Kevin Kiss, where did you have hospital privileges?
A. The old Mt. Sinai, Hillcrest, courtesy privileges at Richmond, Southwest General.
Q. And then when Signature Eye was acquired --

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A. I'm sorry, also University Hospitals.
Q. When Signature Eye was acquired by Cleveland Clinic, is that when you gained privileges at Cleveland Clinic?
A. Correct.
Q. Has your hospital privileges at any hospital ever been suspended, called into question or revoked?
A. They have been suspended for basically -- because of joining the Cleveland Clinic, not because of any other reason.
Q. So when you joined Cleveland Clinic, hospitals that were not affiliated with Cleveland Clinic suspended your --
A. Correct.
Q. -- credentials?
A. One was voluntary. I chose to do it in advance, and the other was University, which chose to do that.
Q. Have you ever been denied privileges in any hospital?
A. No.
Q. Now, doctor, in regard to your employment with the Cleveland Clinic, what is your title and position?

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A. Staff, section pediatric ophthalmology, Cole Eye Institute. I'm not sure if that answers your question.
Q. Do you hold any administrative titles at Cleveland Clinic?
A. Not at this time.
Q. Have you in the past since your employment?
A. No.

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(Thereupon, PLAINTIFFS' Deposition Exhibit 1 was mark'd for purposes of identification.)

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Q. Doctor, counsel has provided me with what I believe is a copy of your curriculum vitae that's been marked as Plaintiffs' Exhibit 1. I'd like you to look at it, and if you would, for the record, identify the document for us and just tell us if that is indeed a copy of your curriculum vitae.
A. This is a copy of my curriculum vitae.
Q. Are there any corrections or additions --
A. There are additions to it.

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Q. -- that you would like to make to it?
A. Just in the subject of presentations, I have given other lectures in the meantime to residents and other meetings.
Q. Have any of the presentations that you have given dealt with the subject matter of papilledema?
A. No.
Q. Any with arachnoid cysts?
A. No.
Q. Or increased intracranial pressure?
A. No.
Q. Now, doctor, you joined Signature Eye, I believe, according to your curriculum vitae, in 1997; is that correct?
A. Not quite. Signature Eye is an extension, or a new organization, from a previously existing medical group, and that Signature Eye came into existence in 97.
Q. Was it formed from the corporation of Solomon, Sholiton, Marcotty and Roth?
A. Yes.
Q. Were all of those physicians also members of Signature Eye?
A. Yes.

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Q. Doctor, have you authored or co-authored any medical journal articles or textbook chapters or textbooks?
A. No.
Q. Doctor, I had asked you if any of the additional presentations that you had made dealt with some certain subjects. There's a number of other presentations that you have made in the past, and I would ask also if any of these presentations that are listed on your CV deal with the subject matter of papilledema, increased intracranial pressure or arachnoid cysts.
A. Two of them may obliquely list increased intracranial pressure as a cause or a finding or a sign or a symptom, but not directly dealing with those as issues.
Q. Which presentations would those be?
A. Superior oblique palsy and systemic disease.
Q. Do any of these presentations deal with visual field testing?
A. No.
Q. In any of your presentations that you have made to the various residents or medical students, have you done any presentations dealing

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with those subjects that I've just listed for you?
A. No.
Q. Tell me what you have reviewed in preparation for this deposition.
A. I have reviewed my own records. I have reviewed the deposition of Dr. Luciano and Dr. Kosmorsky. I have reviewed the hospital records and the Cleveland Clinic outpatient clinic notes.
Q. When you say hospital records, you're referring to the Cleveland Clinic hospital records?
A. Correct.
Q. Have you reviewed any records from Kids in the Sun?
A. The records I have are letters that were sent to me.
Q. What about Benedetto & Associates, which I believe is a psychological counseling service?
A. I have not.
Q. Did you review a transcript of a conversation you had in August of 1989?
A. Yes, I did.

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Q. I'm sorry, August 18th, 1999. I want to correct the date.
A. Ask that question again, please.
Q. Yes. I misspoke and gave you an incorrect date.
Did you review a transcript of a conversation that you had on August 18th, 1999?
A. If that was the conversation with Kathleen Mulligan, yes.
Q. Did you review any deposition summary from Dr. Bruce Cohen's deposition?
MS. HARRIS: I'm going to object. Other than what he's mentioned, anything that he has read has been -- in addition to this, I'm sorry, was between Dr. Marcotty and myself as to my impressions of the case and my impressions of what's going on, and that's privileged.
Q. Doctor, did you review a deposition summary of Dr. Cohen's deposition?
MS. HARRIS: I'm going to instruct you not to answer anything about letters, correspondence, that we've sent you.
Q. You may answer that question, doctor.
MS. HARRIS: I'm instructing you not to answer.

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MS. TOSTI: The fact that he reviewed a deposition summary, I am allowed to ask him. I don't intend to ask him what the content of the summary was. Whether he reviewed a summary, if he's relying on that information for his deposition, then I have a right to ask him the question as to what he reviewed in preparation for this deposition.

MS. HARRIS: He's relying upon his own involvement in this case. He has a ton of information that I have sent him, or people in my office have sent him, on the defense of this case, and you are not entitled to know even what the identity of that information is, so I'm instructing him not to answer regarding any correspondence, any documents that we've prepared in this office for his benefit, for his defense.

Q. Since the filing of this case, have you discussed this case with counsel from Cleveland Clinic?

A. Counsel was present for a short meeting, but other than a preliminary meeting months ago, no.

Q. Who --

MS. HARRIS: Excuse me. I'm going to

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put this on the record so you can't go any further, Jeanne. There was a meeting with the attorney for Signature Eye Care, I think it was Brian Ramm who attended it; Anna Carulas attended the meeting as well. As you well know, there is some of the care in this case that covers care rendered at the Cleveland Clinic, and technically Anna represents him on that portion of the Cleveland Clinic care, and Brian, who was present for Signature Eye Care, represents his employer. End of subject.

MS. TOSTI: So is it your position then that Cleveland Clinic is representing the doctor on the care that was given to Kevin Kiss while he was an employee of the Cleveland Clinic?

MS. HARRIS: There's one, I think, one visit, if I'm not mistaken, aftenvards.

MS. CARULAS: I don't remember the details of it.

MS. HARRIS: He would have been an employee of the Cleveland Clinic at that time. I don't know if you're saying that that's part of this case or not, but, nonetheless, he was an employee then.

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Q. Since this case was filed, have you discussed this case with any physicians?

A. My partners at Signature Eye Associates, very cursorily, saying I'm involved in a case, but the details were something that they didn't care to know and I didn't care to share with them.

Q. Other than with counsel, have you discussed the case with anyone else?

A. No.

Q. Aside from the clinical notes that appear in the Signature Eye records, do you have any other clinical notes on this case?

A. I have copies of the depositions.

Q. I'm speaking in regard to your own personal notes, doctor.

A. No.

Q. Aside from what is in the Signature Eye Care medical records, do you have any other notes on this case?

A. None that I have written or -- I'm not sure how to answer that question, if that's what you want.

Q. I'm just wondering if there's something besides this file that you have in

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front of you.

A. No.

Q. Is there a textbook in your field of ophthalmology that you feel is the best or the most reliable?

A. There are lots of good textbooks. They're all useful in their own right. There's not one that I rely on.

Q. Is there one that you go to more often than another?

A. No.

Q. Is there any that you use with the residents or medical students that you work with?

A. I would use -- medical students don't use my textbooks. Residents will sometimes. They're more likely to use the ophthalmology home study course, which is a pamphlet book put out by the Academy of Ophthalmology.

Q. As you sit here today, is there any publication that you believe has particular relevance to the issues in this case?

A. Not that I'm aware of.

Q. Have you participated in any research dealing with the subject matter of papilledema?

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A. No.
Q. Any dealing with the subject matter of increased intracranial pressure?
A. Again, research?
Q. Yes.
A. No,
Q. Any that deals with optic nerve atrophy?
A. No.
Q. Doctor, do you specialize or limit your practice to any particular area of ophthalmology?
A. I would have to say that my practice is mostly limited to strabismus. It's not a limitation that I placed upon it. It's the nature of the problems that have come, and it has to do with more serious problems tend to go to institutions.
Q. And would you just give a brief definition of what strabismus is.
A. Crooked eyes.
Q. Is there a particular age group that you see in your practice?
A. I see mostly children.
Q. Do you see some adults?

