

<p>Page 1</p> <p>1 IN THE COURT OF COMMON PLEAS 2 OF CUYAHOGA COUNTY, OHIO 3 KEVIN KISS, a minor, by and 4 through his next friend 5 and natural mother, Anne Kiss, 6 et al., 7 Plaintiffs, 8 vs. Case No. 9 ANDREAS MARCOTTY, M.D., 10 et al., 402393 11 Defendants. 12 13 DEPOSITION OF ANDREAS MARCOTTY, M.D. 14 Friday, March 2, 2001 15 16 Deposition of ANDREAS MARCOTTY, M.D., 17 a Defendant herein, called by the Plaintiffs for 18 examination under the statute, taken before me, 19 Karen M. Patterson, a Registered Merit Reporter 20 and Notary Public in and for the State of Ohio, 21 pursuant to notice and stipulations of counsel, 22 at the offices of Mazanec, Raskin & Ryder Co., 23 L.P.A., 34305 Solon Road, Cleveland, Ohio, on the 24 day and date set forth above, at 1:27 o'clock 25 p.m.</p>	<p>Page 3</p> <p>1 ANDREAS MARCOTTY, M.D., of lawful age, 2 called for examination, as provided by the Ohio 3 Rules of Civil Procedure, being by me first duly 4 sworn, as hereinafter certified, deposed and said 5 as follows: 6 EXAMINATION OF ANDREAS MARCOTTY, MD. 7 BY MS. TOSTI: 8 Q. Doctor, would you please state your 9 name for us, please. 10 A. Andreas Marcotty. 11 Q. And your home address? 12 A. 20925 Sydenham, Shaker Heights, Ohio. 13 Q. Is that a single-family home? 14 A. Yes. 15 Q. And could you tell us your zip code, 16 please. 17 A. 44122. 18 Q. What is your current business address? 19 A. 25101 Chagrin Boulevard, Room 150, 20 Beachwood, Ohio, 44122. 21 Q. And at the time that you rendered care 22 to Kevin Kiss, was that also your business 23 address? 24 A. Correct. 25 Q. In 1998, were you seeing patients</p>
<p>Page 2</p> <p>1 APPEARANCES: 2 On behalf of the Plaintiffs: 3 Becker & Mirhkind Co., L.P.A., by 4 JEANNE M. TOSTI, ESQ. 5 Suite 660 Skylight Office Tower 6 1660 West Second Street 7 Cleveland, Ohio 44113 8 (216) 241-2600 9 On behalf of the Defendant Andreas Marcotty, 10 M.D.: 11 Mazanec, Raskin & Ryder Co., L.P.A., 12 by 13 BEVERLY HARRIS, ESQ. 14 100 Franklin's Row 15 34305 Solon Road 16 Cleveland, Ohio 44139 17 (440) 248.7906 18 On behalf of the Defendant Cleveland Clinic 19 Foundation: 20 Roetzel & Andress, by 21 ANNA CARULAS, ESQ. 22 1375 East Ninth Street 23 One Cleveland Center, Tenth Floor 24 Cleveland, Ohio 44114 25 (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 Wervy, R.N., B.S.N.</p>	<p>Page 4</p> <p>1 anyplace else besides your professional office? 2 A. I have a satellite office in the 3 southwest area, and that office has moved 4 locations every so often depending upon the whim 5 of the person I was subleasing from. 6 Q. Where is it currently located, the 7 satellite? 8 A. At Strongsville, SouthPark Cleveland 9 Clinic building. 10 Q. And do you know where it was located 11 in 1998? 12 A. I believe I saw Kevin in my Beachwood 13 office. 14 Q. We were discussing your satellite 15 office. 16 A. I'm sorry, it was at Southwest General 17 Hospital. 18 Q. Who is your current employer? 19 A. Cleveland Clinic. 20 Q. And at the time that you first began 21 caring for Kevin, who was your employer? 22 A. Signature Eye Associates. 23 Q. When did your employment change from 24 Signature Eye? Did you change from Signature Eye 25 to Cleveland Clinic as your employer?</p>

<p style="text-align: right;">Page 5</p> <p>1 A. The entire Signature Eye Associates 2 group joined the Cleveland Clinic. 3 Q. When did that occur? 4 A. January of 99, I think. 5 Q. Cleveland Clinic bought out Signature 6 Eye Associates? 7 A. I'm not sure of the technical aspect 8 of it, but we joined the Clinic. 9 Q. Were you a partner in Signature Eye? 10 A. Yes. 11 Q. Did you receive any type of 12 remuneration or monies? Did you realize any 13 monies as a result of their acquisition? 14 A. Hard assets. 15 Q. Hard assets? 16 A. Correct. 17 Q. What does that refer to, hard assets? 18 A. Equipment. 19 Q. Prior to the time that Signature Eye 20 was acquired by Cleveland Clinic, did you or, to 21 your knowledge, Signature Eye have any type of 22 professional business association with Cleveland 23 Clinic? 24 A. We would -- we had one of the 25 Cleveland Clinic retina doctors come into our</p>	<p style="text-align: right;">Page 7</p> <p>1 Signature Eye Associates or Cleveland Clinic if 2 there was a transition to Cleveland Clinic? 3 A. No. 4 Q. Have you ever had your deposition 5 taken before? 6 A. Once. 7 Q. And why was your deposition being 8 taken in that case? 9 A. I was asked to give an opinion 10 regarding double vision. 11 Q. Was that in a medical negligence 12 case? 13 A. No. It was in a Workmen's 14 Compensation case. 15 Q. Were you asked by the Plaintiff's 16 attorney or by the employer? 17 A. I was asked by the Plaintiff's 18 attorney. 19 Q. Do you recall who that was? 20 A. No. 21 Q. When did you give that deposition? 22 A. Too long ago to remember exactly. I 23 don't know if it was five, seven or ten years. 24 Q. I'm sure counsel has had an 25 opportunity to speak with you a little bit about</p>
<p style="text-align: right;">Page 6</p> <p>1 office. They do consultative work. 2 Q. Who was that? 3 A. Again, it varied depending upon the 4 time or -- there were two individuals. 5 Q. Who were they? 6 A. Dr. Rob Foster and Dr. Hillel Lewis. 7 Q. Aside from the consultation work that 8 Dr. Foster and Dr. Lewis did in your offices, did 9 you have any type of relationship with Cleveland 10 Clinic that you would see patients from Cleveland 11 Clinic? 12 A. No. 13 Q. Do you know whether Signature Eye had 14 any type of a relationship that Cleveland Clinic 15 patients would be seen at Signature Eye? 16 A. Only those patients that were referred 17 to see Foster and Lewis and perhaps their own 18 individual patients because it was convenient for 19 them -- it's speculation -- and, otherwise, no. 20 Q. Do you currently provide professional 21 services for any other entity besides the 22 Cleveland Clinic? 23 A. No. 24 Q. And in 1998, did you provide any 25 professional services for any entity aside from</p>	<p style="text-align: right;">Page 8</p> <p>1 depositions. I want to go over some of the 2 ground rules with you. This is a 3 question-and-answer session. It's under oath. 4 It's important that you understand my questions. 5 If you don't understand my questions, let me 6 know, I'll rephrase the question or repeat it if 7 you would like. Otherwise, I'm going to assume 8 that you understood my question and that you're 9 able to answer it. 10 If at any point in time you would like 11 to refer to medical records -- I see you have 12 some sitting in front of you that I assume are 13 the records -- please feel free to do so. 14 It's important that you give all of 15 your answers verbally because our court reporter 16 cannot take down head nods or hand motions. 17 At some point, counsel may choose to 18 enter an objection for the record. You are still 19 required to answer my question unless your 20 counsel instructs you not to do so. Do you 21 understand those instructions? 22 A. I do. 23 Q. Have you ever been named as a 24 Defendant in a medical negligence suit? 25 A. No.</p>