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A. Again, those adults with crooked eyes or double vision.
Q. Could you give me a ballpark figure as to the percentage of your practice that's children versus adult?
A. 95, 99 percent children.
Q. Do you do surgical procedures in your practice?
A. Yes.
Q. Do you do optic nerve fenestration procedures?
A. Never.
Q. Would that be something that a neuro-ophthalmologist would do, to your knowledge?
A. They might.
Q. What other specialty would do that type of a procedure, to your knowledge?
A. Some oculoplastic or orbital specialists might.
Q. Doctor, what is papilledema?
A. A finding of disc swelling in the setting of increased intracranial pressure.
Q. Is there a difference between papilledema and disk edema?

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A. Yes.
Q. What is the difference?
A. The setting of increased intracranial pressure.
Q. So if the observations, the physical observations, of disc edema and papilledema may be the same, it has to do with the etiology that's causing it?
A. Correct.
Q. Is that a generally accepted definition of the difference between disc edema and papilledema as you described? Is that generally accepted by most ophthalmologists?
A. That's how I use it.
Q. Is it your understanding that that's what most ophthalmologists would term the difference between papilledema and disc edema?
MS. HARRIS: Objection.
A. That's what I would assume, but it's not a subject that I frequently discuss.
Q. When papilledema is present, is it usually bilateral?
A. I am not -- it could be both unilateral and bilateral, but I don't think I can tell you whether it's usually.

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Q. So you couldn't say more than 50 percent of the time it's bilateral?
A. I wouldn't say. I don't have that experience.
Q. What, from a physiologic perspective, is the difference between acute papilledema and chronic papilledema?
MS. HARRIS: You can answer these questions.
A. Repeat the question.
Q. I'm asking you what the difference between acute and chronic papilledema is from a physiologic perspective.
A. It would be based upon the duration of the swelling and the duration of the increased intracranial pressure.
Q. Is there a point in time when you would term it a chronic papilledema, after so long it's termed chronic?
A. I wouldn't term it chronic papilledema.
Q. It's not a term you would use?
A. I don't think I have the knowledge base to decide that this is chronic or acute. It's increased intracranial pressure related

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again.
Q. How often in your practice do you see patients with papilledema?
A. Maybe one a year.
Q. Now, doctor, you said that papilledema is caused by increased intracranial pressure; is that a fair statement?
A. I believe so.
Q. When you see a patient with papilledema, have they already been diagnosed with increased intracranial pressure?
A. They may have been. I'm --
Q. Go ahead and finish your answer.
A. I had finished.
Q. What I'm trying to understand is do you diagnose patients with increased intracranial pressure?
A. No.
Q. So would you be in a position to diagnose a patient with papilledema if the patient hadn't already had an established diagnosis of increased intracranial pressure?
MS. HARRIS: Can you repeat that question?
(Record read.)

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MS. HARRIS: I'm going to object, because I'm not sure I understand the question.
A. I don't know how to answer that question.
Q. Doctor, you said you don't diagnose increased intracranial pressure; correct?
A. Correct.
Q. And you told me that you have to have increased intracranial pressure in order to make the diagnosis of papilledema; correct?
A. Okay.
Q. So as an ophthalmologist, do you ever make the diagnosis of papilledema if there isn't an established diagnosis of increased intracranial pressure?
A. I would never say, per se, this is papilledema. I might say this is a concern I have, so that it's a working diagnosis. It could be changed.
Q. Have you ever had patients referred to you for evaluation, management and followup when they have been diagnosed with papilledema?
A. No.
Q. How is papilledema diagnosed?
A. I would presume that a neurologist or

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neurosurgeon would diagnose that using various tests. Again, I really can't diagnose papilledema.
Q. Can you, as an ophthalmologist, diagnose disc edema?
A. Yes.
Q. How is disc edema diagnosed?
A. A finding of swelling of the optic nerve head.
Q. Now, is it necessary to dilate the eyes in order to do a complete evaluation for disc edema?
A. No.
Q. Can you gain any additional information by dilating the eyes in evaluating for disc edema?
A. I can.
Q. What additional information is gained by doing a dilation when you're evaluating for disc edema?
A. I have a better view of the optic nerve.
Q. And as you look at the internal structure of the eye, what is it that you're looking for to determine if disc edema is present

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or absent or what degree of disc edema there is? What are you looking at?
A. I'm looking at the degree of the swelling that's present, or the flatness, how much I'm looking for, the signs of exudates or hemorrhages. I'm looking for a loss of the blood vessel visibility as those blood vessels leave the optic nerve.
Q. When you look at disc edema, is there some nomenclature for grading the severity of it?
A. I'm sure there are grading systems for everything.
Q. What type of grading system do you use when you're evaluating disc edema?
MS. HARRIS: Objection. Go ahead.
A. I use a system of mild swelling, moderate swelling, severe swelling.
Q. Doctor, when there is disc edema, is there usually a loss of definition or blurring on the optic disc margins?
A. That is what blurring is, yes.
Q. With papilledema, do you know if there's a loss of definition seen in any particular portion of the disc margin first?

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A. My understanding is that it tends to show up inferiorly first.
Q. Doctor, when increased intracranial pressure causes papilledema, does it cause the blood vessels in the optic disc to dilate and be pushed forward?
A. It may cause it to dilate, but, again, that may be an inaccurate finding.
Q. Why would that be?
A. I don't know why that is. That's just -- I understand that it's not an accurate diagnostic tool to decide whether this is disc edema or not or papilledema or not. It can occur.
Q. Now, is a finding of papilledema cause for concern?
A. I can't find papilledema. I can only find disc edema.
Q. Is disc edema cause for concern in a patient?
A. It would depend upon the severity of it.
Q. You said that you use a nomenclature of mild, moderate and severe. Could you tell me what it is that causes you to classify disc edema

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as mild, moderate or severe?
A. I would say primarily the degree of swelling of the nerve head, the physical swelling that I could visualize, the degree of blunting of the edge of the nerve. Tortuousity is a factor, engorgement, the finding of hemorrhages and exudates.
Q. For severe disc edema, which of those things would you find?
A. I would use -- I would find hemorrhages and exudates, I would find very swollen optic nerves, significant blunting of the blood vessels as they cross over the nerve edge, perhaps even -- well, exudates. Those would be the findings that I would be looking for.
Q. How about with moderate disc edema?
A. I would be less inclined to see hemorrhages and exudates. There would be less swelling, less engorgement of the vessels, if there were engorgement. Again, more in moderation.
Q. And mild disc edema?
A. Mild is more difficult to diagnose, I believe, in that it is -- you may see blunting of the nerve, you may see normal vessels, and it's,

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again, a less severe finding overall.
Q. To your knowledge, are there any complications associated with papilledema?
MS. HARRIS: If you know. Objection.
A. Again, papilledema is increased intracranial pressure. So you're looking at complications that could be present or that can occur, yes.
Q. Would you tell me what those complications are?
MS. HARRIS: Objection. If you know.
MS. CARULAS: Please note my objection as well.
Q. You may answer.
MS. HARRIS: Go ahead, if you can.
A. Okay. You might have vision loss, double vision, other neurological abnormalities.
Q. What type of neurological abnormalities?
A. That's out of my bailiwick. I don't know.
Q. So that's not something that you would be able to diagnose; correct, if there was a neurological abnormality as a result of papilledema?

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A. Correct.
Q. Now, doctor, we've talked about disc edema. Are there complications associated with disc edema?
A. With very prolonged, protracted disc edema, you can have perhaps visual field loss.
Q. When you have described long or protracted, how long are we talking about?
A. It's not something I deal with. It's something that I refer off to neuro-ophthalmologists or neurologists.
Q. So when you see someone with disc edema, you refer that patient to another specialist?
A. Yes.
Q. What is optic atrophy?
A. Death of the optic nerve, cell loss in the optic nerve, damage to the optic nerve. Optic atrophy is just a finding, again.
Q. And when you previously referred to vision loss associated with disc edema, is that vision loss in the visual fields a result of optic atrophy?
A. Optic atrophy is the end result of the damage.