<p style="text-align: right;">Page 9</p> <p>1 Q. Have you ever acted as an expert in a 2 a medical negligence suit? 3 A. No, 4 Q. Doctor, you are licensed to practice 5 medicine in the State of Ohio; correct? 6 A. Correct. 7 Q. And you were also so licensed at the 8 time that you cared for Kevin Kiss; correct? 9 A. Correct. 10 Q. Have you ever been licensed in any 11 other state? 12 A. Michigan, Wisconsin. 13 Q. Are those currently active? 14 A. No. 15 Q. Has your license in Ohio or any other 16 state ever been suspended, revoked or called into 17 question? 18 A. No. 19 Q. Doctor, are you board certified in any 20 particular area in medicine? 21 A. Yes. 22 Q. What area? 23 A. Ophthalmology. 24 Q. Any other area? 25 A. No.</p>	<p style="text-align: right;">Page 11</p> <p>1 A. I'm sorry, also University Hospitals. 2 Q. When Signature Eye was acquired by 3 Cleveland Clinic, is that when you gained 4 privileges at Cleveland Clinic? 5 A. Correct. 6 Q. Has your hospital privileges at any 7 hospital ever been suspended, called into 8 question or revoked? 9 A. They have been suspended for 10 basically -- because of joining the Cleveland 11 Clinic, not because of any other reason. 12 Q. So when you joined Cleveland Clinic, 13 hospitals that were not affiliated with Cleveland 14 Clinic suspended your -- 15 A. Correct. 16 Q. -- credentials? 17 A. One was voluntary. I chose to do it 18 in advance, and the other was University, which 19 chose to do that. 20 Q. Have you ever been denied privileges 21 in any hospital? 22 A. No. 23 Q. Now, doctor, in regard to your 24 employment with the Cleveland Clinic, what is 25 your title and position?</p>
<p style="text-align: right;">Page 10</p> <p>1 Q. Is there any subspecialty or 2 additional credentials given in pediatric 3 ophthalmology? 4 A. I'm just -- there are no credentials, 5 though I'm a fellow of the Association of 6 Pediatric Ophthalmology and Strabismus. 7 Q. Your ophthalmology board 8 certification, when did you receive that? 9 A. Approximately 1982 or 83. 10 Q. Did you pass that on the first 11 attempt? 12 A. Yes. 13 Q. Where do you currently have hospital 14 privileges, or I guess I should ask, do you 15 currently have hospital privileges? 16 A. Yes. 17 Q. Where? 18 A. Cleveland Clinic and at Hillcrest. 19 Q. And when you first started treating 20 Kevin Kiss, where did you have hospital 21 privileges? 22 A. The old Mt. Sinai, Hillcrest, courtesy 23 privileges at Richmond, Southwest General. 24 Q. And then when Signature Eye was 25 acquired --</p>	<p style="text-align: right;">Page 22</p> <p>1 A. Staff, section pediatric 2 ophthalmology, Cole Eye Institute. I'm not sure 3 if that answers your question. 4 Q. Do you hold any administrative titles 5 at Cleveland Clinic? 6 A. Not at this time. 7 Q. Have you in the past since your 8 employment? 9 A. No. 10 ***** 11 (Thereupon, PLAINTIFFS' Deposition 12 Exhibit 1 was mark'd for purposes 13 of identification.) 14 ***** 15 Q. Doctor, counsel has provided me with 16 what I believe is a copy of your curriculum vitae 17 that's been marked as Plaintiffs' Exhibit 1. I'd 18 like you to look at it, and if you would, for the 19 record, identify the document for us and just 20 tell us if that is indeed a copy of your 21 curriculum vitae. 22 A. This is a copy of my curriculum vitae. 23 Q. Are there any corrections or 24 additions -- 25 A. There are additions to it.</p>

<p>Page 13</p> <p>1 Q. -- that you would like to make to it?</p> <p>2 A. Just in the subject of presentations,</p> <p>3 I have given other lectures in the meantime to</p> <p>4 residents and other meetings.</p> <p>5 Q. Have any of the presentations that you</p> <p>6 have given dealt with the subject matter of</p> <p>7 papilledema?</p> <p>8 A. No.</p> <p>9 Q. Any with arachnoid cysts?</p> <p>10 A. No.</p> <p>11 Q. Or increased intracranial pressure?</p> <p>12 A. No.</p> <p>13 Q. Now, doctor, you joined Signature Eye,</p> <p>14 I believe, according to your curriculum vitae, in</p> <p>15 1997; is that correct?</p> <p>16 A. Not quite. Signature Eye is an</p> <p>17 extension, or a new organization, from a</p> <p>18 previously existing medical group, and that</p> <p>19 Signature Eye came into existence in 97.</p> <p>20 Q. Was it formed from the corporation of</p> <p>21 Solomon, Sholiton, Marcotty and Roth?</p> <p>22 A. Yes.</p> <p>23 Q. Were all of those physicians also</p> <p>24 members of Signature Eye?</p> <p>25 A. Yes.</p>	<p>Page 15</p> <p>1 with those subjects that I've just listed for</p> <p>2 you?</p> <p>3 A. No.</p> <p>4 Q. Tell me what you have reviewed in</p> <p>5 preparation for this deposition.</p> <p>6 A. I have reviewed my own records. I</p> <p>7 have reviewed the deposition of Dr. Luciano and</p> <p>8 Dr. Kosmorsky. I have reviewed the hospital</p> <p>9 records and the Cleveland Clinic outpatient</p> <p>10 clinic notes.</p> <p>11 Q. When you say hospital records, you're</p> <p>12 referring to the Cleveland Clinic hospital</p> <p>13 records?</p> <p>14 A. Correct.</p> <p>15 Q. Have you reviewed any records from</p> <p>16 Kids in the Sun?</p> <p>17 A. The records I have are letters that</p> <p>18 were sent to me.</p> <p>19 Q. What about Benedetto & Associates,</p> <p>20 which I believe is a psychological counseling</p> <p>21 service?</p> <p>22 A. I have not.</p> <p>23 Q. Did you review a transcript of a</p> <p>24 conversation you had in August of 1989?</p> <p>25 A. Yes, I did.</p>
<p>Page 14</p> <p>1 Q. Doctor, have you authored or</p> <p>2 co-authored any medical journal articles or</p> <p>3 textbook chapters or textbooks?</p> <p>4 A. No.</p> <p>5 Q. Doctor, I had asked you if any of the</p> <p>6 additional presentations that you had made dealt</p> <p>7 with some certain subjects. There's a number of</p> <p>8 other presentations that you have made in the</p> <p>9 past, and I would ask also if any of these</p> <p>10 presentations that are listed on your CV deal</p> <p>11 with the subject matter of papilledema, increased</p> <p>12 intracranial pressure or arachnoid cysts.</p> <p>13 A. Two of them may obliquely list</p> <p>14 increased intracranial pressure as a cause or a</p> <p>15 finding or a sign or a symptom, but not directly</p> <p>16 dealing with those as issues.</p> <p>17 Q. Which presentations would those be?</p> <p>18 A. Superior oblique palsy and systemic</p> <p>19 disease.</p> <p>20 Q. Do any of these presentations deal</p> <p>21 with visual field testing?</p> <p>22 A. No.</p> <p>23 Q. In any of your presentations that you</p> <p>24 have made to the various residents or medical</p> <p>25 students, have you done any presentations dealing</p>	<p>Page 16</p> <p>1 Q. I'm sorry, August 18th, 1999. I want</p> <p>2 to correct the date.</p> <p>3 A. Ask that question again, please.</p> <p>4 Q. Yes. I misspoke and gave you an</p> <p>5 incorrect date.</p> <p>6 Did you review a transcript of a</p> <p>7 conversation that you had on August 18th, 1999?</p> <p>8 A. If that was the conversation with</p> <p>9 Kathleen Mulligan, yes.</p> <p>10 Q. Did you review any deposition summary</p> <p>11 from Dr. Bruce Cohen's deposition?</p> <p>12 MS. HARRIS: I'm going to object.</p> <p>13 Other than what he's mentioned, anything that he</p> <p>14 has read has been -- in addition to this, I'm</p> <p>15 sorry, was between Dr. Marcotty and myself as to</p> <p>16 my impressions of the case and my impressions of</p> <p>17 what's going on, and that's privileged.</p> <p>18 Q. Doctor, did you review a deposition</p> <p>19 summary of Dr. Cohen's deposition?</p> <p>20 MS. HARRIS: I'm going to instruct you</p> <p>21 not to answer anything about letters,</p> <p>22 correspondence, that we've sent you.</p> <p>23 Q. You may answer that question, doctor.</p> <p>24 MS. HARRIS: I'm instructing you not</p> <p>25 to answer.</p>