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Q. Doesn't the optic atrophy cause the loss or the defects in the visual fields?
A. Not technically, no.
Q. No?
A. No.
Q. If you have atrophy of the optic nerve, you're not going to lose that portion of the visual field?
A. You most certainly will, but the atrophy isn't what caused the loss of the visual field.
Q. The cause for the loss of the visual field, would that be like increased intracranial pressure causing the optic atrophy causing the loss of vision? Is that what you're referring to?
MS. HARRIS: Note my objection.
A. Yes. The reason for the swelling would be what would cause the damage to the nerves, which would then result in their cell death, which would then result in the development of the atrophy.
Q. Doctor, if a patient has persistent papilledema, are they at increased risk for optic atrophy as compared to someone who doesn't have

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papilledema?
MS. CARULAS: Objection.
A. Papilledema is increased intracranial pressure, again. That's the issue of papilledema. So you can have vision loss from papilledema, yes, or from increased intracranial pressure.
Q. If a patient has persistent disc edema, are they at increased risk for optic atrophy?
A. Yes.
Q. Are there different stages or levels of severity of optic atrophy?
A. There may be. I'm not well versed in a classification system to be able to say with this grade you have this, and this grade, yes. Again, it's a qualification: mild, subtle, moderate, severe, but you can have a severe atrophy with good vision and you can have mild atrophy with poor vision.
Q. As an ophthalmologist, do you see patients in your practice and follow them for optic atrophy?
A. I see patients with it, and I will see them back with that same diagnosis, yes.

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Q. Would you follow a patient for the progress of optic atrophy in your practice?
A. Not directly, no.
Q. If you noted that in a patient, would that be an instance where you would refer the patient to another specialist to be followed for any progression of the optic atrophy?
A. More for an analysis and assessment as to why it took place.
Q. Doctor, when a patient has optic atrophy, is the vision loss proportionate to the severity of the optic atrophy?
A. No.
Q. Would you agree that visual signs of optic atrophy usually cannot be seen on examination of the internal structures of the eye until disc edema or papilledema resolves?
A. You're asking me then if I can see optic atrophy?
Q. In the presence of disc edema or papilledema.
A. I would say, generally, no.
Q. So in most instances, the disc edema or papilledema would have to resolve before you could on physical examination view changes that

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would be suggestive of optic atrophy?
A. Yes.
Q. Doctor, do you know whether optic atrophy from papilledema and increased intracranial pressure takes some time to develop?
A. That's my understanding, yes.
Q. In general, does the risk of optic nerve damage increase with the duration of the papilledema?
MS. CARULAS: Objection.
MS. HARRIS: Objection. You can answer.
A. It would depend upon the severity of the disc swelling, so that if there is extreme disc swelling, then yes. If it's very mild disc swelling, then it can go on for a tremendously long time, I understand.
Q. Have you ever said that when papilledema is relieved quickly, you're less likely to have damage to the optic nerve?
A. Have I ever said that? Not that I recall.
Q. Do you agree with that statement, that when papilledema is relieved quickly, you're less likely to have damage to the optic nerve?

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MS. CARULAS: Objection.
A. You know, I don't relieve papilledema, I don't see those children, so I don't know how to answer that question, other than I don't know.
Q. Now, doctor, when optic atrophy occurs, are there visible changes that can be seen on funduscopic examination of the internal structures of the eye?
A. Yes.
Q. What type of changes would you see if optic atrophy was present when you examined the internal structures of the eye?
A. You're looking for a difference in the color of the optic nerve, the thinning of the vessels, and on some -- with more cooperative people you can sometimes even see a thinning of the nerve fiber layer or a loss of the nerve fiber layer.
Q. Are there progressive changes that can be seen as the optic atrophy progresses so if you did serial examinations, you would see it change?
MS. HARRIS: Objection.
A. You might see a gradually increasing degree of paleness to the nerve.

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Q. Anything else that might be observed in a progressive optic atrophy?
A. None that I -- no.
Q. When vision loss results as a result of papilledema and increased intracranial pressure, is there a particular field of vision that's affected first?
A, Not that I know of.
Q. Doctor, in children, is it common for them to compensate for vision loss and not be aware of it?
A. Yes.
Q. If a patient has persistent papilledema, do you know how that is treated?
MS. CARULAS: Objection.
A. Treat the problem.
Q. Treat the underlying cause?
A. Yes.
Q. Any other treatments that can be utilized for a patient that has persistent papilledema?
MS. HARRIS: Note my objection.
A. Again, you spoke of optic nerve fenestration which can be used for treatment of this. But, again, you must really relieve the

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underlying problem.
Q. What is an optic nerve sheath fenestration?
A. You cut a small window in the optic nerve sheath.
Q. And is the purpose of that procedure to relieve the compression on the optic nerve?
MS. HARRIS: Note my objection.
A. You know, I don't do this procedure so that I don't know the exact details as to how it functions and the exact purpose of it, whether it is relieving the pressure on the optic nerve or it's relieving the pressure from the intracranial fluid, or whether it's relieving the axon transport. I don't know the exact mechanism as to how it relieves the pressure on the nerve.
Q. Have you ever referred a patient with chronic papilledema or chronic disc edema for an optic nerve sheath fenestration?
A. No.
Q. If a patient has papilledema from increased intracranial pressure, does it always go away when the intracranial pressure is reduced back to normal?
MS. HARRIS: Note my objection.

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A. Ultimately it will go away. It's not necessarily an immediate disappearance. There's a delayed response.
Q. Would you agree, when a patient is found to have papilledema, the patient should have followup evaluation to determine if the papilledema has resolved or whether it's persistent?
MS. CARULAS: Objection.
MS. HARRIS: Objection.
MS. LOESEL: Objection.
A. I guess the decision to do that, to follow up, would really be made by the person who is treating the papilledema and what they believe is appropriate in the care of that individual.
Q. You don't treat papilledema; is that correct?
A. Correct.
Q. Now, in a patient with disc edema, when the patient has been diagnosed with disc edema, should that patient have followup evaluation to determine if the disc edema has resolved or whether it's persistent?
A. Correct.
MS. HARRIS: Objection.

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Q. I'm sorry, doctor, I didn't hear your answer.
A. Correct. I would, yes.
Q. Would you agree that it would be the standard of care to do so in February of 1998, if a patient had disc edema, that it would be the standard of care to follow that patient to determine if the disc edema was resolving, staying stable or getting worse?
MS. CARULAS: Objection.
MS. HARRIS: Objection.
MS. LOESEL: Objection.
MS. HARRIS: By whom?
MS. TOSTI: Well, first off, by an ophthalmologist.
A. It would be a useful -- it would be useful to have that piece of information, yes.
Q. You don't believe that it would be the standard of care to follow the patient and determine what was happening to the disc edema if it was noted by you?
A. I would follow that.
Q. Would most ophthalmologists follow the patient to determine what was happening with the disc edema?

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A. I would presume so.
Q. What is visual field testing?
A. It's a test which looks at the ability to see in the peripheral edges of your field of vision.
Q. Do you do visual field testing in your office?
A. I do.
Q. And how do you do the visual field testing?
A. Using an automated perimeter.
Q. Could you describe just briefly how the visual field testing is done.
A. The physical arrangement?
Q. Yes, how the test is done, what it is that the patient has to do and what is being tested.
A. The patient sits in a chair, their head is in a big bowl, they have to maintain fixation on a small light, and while they maintain fixation of the small light, they have to be aware of lights blinking at them from the peripheral -- or from the side, and press a button when they see this light blink.
Q. And then do you get some type of a

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printout after the test has been completed --
A. Correct.
Q. -- that indicates when the patient responded in seeing the light?
A. Correct.
Q. Why do you use that type of testing in the office?
A. I'm not sure how to answer that. What do you mean?
Q. Are there other ways to test visual field?
A. You can do confrontation fields.
Q. Why do you use the machine in your office?
A. It is, in theory, a more accurate test, a more sensitive test.
Q. Why is that?
A. You're using smaller targets.
Q. And so you would be able to define more clearly exactly the area of the visual field that may have a defect because the target is smaller?
A. Correct.
MS. CARULAS: Objection.
Q. Do you find there are defects in the

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visual fields with the automated testing that might not show up with the confrontational testing?
MS. HARRIS: Objection.
MS. CARULAS: Objection.
A. Yes.
Q. In patients that you have seen with disc edema, have you ever done sequential visual field testing to monitor for the development of visual field defects?
A. It's not something I see very often, and the children that I see it in, who have it, the visual field tests that I do with them, when I do sequential visual fields, it occurs in older children.
Q. So you do do sequential visual fields in some patients; correct?
A. Yes.
Q. Do you do it to monitor whether there has been any progression of the visual field defects?
A. Or the development, yes.
Q. Doctor, would you agree that when a patient has chronic disc edema that they should be followed with sequential visual field

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testing?
MS. HARRIS: Objection.
MS. CARULAS: Objection.
MS. LOESEL: Objection.
A. Repeat the question.
(Record read.)
A. I would follow them with repeat visual fields.
Q. And why would you do that, doctor?
A. To monitor their visual field and their vision status.
Q. And would you be looking to see whether any defects were occurring?
A. That would be the purpose, yes.
Q. And if you found that there were defects occurring, would that suggest that there may be optic atrophy occurring?
A. No, not at that time necessarily.
Q. Would that at least raise a concern that optic atrophy may be occurring?
MS. HARRIS: Objection.
MS. CARULAS: Objection.
A. Atrophy is an end product. Could there be damage occurring, okay.
Q. Well, what would we be talking in

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regard to damage, what would be the damage?
A. The nerve fiber layer of the axons, the nerve itself, but the atrophy is the end result of that damage. So you're not going to see -- semantics.
Q. So before you have atrophy, you have nerve fiber damage?
A. Correct.
Q. So that you would do sequential visual field testing in a patient that had chronic disc edema, and if you saw defects, it might suggest that there was some nerve fiber damage?
MS. HARRIS: I'm going to object. You misconstrued his testimony all the way through. He said he sometimes does sequential visual fields with older children. Now you're saying in every case.
MS. TOSTI: I didn't say every case.
MS. HARRIS: Essentially that's exactly what you did.
Q. Doctor, do you understand my question?
A. I understand the question you're asking, but whether you're going to apply it to every child or some is the question.

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Q. I'm applying it to the children that you're doing sequential visual fields on. In those instances when you determine that sequential visual fields are appropriate, one of the things that you're looking for is a visual field defect; correct?
A. Correct.
Q. If you find that the child that has had a chronic disc edema that you have done sequential visual fields on has a visual field defect, would it suggest the possibility of nerve fiber damage?
A. Yes.
Q. Doctor, when you observe a patient that has chronic disc edema, do you look for what the cause might be?
A. No. I generally will involve other people to look for that cause.
Q. So that when you see that, if it suggests that there may be some other underlying cause, would that be an instance where you would refer the person for evaluation by another specialist --
A. Yes.
Q. -- to determine the cause?

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A. Yes.
Q. Do you have an independent recollection, as you sit here today, of Kevin Kiss? Do you remember him?
A. Not the face, not the child, per se, not the habitus.
Q. Do you remember any of the events surrounding his care?
A. I remember seeing him twice.
Q. I'm going to ask you some questions about the care that you rendered to him, and if you would like to have the records available, feel free to do so. When was the first time that Kevin Kiss came under your care?
A. February 9th, 1998.
Q. And how is it that he came to see you on February 9th, 1998?
A. I believe his pediatrician referred him to see me.
Q. Can you tell me who that was, if you know?
A. Michelle Levy.
Q. And what is your understanding as to why Kevin came to see you on February 9th, 1998?
A. He was complaining of blurry vision.

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He had had a fenestration of a brain cyst, and he was complaining of frequent winking.
Q. Did he also complain of headache and neckache at that visit?
A. Not at the presentation. Later in the examination, that was a complaint that I had elicited from him.
Q. But at that visit on the 9th, he did complain of headache and also neckache?
A. I asked him.
Q. Did he respond he did have headache and he did have neckache?
A. The parents responded, yes.
Q. At the time of this visit or shortly before, did you receive any information from Cleveland Clinic about the care that he had received at Cleveland Clinic?
A. No.
Q. Who accompanied Kevin, if you recall, to the February 9th, 98 office visit?
A. Obviously, a parent. If I look at the sign-in page, I may have -- whoever signed it will be the person who accompanied him, and whether there was a second parent there or not, I don't recall. Do you want me to look?

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Q. Yes, if you have a sign-in page, because I don't have a copy of the sign-in page, I don't believe.
MS. HARRIS: You have a complete copy of the records, Jeanne.
A. Anne Kiss.
Q. I do not have in my records anything that is a sign-in page. May I see it? Is one of these filled out each time a patient came in to see you?
A. First time.
Q. Just the first time?
A. Just the first time.
MS. TOSTI: Just to have a complete set, I would make a request for that page.
Q. When Kevin came in, did you obtain a history from Kevin or his mother or parent?
A. Yes.
Q. And what history did you obtain from him or his mom?
A. Again, that he had had brain cyst fenestration on December 17th for a brain cyst. He was complaining of facial stress is the words the family had used. He had been frequently winking. And later in the exam, he complained of

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I headaches and neckaches.
Q. Now, I believe there's a notation at the right-hand side of the page. First off, the writing that's at the top of this page, is that --
A. That's different. That's my assistant.
Q. Who is your assistant that wrote the top part of the page?
A. I believe it's a woman by the name of Sarah, but, again, she -- there are no initials by the side, so I'm guessing.
Q. And then your notations are underneath her handwriting; is that correct --
A. Correct.
Q. -- at the right-hand side of the page in your handwriting. It looks like it says Motrin for pain.
A. Yes.
Q. Am I reading that correctly?
A. Yes, that's correct.
Q. Did they tell you that Kevin was taking Motrin for pain?
A. Yes.
Q. What type of pain was Kevin having

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that he was taking the Motrin for?
A. I didn't inquire until later as to why he was taking Motrin for pain, and they didn't tell me that he was having pain and taking Motrin for this reason. He just -- are you allergic to any medicines, are you taking any medications.
Q. They didn't say if it was for the headache or the neckache?
A. No.
Q. How old was Kevin when you saw him on February 9th, 1998?
A. That would make him eight years old.
Q. Wasn't he actually about seven-and-a-half at the time that you saw him?
A. Actually, you're right.
Q. Did you have any knowledge of any vision testing that was done on Kevin prior to the time that you saw him?
A. I had no knowledge on Kevin at all.
Q. And you didn't have any type of records or anything that were given to you from the parents or --
A. This is what I had.
Q. You have to let me finish my question because our court reporter is going to have a

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hard time taking us both down at the same time.
The parents did not provide you with any records and you didn't obtain any records from any other source when you saw him on February 9th of 98; correct?
A. Correct.
Q. Now, did you perform any type of an examination on Kevin when you saw him on February 9th?
A. I did.
Q. What type of an examination did you do?
A. I did an eye exam, specifically vision testing, depth perception testing, muscle balance testing. I looked at the back of his eye,
Q. When you did the examination of his eye, that was a Funduscopic examination of the eye?
A. Yes.
Q. Did you dilate Kevin's eyes?
A. I did.
Q. When you did the internal examination of the eye, did you notice any deviations from normal in the Funduscopic examination?
A. There were deviations before that

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point that were not normal.
Q. Well, we'll talk about some of the other findings on your exam.
A. He had what I thought to be disc swelling.
Q. And if you could describe for me what you saw when you looked in the internal portion of his eye.
A. What I saw was a swollen disc, no hemorrhages or exudates, and that was the extent of my note.
Q. Now, we talked a little bit about the grading of swelling. Do you recall the severity of the swelling, whether you considered it mild or moderate or severe, or whatever nomenclature you would attach to it, if you recall?
A. Because there was no descriptive terminology to apply to the nerve, it would have been on a mild to moderate scale; certainly not a severe scale.
Q. And you noted the disc edema in both of his eyes; is that correct?
A. Correct.
Q. Now, doctor, in your next note, I believe down in the middle of it, could you read

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us what you have written there? I think it starts with plus sign, disc edema. If you would just read that.
A. Plus disc edema, OU.
Q. The next line?
A. Complaining of headaches, neckaches.
Q. Now, the OU, that refers to both eyes?
A. Both eyes.
Q. It appears that you underlined OU, and then it appears that there's an exclamation point after that. Is that an exclamation point?
A. Yes.
Q. Why did you underline the notation for both eyes and place an exclamation point after it?
A. Presumabiy because I wasn't expecting to see it.
Q. Was the finding of positive disc edema in both eyes cause for concern in Kevin's case?
MS. HARRIS: Objection. Go ahead.
A. In the setting that he arrived to see me, yes.
Q. And why is that?
A. He was having double vision. He was having crossed eyes. He had a history of cyst

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fenestration, and then a third finding additionally of disc swelling.
Q. Did the symptoms that you just described and your findings raise a high level of suspicion that he may be having increased intracranial pressure?
MS. HARRIS: Objection.
A. I was concerned.
Q. I'msorry.
A. I was concerned about that, yes.
Q. Assuming Kevin's disc edema was caused by increased intracranial pressure, would he be at increased risk for optic nerve atrophy?
MS. HARRIS: Objection.
MS. CARULAS: Objection.
A. If it's untreated.
Q. Did you take any photographs when you dilated Kevin's eyes at that visit?
A. I did not.
Q. Did you note any signs of optic atrophy when you did the internal inspection of the eye?
A. I did not make any notation about optic atrophy, so, therefore, I'm assuming I did not see any optic atrophy.