<p style="text-align: right;">Page 17</p> <p>1 MS. TOSTI: The fact that he reviewed 2 a deposition summary, I am allowed to ask him. I 3 don't intend to ask him what the content of the 4 summary was. Whether he reviewed a summary, if 5 he's relying on that information for his 6 deposition, then I have a right to ask him the 7 question as to what he reviewed in preparation 8 for this deposition. 9 MS. HARRIS: He's relying upon his own 10 involvement in this case. He has a ton of 11 information that I have sent him, or people in my 12 office have sent him, on the defense of this 13 case, and you are not entitled to know even what 14 the identity of that information is, so I'm 15 instructing him not to answer regarding any 16 correspondence, any documents that we've prepared 17 in this office for his benefit, for his defense. 18 Q. Since the filing of this case, have 19 you discussed this case with counsel from 20 Cleveland Clinic? 21 A. Counsel was present for a short 22 meeting, but other than a preliminary meeting 23 months ago, no. 24 Q. Who -- 25 MS. HARRIS: Excuse me. I'm going to</p>	<p style="text-align: right;">Page 19</p> <p>1 Q. Since this case was filed, have you 2 discussed this case with any physicians? 3 A. My partners at Signature Eye 4 Associates, very cursorily, saying I'm involved 5 in a case, but the details were something that 6 they didn't care to know and I didn't care to 7 share with them. 8 Q. Other than with counsel, have you 9 discussed the case with anyone else? 10 A. No. 11 Q. Aside from the clinical notes that 12 appear in the Signature Eye records, do you have 13 any other clinical notes on this case? 14 A. I have copies of the depositions. 15 Q. I'm speaking in regard to your own 16 personal notes, doctor. 17 A. No. 18 Q. Aside from what is in the Signature 19 Eye Care medical records, do you have any other 20 notes on this case? 21 A. None that I have written or -- I'm not 22 sure how to answer that question, if that's what 23 you want. 24 Q. I'm just wondering if there's 25 something besides this file that you have in</p>
<p style="text-align: right;">Page 18</p> <p>1 put this on the record so you can't go any 2 further, Jeanne. There was a meeting with the 3 attorney for Signature Eye Care, I think it was 4 Brian Ramm who attended it; Anna Carulas attended 5 the meeting as well. As you well know, there is 6 some of the care in this case that covers care 7 rendered at the Cleveland Clinic, and technically 8 Anna represents him on that portion of the 9 Cleveland Clinic care, and Brian, who was present 10 for Signature Eye Care, represents his employer. 11 End of subject. 12 MS. TOSTI: So is it your position 13 then that Cleveland Clinic is representing the 14 doctor on the care that was given to Kevin Kiss 15 while he was an employee of the Cleveland 16 Clinic? 17 MS. HARRIS: There's one, I think, one 18 visit, if I'm not mistaken, aftenwards. 19 MS. CARULAS: I don't remember the 20 details of it. 21 MS. HARRIS: He would have been an 22 employee of the Cleveland Clinic at that time. I 23 don't know if you're saying that that's part of 24 this case or not, but, nonetheless, he was an 25 employee then.</p>	<p style="text-align: right;">Page 20</p> <p>1 front of you. 2 A. No. 3 Q. Is there a textbook in your field of 4 ophthalmology that you feel is the best or the 5 most reliable? 6 A. There are lots of good textbooks. 7 They're all useful in their own right. There's 8 not one that I rely on. 9 Q. Is there one that you go to more often 10 than another? 11 A. No. 12 Q. Is there any that you use with the 13 residents or medical students that you work 14 with? 15 A. I would use -- medical students don't 16 use my textbooks. Residents will sometimes. 17 They're more likely to use the ophthalmology home 18 study course, which is a pamphlet book put out by 19 the Academy of Ophthalmology. 20 Q. As you sit here today, is there any 21 publication that you believe has particular 22 relevance to the issues in this case? 23 A. Not that I'm aware of. 24 Q. Have you participated in any research 25 dealing with the subject matter of papilledema?</p>

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1 A. No.
 2 Q. Any dealing with the subject matter of
 3 increased intracranial pressure?
 4 A. Again, research?
 5 Q. Yes.
 6 A. No,
 7 Q. Any that deals with optic nerve
 8 atrophy?
 9 A. No.
 10 Q. Doctor, do you specialize or limit
 11 your practice to any particular area of
 12 ophthalmology?
 13 A. I would have to say that my practice
 14 is mostly limited to strabismus. It's not a
 15 limitation that I placed upon it. It's the
 16 nature of the problems that have come, and it has
 17 to do with more serious problems tend to go to
 18 institutions.
 19 Q. And would you just give a brief
 20 definition of what strabismus is.
 21 A. Crooked eyes.
 22 Q. Is there a particular age group that
 23 you see in your practice?
 24 A. I see mostly children.
 25 Q. Do you see some adults?

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1 A. Yes.
 2 Q. What is the difference?
 3 A. The setting of increased intracranial
 4 pressure.
 5 Q. So if the observations, the physical
 6 observations, of disc edema and papilledema may
 7 be the same, it has to do with the etiology
 8 that's causing it?
 9 A. Correct.
 10 Q. Is that a generally accepted
 11 definition of the difference between disc edema
 12 and papilledema as you described? Is that
 13 generally accepted by most ophthalmologists?
 14 A. That's how I use it.
 15 Q. Is it your understanding that that's
 16 what most ophthalmologists would term the
 17 difference between papilledema and disc edema?
 18 MS. HARRIS: Objection.
 19 A. That's what I would assume, but it's
 20 not a subject that I frequently discuss.
 21 Q. When papilledema is present, is it
 22 usually bilateral?
 23 A. I am not -- it could be both
 24 unilateral and bilateral, but I don't think I can
 25 tell you whether it's usually.