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Q. I think we talked about this previously. In the presence of disc edema, it would be difficult to visualize changes consistent with optic atrophy?
A. Correct.
Q. Now, when you looked at the internal structures of his eyes, were you able to determine if his disc edema was the result of an acute or a chronic problem?
A. No.
Q. Did you note any signs of nerve weakness in your examination of Kevin?
A. No.
Q. Now, you have a notation on the left-hand side of the page in regard to the right eye, I believe. Would you read us what that notation is.
A. This is back to his history in that I was told -- asked questions related to this, and I was told that the right eye had improved in the sense that he had presented originally with what was thought to be a Compressive third and ptosis, and I believe this was related to me by the family and that it had improved.
Q. Your actual notation --

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A. It says right eye improved/after, and ptosis. On the other side of the slash, fine, compressive third.
Q. That's not a finding that you found at your examination?
A. No. No.
Q. You have a figure here with eights in four different areas. Could you tell us what that refers to?
A. That's a graph or a diagram indicating the degree of crookedness or crossing of his eyes in different positions of gaze: Up, down, left and right.
Q. In the bottom right-hand corner of your notation, there's a question mark and an ET. Could you read us what that block of information says.
A. It says, question ET secondary to ICP versus ACC space ET. And then the second line is question HA secondary to ET/or ICP.
Q. And does that refer to question etiology?
A. No. Question esotropia secondary to increased intracranial pressure versus accommodated vasotropia, and question headache

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secondary to esotropia, crossing eyes, or ICP.
Q. Now, you did find some crossing of the eyes in Kevin; is that correct?
A. I did.
Q. The degree of crossing that you noted, could that be due to a neurological problem?
A. The pattern that he had did not suggest a neurological problem.
Q. Could it have been due to a neurological problem?
MS. HARRIS: Objection.
MS. CARULAS: Objection as well.
A. Yes.
Q. Considering Kevin's recent cyst fenestration and the symptoms of the headache, the neckache, the frequent blinking, the disc edema, did you have any concern that his crossing may be due to increased intracranial pressure?
A. I was concerned that that was related, yes.
Q. Now, aside from what we've just discussed, did you find any other deviations from normal on your examination and testing of Kevin that you felt was significant?
A. Again, going back to the eight figure,

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at the time of my examination, he also had more crossing up close, which is very typical for children who have crossing eyes. They will oftentimes have a greater deviation in near than in distance. The fact that when I put that plus three in front of him, which is the third line of the column we talked about, his crossing disappeared and suggested that his crossing may be focusing-related crossing rather than neurological problems.
Q. Doctor, what actual testing of the vision did you do at this visit?
A. Visual acuity testing.
Q. **How** did you do visual acuity testing? How did you do it?
A. Snellen acuity chart.
Q. Did you do any visual field testing of Kevin when you saw him on February 9th of 98?
A. I did not.
Q. Now, knowing Kevin's history when you saw the bilateral disc edema, did you have heightened concern that Kevin may have increased intracranial pressure causing papilledema?
MS. HARRIS: Objection to heightened concern.

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Q. I didn't hear your answer, doctor.
A. Repeat the question again now.
Q. I said: When you saw Kevin on February 9th, knowing his history, when you saw the bilateral disc edema, did you have a heightened concern that Kevin may have increased intracranial pressure causing papilledema?
MS. HARRIS: Objection.
A. I did.
Q. Tell me what was within your differential diagnosis at that visit when you saw him.
A. My thoughts were that there was a possibility that his crossing was due to a focusing-related crossing eye problem, treatable by glasses, versus crossing induced by an intracranial pressure problem, and that his headaches, they also had been due to an attempt to control the double vision either from the focusing-induced crossing or increased intracranial pressure.
The disc edema wasn't of such severity that it necessarily meant increased intracranial pressure. It may have in fact been just simply idiopathic in that it was -- it was always there,

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and that's the way he is. So there were a number of different issues that I was looking at or thinking about.
Q. And did you know how long Kevin had had disc edema before you saw him?
A. I don't even know if he had disc edema -- I mean, he had disc swelling, correct. I don't know how long he had this finding. I don't know, again, if that was him, that's always been him, or whether this was brand new or whether it's been there for four months, five months.
Q. Doctor, if you had a heightened concern that Kevin's disc edema and other symptoms may be related to increased intracranial pressure, is there a reason why you did not do visual field testing to check for signs of nerve damage?
MS. HARRIS: Objection. Go ahead.
A. There was no evidence of nerve damage at that time, and, secondly, because I don't treat increased intracranial pressure problems, it was important to get him to see the neurosurgeon or the pediatric neurologist, whoever was going to be caring for him, and get

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him in there to be evaluated and then treated appropriately.
Q. Well, doctor, isn't one of the ways you see if there were signs of nerve problems is by doing the visual field testing and finding that there's a defect in the part of the visual field? Isn't that how you would determine that there was an optic nerve problem?
A. That's how you would show the damage to the nerve, yes.
Q. So if you have got a heightened concern that the disc edema may be related to increased intracranial pressure, wouldn't you do visual field testing to see if there was in fact any damage to the optic nerve?
MS. HARRIS: Objection. Go ahead.
A. It would not have altered what I was going to do, which is get him back to the neurosurgeon.
Q. Did you believe that the neurosurgeon would take care of referring him to an appropriate person for followup visual field testing?
MS. HARRIS: Objection.
MS. CARULAS: Note an objection.

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A. I can't answer what he would do in this sense. Again, he deals with increased intracranial pressure -- that is by nature his job -- and, therefore, the followup, the care, the management that he's going to give to that individual is going to be driven by what he finds and what he thinks is appropriate.
Q. Would you agree that, when Kevin was diagnosed by you with disc edema, he should have been followed closely for the development of optic atrophy?
MS. HARRIS: Objection.
MS. CARULAS: Objection.
MS. HARRIS: You know, Jeanne, you use words like heightened, closely. Define those terms.
MS. TOSTI: I'm sorry. If the doctor has a question, he can ask me to define my terms, but that's not for you to do, and I object to your interruption and suggestion that I have to define terms for you.
Q. Doctor, if you don't understand my question, please let me know and I'll be happy to rephrase it or to define a term.
MS. HARRIS: Jeanne, I'm representing

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him, and I have every right to ask you to define the terms.
MS. TOSTI: No, you do not; the doctor only. I'm not taking your deposition; I'm taking the doctor's, and if he has difficulty with the question that I'm asking, he can ask for an explanation.
MS. HARRIS: Well, Jeanne, we can agree to disagree.
Now, doctor, if you need the question read back or a definition, please let her know.
A. Please give me a definition of what you mean by closely.
Q. Well, let's just take the word closely out.
Would you agree that when Kevin was diagnosed with disc edema that he should have been followed for the development of optic atrophy?
MS. HARRIS: Objection.
MS. CARULAS: Note my objection as well.
A. Optic atrophy would be a side result of damage to the nerve, and the cause of the damage to the nerve would be what would decide

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how that should be cared for and evaluated, whether he should be referred for -- what kind of followup?
Q. Visual field testing.
A. I don't know what he should have done.
Q. When you referred the patient to the neurosurgeon, was it your understanding that Kevin would receive followup with visual field testing for the disc edema that you diagnosed at the February 9th visit?
MS. HARRIS: Objection.
A. No.
MS. CARULAS: Objection.
A. No. Actually, I referred them with the idea that he would be evaluated, and if in fact increased intracranial problems were present, that they would be treated. But I did not send him to the neurosurgeon for evaluation of the disc edema unrelated to pressure problems, and I didn't send him there for visual field testing or a vision evaluation.
Q. So when you concluded your visit on February 9th, tell me what was within your plan of care for Kevin.
A. I was sending him back to the

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neurosurgeon for evaluation and -- evaluation of what I thought was -- concerned may be increased intracranial pressure, and then I wanted to have Kevin come back in approximately six weeks for evaluation of his crossing.
Q. Now, if Kevin indeed had papilledema from increased intracranial pressure, that's not something that you would follow and treat; is that correct?
A. I clearly would not treat it.
Q. Now, at the end of your note on the bottom left-hand side of the page, there's a reference to Luciano and a reference to Bruce Cohen. Could you tell me what that says and what that refers to.
A. It says Mark Luciano, cc, Cleveland Clinic, Bruce Cohen, who I know is also at staff there.
Q. And why are there names included down here?
A. Because they were involved already in his care.
Q. So it was your understanding that, by February 9th of 1998, Dr. Cohen was involved in Kevin's care?

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A. I don't actually recall how I got to put his name there. Perhaps -- I don't recall. And I don't recall whether or not he was involved in his care or not.
Q. When Kevin was there on the 9th, did you inform Kevin's parents that he had the disc edema and that his disc edema and symptoms may indicate increased intracranial pressure?
A. I think I basically -- what I told them is I was concerned that the things I had seen at the examination may have been related to a problem with his surgery or increased intracranial pressure. Whether I used increased intracranial pressure or not, I don't recall. Whether I told him he had nerve swelling again, specifically that idea, as a result of his increased intracranial pressure, again, I don't recall. But what I did tell them is that I wanted them to go back to see the neurosurgeon.
Q. Did you tell them that there may be a risk of vision loss related to the disc swelling?
A. I did not. Not that I recall, at least.
Q. Did you tell Kevin's parents that they needed to bring him back specifically for

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evaluation related to the disc swelling?
MS. HARRIS: Objection. Go ahead.
A. I don't recall specifically what I told them as to why I wanted Kevin to come back, but I did ask them to come back for reevaluation.
Q. And I think we talked about it before. You had indicated that with the crossing of the eyes, the possibility of some type of a lens correction might be helpful to him; correct?
A. Correct.
Q. Did you discuss that with the parents?
A. Yes.
Q. Did you discuss with Kevin's parents that Cleveland Clinic would make a referral for any additional eye evaluation that would be necessary after the neurosurgeon saw him?
MS. HARRIS: Objection.
A. I did not.
Q. Did you assume that Cleveland Clinic would make a referral --
MS. HARRIS: Objection.
Q. -- for any eye evaluation that would be necessary?
MS. HARRIS: Objection.
MS. CARULAS: Objection.

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A. I didn't assume one way or the other. You're asking me what was going to happen after the evaluation with Dr. Luciano, and I had no idea what was going to happen.
Q. Did you discuss your findings of February 9th, 98 with Kevin's neurosurgeon, Dr. Luciano?
A. I did.
Q. When did you speak to him?
A. That day or the next day, but I believe it was that day.
Q. What was the content of that conversation?
A. It's not recorded in my notes, but I believe the content would have been related to the idea that he had surgery, he had crossing eyes, and I had seen disc swelling, and that I was concerned that this may be related to increased intracranial pressure.
Q. What was Dr. Luciano's response?
A. Let me backtrack one of my answers. I don't know if I spoke to him or his nurse or someone who was directly related to his care of patients.
Q. What response did you get from whoever

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it was that you spoke to?
MS. CARULAS: Note an objection.
A. An appointment was made for him to go see him.
Q. Did you discuss who would be responsible for following Kevin's vision status and checking for signs of resolution of the disc edema?
A. I did not discuss it.

(Thereupon, PLAINTIFFS' Deposition Exhibit 2 was mark'd for purposes of identification.)

Q. Doctor, I'm handing you what's been marked as Plaintiffs' Exhibit 2, which is a correspondence dated February 11th, 1998. Bev, it's this letter. I would ask you to look at it, and, if you would please, identify that document for us, if you would.
A. This is the letter that I wrote to Dr. Luciano based upon -- regarding the visit I had had with Kevin.
Q. Doctor, in the last paragraph of this letter, the fifth line down, it says, "I have

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discussed this with Dr. Luciano who will be re-evaluating the child on February 10th." The last paragraph, fifth line down, do you see where I'm reading?
A. I see.
Q. Did you not discuss Kevin with Dr. Luciano directly?
MS. HARRIS: Objection.
A. I don't recall whether it was directly or whether it was his specific nurse, someone who would convey the importance of the phone call to him directly.
Q. Your letter says you discussed it with Dr. Luciano; correct?
A. I consider his nurse, by proxy, him.
Q. Doctor, your letter says that you discussed it with Dr. Luciano; correct?
MS. HARRIS: Objection.
A. The same answer.
Q. What was your recommendation regarding glasses for Kevin?
A, To obtain the glasses that I had prescribed for him and to wear them full time.
Q. Doctor, in your letter, Plaintiffs' Exhibit Number **2,** just after the sentence that I

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referred you to, it says, "I have discussed this with Dr. Luciano who will be re-evaluating the child on February 10th. Once this has resolved, I have indicated to the family that they need to consider glasses to help control the esotropia and that I would like the opportunity of reevaluating him in approximately six weeks."
Were your directions to the family, once the problems that he was having resolved, that he should use the glasses?
A. No. Once he had been in to see Dr. Luciano and had been evaluated, they still would need to get these glasses.
Q. Well, it doesn't say go in and be evaluated. It says once this is resolved. What were you referring to that should be resolved?
A. The visit with him.
Q. Why did you tell Dr. Luciano that you wanted to see Kevin in six weeks?
A. To re-evaluate the crossing of his eyes that was present at the examination.
Q. And did Dr. Luciano agree that Kevin should come back to you in six weeks?
A. They didn't disagree or agree. That was not a decision that he was supposed to make.

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Q. In your office note here, there's another date stamped for March 30th of 1998, and it's followed by a handwritten notation NS. Does that mean that there was an appointment but the patient did not show up for it?
A. That's correct.
Q. Do you know whether Kevin's deteriorating medical condition was the reason that he did not come to that appointment?
MS. HARRIS: Objection. Go ahead.
A. No.
Q. Do you know why Kevin didn't show up for that appointment?
A. No.
Q. Did you or your office call to find out why Kevin was not at that appointment?
A. I don't recall.
Q. Is that a procedure that would usually be done at your office, to call the patient to find out why the appointment wasn't kept?
A. Not usually, and it again would depend upon the problem and the patient and the circumstances surrounding things.
Q. Did you inform Dr. Luciano that you did not see Kevin as you had intended --

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A. I did not.
Q. -- at six weeks? Do you know if Kevin received any type of ophthalmology followup at the Cleveland Clinic instead of seeing you?
A. I would have no way of knowing that.
Q. Do you have an opinion as to whether Kevin had papilledema when you saw him on February 9th of 98?
A. No. I didn't know what he had, whether it was disc swelling or papilledema.
Q. Now, you next saw him on July 14th of 98; is that correct?
A. Yes, it is.
Q. How is it that Kevin came to see you on that date?
A. My understanding is it was requested -- he was asked to see me again by Dr. Cohen.
Q. Did you obtain any history from him at that visit?
A. The history is as you have seen it, basically that he had had a lot of problems, had emergency surgery with a shunt put in, and then shortly before I saw him again was complaining of some difficulty with his vision again.

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Q. Did you do an examination of Kevin on July 14th of 98?
A. The exam I did is, as I've written it, visual acuity, and then a visual field.
Q. Did Kevin have any nerve weakness that you found at that visit?
A. I didn't record any if I found any.
Q. Did you do a funduscopic exam at that visit?
A. I did a funduscopic. Again, it's not written.
Q. Did you dilate his eyes?
A. I don't believe so. It looks like we crossed it off.
Q. Do you recall what your findings were on the funduscopic?
A. I believe I saw optic atrophy or optic pallor.
Q. Was there any evidence of disc edema at the time that you saw him in July?
A. None that I recall.
Q. Doctor, you mentioned that you did visual field testing at that visit. Why did you do visual field testing at that visit?
A. Because he had returned with a visual

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acuity of counting fingers.
Q. What type of visual field testing did you do?
A. I did the Humphrey field testing, automated visual field testing.
Q. What were the results of that visual field testing?
A. Visual field testing showed some loss of visual field in the superior hemifield of both eyes as well as some extension into the right inferior quadrant.
Q. Was the visual field defects that you found the same in both the right and the left eye?
A. Not exactly. They were sort of similar.
Q. What were the differences between the right and the left eye that you found?
A. Sensitivity differences and degree of involvement in the different quadrants.

(Thereupon, PLAINTIFFS' Deposition Exhibits 3A & 3B were mark'd for purposes of identification.)