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1 A. Again, those adults with crooked eyes
 2 or double vision.
 3 Q. Could you give me a ballpark figure as
 4 to the percentage of your practice that's
 5 children versus adult?
 6 A. 95, 99 percent children.
 7 Q. Do you do surgical procedures in your
 8 practice?
 9 A. Yes.
 10 Q. Do you do optic nerve fenestration
 11 procedures?
 12 A. Never.
 13 Q. Would that be something that a
 14 neuro-ophthalmologist would do, to your
 15 knowledge?
 16 A. They might.
 17 Q. What other specialty would do that
 18 type of a procedure, to your knowledge?
 19 A. Some oculoplastic or orbital
 20 specialists might.
 21 Q. Doctor, what is papilledema?
 22 A. A finding of disc swelling in the
 23 setting of increased intracranial pressure.
 24 Q. Is there a difference between
 25 papilledema and disk edema?

Page 24

1 Q. So you couldn't say more than 50
 2 percent of the time it's bilateral?
 3 A. I wouldn't say. I don't have that
 4 experience.
 5 Q. What, from a physiologic perspective,
 6 is the difference between acute papilledema and
 7 chronic papilledema?
 8 MS. HARRIS: You can answer these
 9 questions.
 10 A. Repeat the question.
 11 Q. I'm asking you what the difference
 12 between acute and chronic papilledema is from a
 13 physiologic perspective.
 14 A. It would be based upon the duration of
 15 the swelling and the duration of the increased
 16 intracranial pressure.
 17 Q. Is there a point in time when you
 18 would term it a chronic papilledema, after so
 19 long it's termed chronic?
 20 A. I wouldn't term it chronic
 21 papilledema.
 22 Q. It's not a term you would use?
 23 A. I don't think I have the knowledge
 24 base to decide that this is chronic or acute.
 25 It's increased intracranial pressure related

6 (Pages 21 to 24)

Page 25

1 again.
 2 Q. How often in your practice do you see
 3 patients with papilledema?
 4 A. Maybe one a year.
 5 Q. Now, doctor, you said that papilledema
 6 is caused by increased intracranial pressure; is
 7 that a fair statement?
 8 A. I believe so.
 9 Q. When you see a patient with
 10 papilledema, have they already been diagnosed
 11 with increased intracranial pressure?
 12 A. They may have been. I'm --
 13 Q. Go ahead and finish your answer.
 14 A. I had finished.
 15 Q. What I'm trying to understand is do
 16 you diagnose patients with increased intracranial
 17 pressure?
 18 A. No.
 19 Q. So would you be in a position to
 20 diagnose a patient with papilledema if the
 21 patient hadn't already had an established
 22 diagnosis of increased intracranial pressure?
 23 MS. HARRIS: Can you repeat that
 24 question?
 25 (Record read.)

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1 neurosurgeon would diagnose that using various
 2 tests. Again, I really can't diagnose
 3 papilledema.
 4 Q. Can you, as an ophthalmologist,
 5 diagnose disc edema?
 6 A. Yes.
 7 Q. How is disc edema diagnosed?
 8 A. A finding of swelling of the optic
 9 nerve head.
 10 Q. Now, is it necessary to dilate the
 11 eyes in order to do a complete evaluation for
 12 disc edema?
 13 A. No.
 14 Q. Can you gain any additional
 15 information by dilating the eyes in evaluating
 16 for disc edema?
 17 A. I can.
 18 Q. What additional information is gained
 19 by doing a dilation when you're evaluating for
 20 disc edema?
 21 A. I have a better view of the optic
 22 nerve.
 23 Q. And as you look at the internal
 24 structure of the eye, what is it that you're
 25 looking for to determine if disc edema is present

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1 MS. HARRIS: I'm going to object,
 2 because I'm not sure I understand the question.
 3 A. I don't know how to answer that
 4 question.
 5 Q. Doctor, you said you don't diagnose
 6 increased intracranial pressure; correct?
 7 A. Correct.
 8 Q. And you told me that you have to have
 9 increased intracranial pressure in order to make
 10 the diagnosis of papilledema; correct?
 11 A. Okay.
 12 Q. So as an ophthalmologist, do you ever
 13 make the diagnosis of papilledema if there isn't
 14 an established diagnosis of increased
 15 intracranial pressure?
 16 A. I would never say, per se, this is
 17 papilledema. I might say this is a concern I
 18 have, so that it's a working diagnosis. It could
 19 be changed.
 20 Q. Have you ever had patients referred to
 21 you for evaluation, management and followup when
 22 they have been diagnosed with papilledema?
 23 A. No.
 24 Q. How is papilledema diagnosed?
 25 A. I would presume that a neurologist or

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1 or absent or what degree of disc edema there is?
 2 What are you looking at?
 3 A. I'm looking at the degree of the
 4 swelling that's present, or the flatness, how
 5 much I'm looking for, the signs of exudates or
 6 hemorrhages. I'm looking for a loss of the blood
 7 vessel visibility as those blood vessels leave
 8 the optic nerve.
 9 Q. When you look at disc edema, is there
 10 some nomenclature for grading the severity of
 11 it?
 12 A. I'm sure there are grading systems for
 13 everything.
 14 Q. What type of grading system do you use
 15 when you're evaluating disc edema?
 16 MS. HARRIS: Objection. Go ahead.
 17 A. I use a system of mild swelling,
 18 moderate swelling, severe swelling.
 19 Q. Doctor, when there is disc edema, is
 20 there usually a loss of definition or blurring on
 21 the optic disc margins?
 22 A. That is what blurring is, yes.
 23 Q. With papilledema, do you know if
 24 there's a loss of definition seen in any
 25 particular portion of the disc margin first?

7 (Pages 25 to 28)

<p>Page 29</p> <p>1 A. My understanding is that it tends to 2 show up inferiorly first. 3 Q. Doctor, when increased intracranial 4 pressure causes papilledema, does it cause the 5 blood vessels in the optic disc to dilate and be 6 pushed forward? 7 A. It may cause it to dilate, but, again, 8 that may be an inaccurate finding. 9 Q. Why would that be? 10 A. I don't know why that is. That's 11 just -- I understand that it's not an accurate 12 diagnostic tool to decide whether this is disc 13 edema or not or papilledema or not. It can 14 occur. 15 Q. Now, is a finding of papilledema cause 16 for concern? 17 A. I can't find papilledema. I can only 18 find disc edema. 19 Q. Is disc edema cause for concern in a 20 patient? 21 A. It would depend upon the severity of 22 it. 23 Q. You said that you use a nomenclature 24 of mild, moderate and severe. Could you tell me 25 what it is that causes you to classify disc edema</p>	<p>Page 31</p> <p>1 again, a less severe finding overall. 2 Q. To your knowledge, are there any 3 complications associated with papilledema? 4 MS. HARRIS: If you know. Objection. 5 A. Again, papilledema is increased 6 intracranial pressure. So you're looking at 7 complications that could be present or that can 8 occur, yes. 9 Q. Would you tell me what those 10 complications are? 11 MS. HARRIS: Objection. If you know. 12 MS. CARULAS: Please note my objection 13 as well. 14 Q. You may answer. 15 MS. HARRIS: Go ahead, if you can. 16 A. Okay. You might have vision loss, 17 double vision, other neurological abnormalities. 18 Q. What type of neurological 19 abnormalities? 20 A. That's out of my bailiwick. I don't 21 know. 22 Q. So that's not something that you would 23 be able to diagnose; correct, if there was a 24 neurological abnormality as a result of 25 papilledema?</p>
<p>Page 30</p> <p>1 as mild, moderate or severe? 2 A. I would say primarily the degree of 3 swelling of the nerve head, the physical swelling 4 that I could visualize, the degree of blunting of 5 the edge of the nerve. Tortuosity is a factor, 6 engorgement, the finding of hemorrhages and 7 exudates. 8 Q. For severe disc edema, which of those 9 things would you find? 10 A. I would use -- I would find 11 hemorrhages and exudates, I would find very 12 swollen optic nerves, significant blunting of the 13 blood vessels as they cross over the nerve edge, 14 perhaps even -- well, exudates. Those would be 15 the findings that I would be looking for. 16 Q. How about with moderate disc edema? 17 A. I would be less inclined to see 18 hemorrhages and exudates. There would be less 19 swelling, less engorgement of the vessels, if 20 there were engorgement. Again, more in 21 moderation. 22 Q. And mild disc edema? 23 A. Mild is more difficult to diagnose, I 24 believe, in that it is -- you may see blunting of 25 the nerve, you may see normal vessels, and it's,</p>	<p>Page 32</p> <p>1 A. Correct. 2 Q. Now, doctor, we've talked about disc 3 edema. Are there complications associated with 4 disc edema? 5 A. With very prolonged, protracted disc 6 edema, you can have perhaps visual field loss. 7 Q. When you have described long or 8 protracted, how long are we talking about? 9 A. It's not something I deal with. It's 10 something that I refer off to 11 neuro-ophthalmologists or neurologists. 12 Q. So when you see someone with disc 13 edema, you refer that patient to another 14 specialist? 15 A. Yes. 16 Q. What is optic atrophy? 17 A. Death of the optic nerve, cell loss in 18 the optic nerve, damage to the optic nerve. 19 Optic atrophy is just a finding, again. 20 Q. And when you previously referred to 21 vision loss associated with disc edema, is that 22 vision loss in the visual fields a result of 23 optic atrophy? 24 A. Optic atrophy is the end result of the 25 damage.</p>