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Q. Doctor, I'm handing you a copy of what's been marked as Plaintiffs' Exhibit 3A and 3B, and I would ask you if this is a copy of the printout of the visual field testing that you did on July 14th of 98 of Kevin Kiss.
A. It is.
Q. Is the pattern that is seen on Kevin Kiss' visual field testing of July 14th, 1998 consistent with optic atrophy resulting from chronic papilledema?
MS. HARRIS: Objection.
MS. CARULAS: Objection.
MS. LOESEL: Objection.
MS. HARRIS: If you can answer that.
A. I can't answer that. I don't know the answer.
Q. After you completed the visual field testing, did you discuss the results with Kevin's parents?
A. I don't specifically recall what I discussed. I may have said to them that there was vision loss, but I don't recall to what degree of specificity or how specific I was regarding this.
Q. When you did the internal examination

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of the eye, you noted optic nerve atrophy; is that correct?
A. I believe so, yes.
Q. What degree of severity did you note in your evaluation of the inner part of the eye?
A. I didn't note it, write it down, so that on July 14th the optic atrophy that was present, I can't quantify other than it was visible and it was -- it was visible to me.
Q. You don't have any recollection of the discussion that you had with Kevin's parents; is that correct?
A. Not specifically as to what I expected for him or anything like that. I do recall asking what happened when I saw his vision test.
Q. You asked what happened?
A. Yes.
Q. Why did you ask what happened?
A. Well, because he had had some vision loss in his left eye.
Q. Do you recall any response from Kevin's parents in regard to the information you provided to them?
A. Not specifically, no.
Q. Now, following the evaluation that you

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did on Kevin on July 14th of 98, did you contact Dr. Luciano regarding your findings of optic atrophy?
A. I believe I did.
Q. When did you contact him?
A. I don't have an exact date; it's not written down, but I do know that Kevin did return to see him shortly thereafter again.
Q. Did you talk with him on the phone?
A. I believe so, or his representative.
Q. What was Dr. Luciano's reaction when you informed him that you had found that Kevin had optic atrophy?
A. That I don't recall.
Q. Do you recall whether Dr. Luciano said that this -- was he surprised to hear that he had optic atrophy?
MS. CARULAS: Objection.
A. Again, I don't recall.
Q. Do you recall him telling you that Dr. Cohen had observed this several weeks before you had observed it?
MS. HARRIS: Objection. He said he doesn't recall whether he talked to Luciano or he talked to his representative.

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A. Agreed. I don't recall.
Q. You don't recall whether there was any information that either Dr. Luciano or his representative was aware of the optic atrophy prior to the time that you contacted them?
A. I have no knowledge as to what they knew.
Q. Well, I'm asking you what your knowledge is. You made a contact with people over at Cleveland Clinic, and I'm wondering, whether it was Dr. Luciano or the representative, whether it was your impression that they already knew about the optic atrophy when you contacted them.
A. I have no -- I don't recall whether or not there was any knowledge on their part, surprise or recognition that it was already there. I don't know.
Q. Now, doctor, there's a note here in your records on July 22nd of 1998. I believe it says, sent copy of the visual fields and the vision readings to neuro-ophthalmologist. That was written by one of the assistants in your office; is that correct?
A. Correct.

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Q. Did you have any contact with the Cleveland Clinic in regard to sending those visual field tests? Did you talk to anybody that said, please send them over?
A. Not specifically that I recall speaking to anybody about it. I may have, but it's not something where I made the phone call. I don't recall doing that.
Q. So you don't–
A. I may have been asked about it. I may have said oh, yes, send them.
Q. You don't recall being contacted and a request being made directly to you for those tests?
A. It may have been made personally to me, it may have been made by letter, and it may have been made to my telephone answering system.
Q. Did you at any time speak to Dr. Kosmorsky about Kevin?
A. I may have. I don't recall specifically that I did.
Q. Now, when you completed your care of Kevin on July 14th, 1998, what was your plan of care for him?
A. I had asked the family to return to

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see me in six months, to redo the visual fields.
Q. Anything else?
A. I had already communicated with Dr. Luciano, so there was nothing else I wished to do at that time.
Q. After the visual field test results were sent to the Cleveland Clinic, did you receive a correspondence from Dr. Kosmorsky?
A. I may have. I'll have to look. Do you want me to?
Q. Yes.
A. Yes.
Q. Could you tell us what the date of the letter is?
A. July 23rd.
Q. Did Dr. Kosmorsky indicate to you in that correspondence that he wanted you to give some followup to Kevin?
A. Yes.
Q. Was it your understanding that you were to follow Kevin for his optic atrophy secondary to edema from his arachnoid cyst?
A. That's what the letter reads, yes.
Q. What would be the followup for a patient as described by Dr. Kosmorsky -- what

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type of followup would you do for that?
A. I would expect the family to call and make an appointment. Dr. Kosmorsky may suggest to them that they come back in a certain time frame and then we would re-evaluate him at that time.
Q. What would your re-evaluation consist of?
A. Redo his vision testing and re-evaluate his visual fields.
Q. Why would you re-evaluate his visual fields?
A. Because the changes that were visible on the first visual field test that I did in July may not be the same when he returns. They may improve. The test was a moderately inaccurate test at the time, so with experience he may do better.
Q. Why was it moderately inaccurate?
A. Due to the fixation losses that were present.
Q. What is a fixation loss?
A. The fixation loss is the child is looking at this point at a small light, and actually the computer is registering whether he

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is looking at that light. And if the child is looking elsewhere, then the visual field testing you're doing is inaccurate because you're not controlling the peripheral vision.
Q. Is part of that related to the age of the child that's taking the test in that they aren't able to concentrate on what they're directed to concentrate on?
A. Absolutely.
Q. And is that also one of the problems when you do confrontational visual field testing with a child of a young age, that they have difficulty concentrating on what you're telling them to concentrate on?
MS. CARULAS: Objection.
MS. HARRIS: Objection.
A. It's a different test. The format is entirely different.
Q. I understand that, doctor, but is it also difficult to get them to have their full attention so you get an accurate reading?
MS. HARRIS: Objection.
MS. CARULAS: Objection.
MS. LOESEL: Objection.
A. Confrontational fields are inaccurate

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compared to this kind of a test, but both need to be accurate.
Q. Once optic atrophy occurs, is there anything that can be done to treat it?
A. Not to my knowledge.
Q. So the vision loss that occurs from optic atrophy would be permanent then; correct?
A. After a period of time, the atrophy stabilizes and the vision loss that you have at that time, yes. Early on, the vision may be poor and then improve with time, signifying not necessarily an improvement in the atrophy, but just a recovery of the vision.
Q. When you saw Kevin in July, was his vision at a stable state at that point?
A. I have no way of knowing.
Q. Now, you then saw him again, I believe, on October 3rd of 98; is that correct?
A. Correct.
Q. There is a stamp that is not fully legible that is underneath that date. I don't know if it's legible on your record or not. I just see something, no referral, and I don't know what the first word says.
A. Has no referral. At the top of this

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page, this child needs referrals in order to be evaluated. So these visits are driven by someone else. I can request it, but someone has to authorize it.
Q. In this case, this October 3rd of 98 visit, was this a referral that came from someone?
A. I don't know. It says saw Dr. Kosmorsky, but I don't know why they came in at that particular moment.
Q. Did you also do an examination on Kevin on October 3rd of 98?
A. I did.
Q. Did you find anything, any new deviations from normal that you felt were significant, anything different than your previous examinations of him?
A. The notations are different, but I think the examination is fundamentally unchanged.
Q. Did you do visual field testing at this visit?
A. I did a different visual field testing, which is the central 40, which is an attempt to further define his central vision loss.

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Q. When you did that test, what were your findings?
A. That there was loss of central visual field in the straight ahead region. Again, it's an inaccurate test from the information based upon the fixation losses. It's, again, a difficult test for a child to do, so that I wasn't sure as to the exact pattern that he was going to ultimately demonstrate and felt that his vision loss had actually improved from the previous visit.
Q. Were you able to determine whether the improvement was in his right eye, his left eye or both eyes?
A. His right eye was 20/20, so the vision had stayed the same. The visual acuity in the left eye had improved.
Q. Because you have done *two* different visual field testings, can you actually say that there was an improvement, or could it be that one test tested slightly different than the other test because it was a different instrument?
A. It was the same machine; it was a different test, so the results are different. The improvement came from the visual acuity test,

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which was the same test.
Q. Are you confident that there was actual improvement in the vision when you tested him on October 3rd, and that that wasn't just a deviation because of different testing methods?
A. The visual field I can't comment on; it's a different test, and so I won't comment whether there's an improvement or not an improvement there. The visual acuity test was the same test.
Q. There was an improvement in visual acuity?
A. There was an improvement in his measured acuity.
Q. Now, when you did the visual field testing on October 3rd of 98, did you send those results to Cleveland Clinic?
A. I don't recall whether I sent the results of that to Cleveland Clinic or not. I don't know if my records indicate I sent a letter back indicating such.
Q. On your handwritten note in the clinical record, I would like you to just read through what's in your handwriting.
MS. HARRIS: For what date?

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MS. TOSTI: October 3rd, 98.
A. Positive MG pupil left eye. Retinoscopy plus 75, plus .75. O atrophy, left eye. Mild atrophy right eye, and otherwise VMP, vessels macular peripheral normal OU. Next visit, 24-2, six months long. Humphrey visual field on the side, central 40 right normal, left see prints, and I wrote right doubt.
Q. What does the right doubt mean?
A. That it was probably not normal.
Q. Now, you have optic atrophy. That section says optic atrophy?
A. Optic atrophy, OS, left eye.
Q. He had optic atrophy in his left eye?
A. Yes.
Q. You have mild atrophy in the right eye; correct?
A. Correct.
Q. What was the degree of optic atrophy in his left eye?
A. I didn't quantify it.
Q. Was it greater than what you saw in the right eye?
A. Yes.
Q. You designated mild for the right eye?

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A. Yes, that would be correct.
Q. Now, did you see Kevin again then on -- let's see -- June 1st of 99?
A. I did.
Q. And your findings at that visit, were they any different than what you had found at the previous visit?
A. Visual acuity testing was 20/20 in the right. Count fingers at four feet; that's the same. Color vision test, he missed a number of color vision tests, and this is with both eyes open, so that he had a red/green color defect, and that may have impressed beforehand. It was just another test to throw into the evaluation. Retinoscopy was the same, essentially. He had bilateral optic nerve pallor, left greater than right, and Humphrey visual field tests were done.
Q. When you saw him on June 1st of 99, were you able to determine whether or not his vision loss had stabilized?
A. I wasn't able to determine whether it stabilized. I wasn't answering that question in my mind. The question is more did I believe or feel that it had stabilized, and I felt it had.
Q. Now, did Kevin's mother express any

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concern to you regarding Kevin's eyesight?
A. The question was asked, does the patient have a disease in his left eye.
Q. Did you respond to that question?
A. I don't recall what my response was. I'm sure I said he had problems with his vision, yes.
Q. Do you recall any conversations that you had with Kevin's mother from that visit?
A. Other than asking him to wear protective lenses, not specifically, no, but protective lenses are a conversation in itself.
Q. Doctor, under the June lst, 99 visit, could you tell us what you have written in your handwriting at the bottom.
A. I don't know where you're referring to. Which part?
Q. After the HVF, there's a line, see prints both eyes. What's written under that?
A. Retinoscopy, plus one, plus one, bilateral optic nerve pathology left greater than right. One year AM.
Q. Now, there's a stamp in the notes that says letter dictated. Did you dictate a letter?
A. I did.

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Q. Who was that letter dictated to?
A. Morrie Levinson, Bruce Cohen, Michelle Levy. If I dictated any other ones, I have'to continue digging.
Q. That's fine, doctor. What was the reason that you were dictating those letters?
A. To inform them what I was seeing at this visit.
Q. Would that be in regard to Kevin's vision loss?
A. It would be revolved to his examination, yes, because of his vision loss.
Q. Is the loss of visual acuity one of the later findings of chronic papilledema?
MS. HARRIS: Objection.
MS. CARULAS: Objection.
A. Again, they're findings of papilledema. I don't know where to put it in the time scale, whether it's necessarily early on or later on, but it certainly can be a late finding.
Q. Do you have an opinion as to when Kevin developed vision loss?
MS. HARRIS: Objection.
A. I have no knowledge as to when he developed vision loss other than after February

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14th, 98.
Q. Do you have an opinion as to whether Kevin's optic atrophy and resulting vision loss was preventable?
A. No.
MS. CARULAS: Objection.
A. I don't.
Q. Do you have an opinion as to whose responsibility it was to monitor Kevin's papilledema?
MS. CARULAS: Objection.
MS. HARRIS: Objection as to the word monitor.
A. I'm not going to monitor his papilledema. I'm not going to monitor his intracranial pressure.
Q. So your opinion is that it wasn't your responsibility to monitor Kevin for papilledema; correct?
A. Correct.
Q. Do you have an opinion as to whose responsibility it was?
A. You're asking me who is supposed to treat it.
Q. I'm asking if you have an opinion as

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to who was supposed to monitor the papilledema.
A. The monitoring of the papilledema would be the setting of his entire care, which would have been related to his intracranial pressure.
Q. Would that be Dr. Luciano's job?
A. It could be. It could be Dr. Cohen's job, it could be Dr. Kosmorsky's job; any of these individuals that were involved in the care.
Q. Do you have any criticism of the care that was rendered to Kevin by the Cleveland Clinic?
A. I don't have enough knowledge about intracranial issues.
Q. Do you have an opinion as to what caused Kevin's visual loss?
A. It's presumptive. I don't know what caused it. I believe, I would assume, it's related to problems related to the cyst fenestration and the reasons for the need for the ventricular peritoneal shunt and issues related to that.
Q. Do you have an opinion as to whether it was caused by increased intracranial pressure?
A. Notdirectly.

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Q. His vision loss.
Doctor, I'm going to hand you a copy of the August 18th, 1999 transcript of the conversation that you had with Kathy Mulligan, and I would like you to just review it, if you would, and tell me if your testimony today has been consistent with what you said in that transcribed conversation of August 18th, 99.
MS. HARRIS: Cease and desist. He will not answer these questions. This transcribed statement that your office took was questions by your paralegal -- I assume it's a paralegal -- who told this doctor, under the guise of Michael Becker, under his signature, that he was not going to be sued. She took this. We have no idea of the dictating equipment, we have no idea whether this is an accurate translation, and, in fact, half of the questions in this thing don't even make sense. He is not answering any questions about the accuracy or the inaccuracy of your translation. End of subject.
MS. TOSTI: Are you instructing him not to --
MS. HARRIS: I am instructing --

MS. **TOSTI:** Let me finish. Are you instructing your client not to answer my question as to whether the transcription that I have provided to him is consistent with what he has testified to today? Are you instructing him not to answer that question?

MS. HARRIS: I am absolutely telling him that.

MS. TOSTI: Okay.

MS. HARRIS: I think this is unfair, unreasonable and irresponsible.

MS. TOSTI: I have no further questions for you, doctor.

MS. CARULAS: No questions.

MS. LOESEL: No questions.

MS. HARRIS: Are you writing this up?

MS. **TOSTI:** Yes.

MS. HARRIS: When she writes it up, he will not waive signature. Would you send a copy to me, I'll get it to him for signature.

Can we waive the seven days signing, Jeanne?

MS. TOSTI: Yes. How long do you want?

MS. HARRIS: Three weeks max, four

weeks.

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(Deposition concluded at 3:40 o'clock p.m.)

(Signature not waived.)

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AFFIDAVIT

I have read the foregoing transcript from page 1 through 98 and note the following corrections:

PAGE	LINE	REQUESTED CHANGE

_____

ANDREAS MARCOTTY, M.D.

Subscribed and sworn to before me this _____ day of _____, 2000.

_____

Notary Public

My commission expires _____.

CERTIFICATE

State of Ohio,)
) SS:
County of Cuyahoga.)

I, Karen M. Patterson, a Notary Public within and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within named ANDREAS MARCOTTY, M.D. was by me first duly worn to testify to the truth, the whole truth and nothing but the truth in the cause aforesaid; that the testimony as above set forth was by me reduced to stenotypy, afterwards transcribed, and that the foregoing is a true and correct transcription of the testimony.

I do further certify that this deposition was taken at the time and place specified and was completed without adjournment; that I am not a relative or attorney for either party or otherwise interested in the event of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Cleveland, Ohio, on this 12th day of March 2000.

Karen M. Patterson

Karen M. Patterson, Notary Public
Within and for the State of Ohio

My commission expires October 7, 2004.

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