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1 Q. Doesn't the optic atrophy cause the
2 loss or the defects in the visual fields?
3 A. Not technically, no.
4 Q. No?
5 A. No.
6 Q. If you have atrophy of the optic
7 nerve, you're not going to lose that portion of
8 the visual field?
9 A. You most certainly will, but the
10 atrophy isn't what caused the loss of the visual
11 field.
12 Q. The cause for the loss of the visual
13 field, would that be like increased intracranial
14 pressure causing the optic atrophy causing the
15 loss of vision? Is that what you're referring
16 to?
17 MS. HARRIS: Note my objection.
18 A. Yes. The reason for the swelling
19 would be what would cause the damage to the
20 nerves, which would then result in their cell
21 death, which would then result in the development
22 of the atrophy.
23 Q. Doctor, if a patient has persistent
24 papilledema, are they at increased risk for optic
25 atrophy as compared to someone who doesn't have

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1 papilledema?
2 MS. CARULAS: Objection.
3 A. Papilledema is increased intracranial
4 pressure, again. That's the issue of
5 papilledema. So you can have vision loss from
6 papilledema, yes, or from increased intracranial
7 pressure.
8 Q. If a patient has persistent disc
9 edema, are they at increased risk for optic
10 atrophy?
11 A. Yes.
12 Q. Are there different stages or levels
13 of severity of optic atrophy?
14 A. There may be. I'm not well versed in
15 a classification system to be able to say with
16 this grade you have this, and this grade, yes.
17 Again, it's a qualification: mild, subtle,
18 moderate, severe, but you can have a severe
19 atrophy with good vision and you can have mild
20 atrophy with poor vision.
21 Q. As an ophthalmologist, do you see
22 patients in your practice and follow them for
23 optic atrophy?
24 A. I see patients with it, and I will see
25 them back with that same diagnosis, yes.

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1 Q. Would you follow a patient for the
2 progress of optic atrophy in your practice?
3 A. Not directly, no.
4 Q. If you noted that in a patient, would
5 that be an instance where you would refer the
6 patient to another specialist to be followed for
7 any progression of the optic atrophy?
8 A. More for an analysis and assessment as
9 to why it took place.
10 Q. Doctor, when a patient has optic
11 atrophy, is the vision loss proportionate to the
12 severity of the optic atrophy?
13 A. No.
14 Q. Would you agree that visual signs of
15 optic atrophy usually cannot be seen on
16 examination of the internal structures of the eye
17 until disc edema or papilledema resolves?
18 A. You're asking me then if I can see
19 optic atrophy?
20 Q. In the presence of disc edema or
21 papilledema.
22 A. I would say, generally, no.
23 Q. So in most instances, the disc edema
24 or papilledema would have to resolve before you
25 could on physical examination view changes that

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1 would be suggestive of optic atrophy?
2 A. Yes.
3 Q. Doctor, do you know whether optic
4 atrophy from papilledema and increased
5 intracranial pressure takes some time to develop?
6 A. That's my understanding, yes.
7 Q. In general, does the risk of optic
8 nerve damage increase with the duration of the
9 papilledema?
10 MS. CARULAS: Objection.
11 MS. HARRIS: Objection. You can
12 answer.
13 A. It would depend upon the severity of
14 the disc swelling, so that if there is extreme
15 disc swelling, then yes. If it's very mild disc
16 swelling, then it can go on for a tremendously
17 long time, I understand.
18 Q. Have you ever said that when
19 papilledema is relieved quickly, you're less
20 likely to have damage to the optic nerve?
21 A. Have I ever said that? Not that I
22 recall.
23 Q. Do you agree with that statement, that
24 when papilledema is relieved quickly, you're less
25 likely to have damage to the optic nerve?

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1 MS. CARULAS: Objection.
 2 A. You know, I don't relieve papilledema,
 3 I don't see those children, so I don't know how
 4 to answer that question, other than I don't know.
 5 Q. Now, doctor, when optic atrophy
 6 occurs, are there visible changes that can be
 7 seen on fundoscopic examination of the internal
 8 structures of the eye?
 9 A. Yes.
 10 Q. What type of changes would you see if
 11 optic atrophy was present when you examined the
 12 internal structures of the eye?
 13 A. You're looking for a difference in the
 14 color of the optic nerve, the thinning of the
 15 vessels, and on some -- with more cooperative
 16 people you can sometimes even see a thinning of
 17 the nerve fiber layer or a loss of the nerve
 18 fiber layer.
 19 Q. Are there progressive changes that can
 20 be seen as the optic atrophy progresses so if you
 21 did serial examinations, you would see it
 22 change?
 23 MS. HARRIS: Objection.
 24 A. You might see a gradually increasing
 25 degree of paleness to the nerve.

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1 underlying problem.
 2 Q. What is an optic nerve sheath
 3 fenestration?
 4 A. You cut a small window in the optic
 5 nerve sheath.
 6 Q. And is the purpose of that procedure
 7 to relieve the compression on the optic nerve?
 8 MS. HARRIS: Note my objection.
 9 A. You know, I don't do this procedure so
 10 that I don't know the exact details as to how it
 11 functions and the exact purpose of it, whether it
 12 is relieving the pressure on the optic nerve or
 13 it's relieving the pressure from the intracranial
 14 fluid, or whether it's relieving the axon
 15 transport. I don't know the exact mechanism as
 16 to how it relieves the pressure on the nerve.
 17 Q. Have you ever referred a patient with
 18 chronic papilledema or chronic disc edema for an
 19 optic nerve sheath fenestration?
 20 A. No.
 21 Q. If a patient has papilledema from
 22 increased intracranial pressure, does it always
 23 go away when the intracranial pressure is reduced
 24 back to normal?
 25 MS. HARRIS: Note my objection.

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1 Q. Anything else that might be observed
 2 in a progressive optic atrophy?
 3 A. None that I -- no.
 4 Q. When vision loss results as a result
 5 of papilledema and increased intracranial
 6 pressure, is there a particular field of vision
 7 that's affected first?
 8 A. Not that I know of.
 9 Q. Doctor, in children, is it common for
 10 them to compensate for vision loss and not be
 11 aware of it?
 12 A. Yes.
 13 Q. If a patient has persistent
 14 papilledema, do you know how that is treated?
 15 MS. CARULAS: Objection.
 16 A. Treat the problem.
 17 Q. Treat the underlying cause?
 18 A. Yes.
 19 Q. Any other treatments that can be
 20 utilized for a patient that has persistent
 21 papilledema?
 22 MS. HARRIS: Note my objection.
 23 A. Again, you spoke of optic nerve
 24 fenestration which can be used for treatment of
 25 this. But, again, you must really relieve the

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1 A. Ultimately it will go away. It's not
 2 necessarily an immediate disappearance. There's
 3 a delayed response.
 4 Q. Would you agree, when a patient is
 5 found to have papilledema, the patient should
 6 have followup evaluation to determine if the
 7 papilledema has resolved or whether it's
 8 persistent?
 9 MS. CARULAS: Objection.
 10 MS. HARRIS: Objection.
 11 MS. LOESEL: Objection.
 12 A. I guess the decision to do that, to
 13 follow up, would really be made by the person who
 14 is treating the papilledema and what they believe
 15 is appropriate in the care of that individual.
 16 Q. You don't treat papilledema; is that
 17 correct?
 18 A. Correct.
 19 Q. Now, in a patient with disc edema,
 20 when the patient has been diagnosed with disc
 21 edema, should that patient have followup
 22 evaluation to determine if the disc edema has
 23 resolved or whether it's persistent?
 24 A. Correct.
 25 MS. HARRIS: Objection.

10 (Pages 37 to 40)

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1 Q. I'm sorry, doctor, I didn't hear your
2 answer.
3 A. Correct. I would, yes.
4 Q. Would you agree that it would be the
5 standard of care to do so in February of 1998, if
6 a patient had disc edema, that it would be the
7 standard of care to follow that patient to
8 determine if the disc edema was resolving,
9 staying stable or getting worse?
10 MS. CARULAS: Objection.
11 MS. HARRIS: Objection.
12 MS. LOESEL: Objection.
13 MS. HARRIS: By whom?
14 MS. TOSTI: Well, first off, by an
15 ophthalmologist.
16 A. It would be a useful -- it would be
17 useful to have that piece of information, yes.
18 Q. You don't believe that it would be the
19 standard of care to follow the patient and
20 determine what was happening to the disc edema if
21 it was noted by you?
22 A. I would follow that.
23 Q. Would most ophthalmologists follow the
24 patient to determine what was happening with the
25 disc edema?

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1 printout after the test has been completed --
2 A. Correct.
3 Q. -- that indicates when the patient
4 responded in seeing the light?
5 A. Correct.
6 Q. Why do you use that type of testing in
7 the office?
8 A. I'm not sure how to answer that. What
9 do you mean?
10 Q. Are there other ways to test visual
11 field?
12 A. You can do confrontation fields.
13 Q. Why do you use the machine in your
14 office?
15 A. It is, in theory, a more accurate
16 test, a more sensitive test.
17 Q. Why is that?
18 A. You're using smaller targets.
19 Q. And so you would be able to define
20 more clearly exactly the area of the visual field
21 that may have a defect because the target is
22 smaller?
23 A. Correct.
24 MS. CARULAS: Objection.
25 Q. Do you find there are defects in the

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1 A. I would presume so.
2 Q. What is visual field testing?
3 A. It's a test which looks at the ability
4 to see in the peripheral edges of your field of
5 vision.
6 Q. Do you do visual field testing in your
7 office?
8 A. I do.
9 Q. And how do you do the visual field
10 testing?
11 A. Using an automated perimeter.
12 Q. Could you describe just briefly how
13 the visual field testing is done.
14 A. The physical arrangement?
15 Q. Yes, how the test is done, what it is
16 that the patient has to do and what is being
17 tested.
18 A. The patient sits in a chair, their
19 head is in a big bowl, they have to maintain
20 fixation on a small light, and while they
21 maintain fixation of the small light, they have
22 to be aware of lights blinking at them from the
23 peripheral -- or from the side, and press a
24 button when they see this light blink.
25 Q. And then do you get some type of a

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1 visual fields with the automated testing that
2 might not show up with the confrontational
3 testing?
4 MS. HARRIS: Objection.
5 MS. CARULAS: Objection.
6 A. Yes.
7 Q. In patients that you have seen with
8 disc edema, have you ever done sequential visual
9 field testing to monitor for the development of
10 visual field defects?
11 A. It's not something I see very often,
12 and the children that I see it in, who have it,
13 the visual field tests that I do with them, when
14 I do sequential visual fields, it occurs in older
15 children.
16 Q. So you do do sequential visual fields
17 in some patients; correct?
18 A. Yes.
19 Q. Do you do it to monitor whether there
20 has been any progression of the visual field
21 defects?
22 A. Or the development, yes.
23 Q. Doctor, would you agree that when a
24 patient has chronic disc edema that they should
25 be followed with sequential visual field

11 (Pages 41 to 44)

<p>Page 45</p> <p>1 testing? 2 MS. HARRIS: Objection. 3 MS. CARULAS: Objection. 4 MS. LOESEL: Objection. 5 A. Repeat the question. 6 (Record read.) 7 A. I would follow them with repeat visual 8 fields. 9 Q. And why would you do that, doctor? 10 A. To monitor their visual field and 11 their vision status. 12 Q. And would you be looking to see 13 whether any defects were occurring? 14 A. That would be the purpose, yes. 15 Q. And if you found that there were 16 defects occurring, would that suggest that there 17 may be optic atrophy occurring? 18 A. No, not at that time necessarily. 19 Q. Would that at least raise a concern 20 that optic atrophy may be occurring? 21 MS. HARRIS: Objection. 22 MS. CARULAS: Objection. 23 A. Atrophy is an end product. Could 24 there be damage occurring, okay. 25 Q. Well, what would we be talking in</p>	<p>Page 47</p> <p>1 Q. I'm applying it to the children that 2 you're doing sequential visual fields on. In 3 those instances when you determine that 4 sequential visual fields are appropriate, one of 5 the things that you're looking for is a visual 6 field defect; correct? 7 A. Correct. 8 Q. If you find that the child that has 9 had a chronic disc edema that you have done 10 sequential visual fields on has a visual field 11 defect, would it suggest the possibility of nerve 12 fiber damage? 13 A. Yes. 14 Q. Doctor, when you observe a patient 15 that has chronic disc edema, do you look for what 16 the cause might be? 17 A. No. I generally will involve other 18 people to look for that cause. 19 Q. So that when you see that, if it 20 suggests that there may be some other underlying 21 cause, would that be an instance where you would 22 refer the person for evaluation by another 23 specialist -- 24 A. Yes. 25 Q. -- to determine the cause?</p>
<p>Page 46</p> <p>1 regard to damage, what would be the damage? 2 A. The nerve fiber layer of the axons, 3 the nerve itself, but the atrophy is the end 4 result of that damage. So you're not going to 5 see -- semantics. 6 Q. So before you have atrophy, you have 7 nerve fiber damage? 8 A. Correct. 9 Q. So that you would do sequential visual 10 field testing in a patient that had chronic disc 11 edema, and if you saw defects, it might suggest 12 that there was some nerve fiber damage? 13 MS. HARRIS: I'm going to object. You 14 misconstrued his testimony all the way through. 15 He said he sometimes does sequential visual 16 fields with older children. Now you're saying in 17 every case. 18 MS. TOSTI: I didn't say every case. 19 MS. HARRIS: Essentially that's 20 exactly what you did. 21 Q. Doctor, do you understand my 22 question? 23 A. I understand the question you're 24 asking, but whether you're going to apply it to 25 every child or some is the question.</p>	<p>Page 48</p> <p>1 A. Yes. 2 Q. Do you have an independent 3 recollection, as you sit here today, of Kevin 4 Kiss? Do you remember him? 5 A. Not the face, not the child, per se, 6 not the habitus. 7 Q. Do you remember any of the events 8 surrounding his care? 9 A. I remember seeing him twice. 10 Q. I'm going to ask you some questions 11 about the care that you rendered to him, and if 12 you would like to have the records available, 13 feel free to do so. When was the first time that 14 Kevin Kiss came under your care? 15 A. February 9th, 1998. 16 Q. And how is it that he came to see you 17 on February 9th, 1998? 18 A. I believe his pediatrician referred 19 him to see me. 20 Q. Can you tell me who that was, if you 21 know? 22 A. Michelle Levy. 23 Q. And what is your understanding as to 24 why Kevin came to see you on February 9th, 1998? 25 A. He was complaining of blurry vision.</p>

<p>Page 49</p> <p>1 He had had a fenestration of a brain cyst, and he 2 was complaining of frequent winking. 3 Q. Did he also complain of headache and 4 neckache at that visit? 5 A. Not at the presentation. Later in the 6 examination, that was a complaint that I had 7 elicited from him. 8 Q. But at that visit on the 9th, he did 9 complain of headache and also neckache? 10 A. I asked him. 11 Q. Did he respond he did have headache 12 and he did have neckache? 13 A. The parents responded, yes. 14 Q. At the time of this visit or shortly 15 before, did you receive any information from 16 Cleveland Clinic about the care that he had 17 received at Cleveland Clinic? 18 A. No. 19 Q. Who accompanied Kevin, if you recall, 20 to the February 9th, 98 office visit? 21 A. Obviously, a parent. If I look at the 22 sign-in page, I may have -- whoever signed it 23 will be the person who accompanied him, and 24 whether there was a second parent there or not, I 25 don't recall. Do you want me to look?</p>	<p>Page 51</p> <p>1 headaches and neckaches. 2 Q. Now, I believe there's a notation at 3 the right-hand side of the page. First off, the 4 writing that's at the top of this page, is 5 that -- 6 A. That's different. That's my 7 assistant. 8 Q. Who is your assistant that wrote the 9 top part of the page? 10 A. I believe it's a woman by the name of 11 Sarah, but, again, she -- there are no initials 12 by the side, so I'm guessing. 13 Q. And then your notations are underneath 14 her handwriting; is that correct -- 15 A. Correct. 16 Q. -- at the right-hand side of the page 17 in your handwriting. It looks like it says 18 Motrin for pain. 19 A. Yes. 20 Q. Am I reading that correctly? 21 A. Yes, that's correct. 22 Q. Did they tell you that Kevin was 23 taking Motrin for pain? 24 A. Yes. 25 Q. What type of pain was Kevin having</p>
<p>Page 50</p> <p>1 Q. Yes, if you have a sign-in page, 2 because I don't have a copy of the sign-in page, 3 I don't believe. 4 MS. HARRIS: You have a complete copy 5 of the records, Jeanne. 6 A. Anne Kiss. 7 Q. I do not have in my records anything 8 that is a sign-in page. May I see it? Is one of 9 these filled out each time a patient came in to 10 see you? 11 A. First time. 12 Q. Just the first time? 13 A. Just the first time. 14 MS. TOSTI: Just to have a complete 15 set, I would make a request for that page. 16 Q. When Kevin came in, did you obtain a 17 history from Kevin or his mother or parent? 18 A. Yes. 19 Q. And what history did you obtain from 20 him or his mom? 21 A. Again, that he had had brain cyst 22 fenestration on December 17th for a brain cyst. 23 He was complaining of facial stress is the words 24 the family had used. He had been frequently 25 winking. And later in the exam, he complained of</p>	<p>Page 52</p> <p>1 that he was taking the Motrin for? 2 A. I didn't inquire until later as to why 3 he was taking Motrin for pain, and they didn't 4 tell me that he was having pain and taking Motrin 5 for this reason. He just -- are you allergic to 6 any medicines, are you taking any medications. 7 Q. They didn't say if it was for the 8 headache or the neckache? 9 A. No. 10 Q. How old was Kevin when you saw him on 11 February 9th, 1998? 12 A. That would make him eight years old. 13 Q. Wasn't he actually about 14 seven-and-a-half at the time that you saw him? 15 A. Actually, you're right. 16 Q. Did you have any knowledge of any 17 vision testing that was done on Kevin prior to 18 the time that you saw him? 19 A. I had no knowledge on Kevin at all. 20 Q. And you didn't have any type of 21 records or anything that were given to you from 22 the parents or -- 23 A. This is what I had. 24 Q. You have to let me finish my question 25 because our court reporter is going to have a</p>

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1 hard time taking us both down at the same time.
 2 The parents did not provide you with
 3 any records and you didn't obtain any records
 4 from any other source when you saw him on
 5 February 9th of 98; correct?
 6 A. Correct.
 7 Q. Now, did you perform any type of an
 8 examination on Kevin when you saw him on February
 9 9th?
 10 A. I did.
 11 Q. What type of an examination did you
 12 do?
 13 A. I did an eye exam, specifically vision
 14 testing, depth perception testing, muscle balance
 15 testing. I looked at the back of his eye,
 16 Q. When you did the examination of his
 17 eye, that was a Funduscopy examination of the
 18 eye?
 19 A. Yes.
 20 Q. Did you dilate Kevin's eyes?
 21 A. I did.
 22 Q. When you did the internal examination
 23 of the eye, did you notice any deviations from
 24 normal in the Funduscopy examination?
 25 A. There were deviations before that

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1 us what you have written there? I think it
 2 starts with plus sign, disc edema. If you would
 3 just read that.
 4 A. Plus disc edema, OU.
 5 Q. The next line?
 6 A. Complaining of headaches, neckaches.
 7 Q. Now, the OU, that refers to both eyes?
 8 A. Both eyes.
 9 Q. It appears that you underlined OU, and
 10 then it appears that there's an exclamation point
 11 after that. Is that an exclamation point?
 12 A. Yes.
 13 Q. Why did you underline the notation for
 14 both eyes and place an exclamation point after
 15 it?
 16 A. Presumably because I wasn't expecting
 17 to see it.
 18 Q. Was the finding of positive disc edema
 19 in both eyes cause for concern in Kevin's case?
 20 MS. HARRIS: Objection. Go ahead.
 21 A. In the setting that he arrived to see
 22 me, yes.
 23 Q. And why is that?
 24 A. He was having double vision. He was
 25 having crossed eyes. He had a history of cyst

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

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1 fenestration, and then a third finding
 2 additionally of disc swelling.
 3 Q. Did the symptoms that you just
 4 described and your findings raise a high level of
 5 suspicion that he may be having increased
 6 intracranial pressure?
 7 MS. HARRIS: Objection.
 8 A. I was concerned.
 9 Q. I'm sorry.
 10 A. I was concerned about that, yes.
 11 Q. Assuming Kevin's disc edema was caused
 12 by increased intracranial pressure, would he be
 13 at increased risk for optic nerve atrophy?
 14 MS. HARRIS: Objection.
 15 MS. CARULAS: Objection.
 16 A. If it's untreated.
 17 Q. Did you take any photographs when you
 18 dilated Kevin's eyes at that visit?
 19 A. I did not.
 20 Q. Did you note any signs of optic
 21 atrophy when you did the internal inspection of
 22 the eye?
 23 A. I did not make any notation about
 24 optic atrophy, so, therefore, I'm assuming I did
 25 not see any optic atrophy.

14 (Pages 53 to 56)

<p>Page 57</p> <p>1 Q. I think we talked about this 2 previously. In the presence of disc edema, it 3 would be difficult to visualize changes 4 consistent with optic atrophy? 5 A. Correct. 6 Q. Now, when you looked at the internal 7 structures of his eyes, were you able to 8 determine if his disc edema was the result of an 9 acute or a chronic problem? 10 A. No. 11 Q. Did you note any signs of nerve 12 weakness in your examination of Kevin? 13 A. No. 14 Q. Now, you have a notation on the 15 left-hand side of the page in regard to the right 16 eye, I believe. Would you read us what that 17 notation is. 18 A. This is back to his history in that I 19 was told -- asked questions related to this, and 20 I was told that the right eye had improved in the 21 sense that he had presented originally with what 22 was thought to be a Compressive third and ptosis, 23 and I believe this was related to me by the 24 family and that it had improved. 25 Q. Your actual notation --</p>	<p>Page 59</p> <p>1 secondary to esotropia, crossing eyes, or ICP. 2 Q. Now, you did find some crossing of the 3 eyes in Kevin; is that correct? 4 A. I did. 5 Q. The degree of crossing that you noted, 6 could that be due to a neurological problem? 7 A. The pattern that he had did not 8 suggest a neurological problem. 9 Q. Could it have been due to a 10 neurological problem? 11 MS. HARRIS: Objection. 12 MS. CARULAS: Objection as well. 13 A. Yes. 14 Q. Considering Kevin's recent cyst 15 fenestration and the symptoms of the headache, 16 the neckache, the frequent blinking, the disc 17 edema, did you have any concern that his crossing 18 may be due to increased intracranial pressure? 19 A. I was concerned that that was related, 20 yes. 21 Q. Now, aside from what we've just 22 discussed, did you find any other deviations from 23 normal on your examination and testing of Kevin 24 that you felt was significant? 25 A. Again, going back to the eight figure,</p>
<p>Page 58</p> <p>1 A. It says right eye improved/after, and 2 ptosis. On the other side of the slash, fine, 3 compressive third. 4 Q. That's not a finding that you found at 5 your examination? 6 A. No. No. 7 Q. You have a figure here with eights in 8 four different areas. Could you tell us what 9 that refers to? 10 A. That's a graph or a diagram indicating 11 the degree of crookedness or crossing of his eyes 12 in different positions of gaze: Up, down, left 13 and right. 14 Q. In the bottom right-hand corner of 15 your notation, there's a question mark and an 16 ET. Could you read us what that block of 17 information says. 18 A. It says, question ET secondary to ICP 19 versus ACC space ET. And then the second line is 20 question HA secondary to ET/or ICP. 21 Q. And does that refer to question 22 etiology? 23 A. No. Question esotropia secondary to 24 increased intracranial pressure versus 25 accommodated vasotopia, and question headache</p>	<p>Page 60</p> <p>1 at the time of my examination, he also had more 2 crossing up close, which is very typical for 3 children who have crossing eyes. They will 4 oftentimes have a greater deviation in near than 5 in distance. The fact that when I put that plus 6 three in front of him, which is the third line of 7 the column we talked about, his crossing 8 disappeared and suggested that his crossing may 9 be focusing-related crossing rather than 10 neurological problems. 11 Q. Doctor, what actual testing of the 12 vision did you do at this visit? 13 A. Visual acuity testing. 14 Q. How did you do visual acuity testing? 15 How did you do it? 16 A. Snellen acuity chart. 17 Q. Did you do any visual field testing of 18 Kevin when you saw him on February 9th of 98? 19 A. I did not. 20 Q. Now, knowing Kevin's history when you 21 saw the bilateral disc edema, did you have 22 heightened concern that Kevin may have increased 23 intracranial pressure causing papilledema? 24 MS. HARRIS: Objection to heightened 25 concern.</p>

<p style="text-align: right;">Page 61</p> <p>1 Q. I didn't hear your answer, doctor.</p> <p>2 A. Repeat the question again now.</p> <p>3 Q. I said: When you saw Kevin on</p> <p>4 February 9th, knowing his history, when you saw</p> <p>5 the bilateral disc edema, did you have a</p> <p>6 heightened concern that Kevin may have increased</p> <p>7 intracranial pressure causing papilledema?</p> <p>8 MS. HARRIS: Objection.</p> <p>9 A. I did.</p> <p>10 Q. Tell me what was within your</p> <p>11 differential diagnosis at that visit when you saw</p> <p>12 him.</p> <p>13 A. My thoughts were that there was a</p> <p>14 possibility that his crossing was due to a</p> <p>15 focusing-related crossing eye problem, treatable</p> <p>16 by glasses, versus crossing induced by an</p> <p>17 intracranial pressure problem, and that his</p> <p>18 headaches, they also had been due to an attempt</p> <p>19 to control the double vision either from the</p> <p>20 focusing-induced crossing or increased</p> <p>21 intracranial pressure.</p> <p>22 The disc edema wasn't of such severity</p> <p>23 that it necessarily meant increased intracranial</p> <p>24 pressure. It may have in fact been just simply</p> <p>25 idiopathic in that it was -- it was always there,</p>	<p style="text-align: right;">Page 63</p> <p>1 him in there to be evaluated and then treated</p> <p>2 appropriately.</p> <p>3 Q. Well, doctor, isn't one of the ways</p> <p>4 you see if there were signs of nerve problems is</p> <p>5 by doing the visual field testing and finding</p> <p>6 that there's a defect in the part of the visual</p> <p>7 field? Isn't that how you would determine that</p> <p>8 there was an optic nerve problem?</p> <p>9 A. That's how you would show the damage</p> <p>10 to the nerve, yes.</p> <p>11 Q. So if you have got a heightened</p> <p>12 concern that the disc edema may be related to</p> <p>13 increased intracranial pressure, wouldn't you do</p> <p>14 visual field testing to see if there was in fact</p> <p>15 any damage to the optic nerve?</p> <p>16 MS. HARRIS: Objection. Go ahead.</p> <p>17 A. It would not have altered what I was</p> <p>18 going to do, which is get him back to the</p> <p>19 neurosurgeon.</p> <p>20 Q. Did you believe that the neurosurgeon</p> <p>21 would take care of referring him to an</p> <p>22 appropriate person for followup visual field</p> <p>23 testing?</p> <p>24 MS. HARRIS: Objection.</p> <p>25 MS. CARULAS: Note an objection.</p>
<p style="text-align: right;">Page 62</p> <p>1 and that's the way he is. So there were a number</p> <p>2 of different issues that I was looking at or</p> <p>3 thinking about.</p> <p>4 Q. And did you know how long Kevin had</p> <p>5 had disc edema before you saw him?</p> <p>6 A. I don't even know if he had disc</p> <p>7 edema -- I mean, he had disc swelling, correct.</p> <p>8 I don't know how long he had this finding. I</p> <p>9 don't know, again, if that was him, that's always</p> <p>10 been him, or whether this was brand new or</p> <p>11 whether it's been there for four months, five</p> <p>12 months.</p> <p>13 Q. Doctor, if you had a heightened</p> <p>14 concern that Kevin's disc edema and other</p> <p>15 symptoms may be related to increased intracranial</p> <p>16 pressure, is there a reason why you did not do</p> <p>17 visual field testing to check for signs of nerve</p> <p>18 damage?</p> <p>19 MS. HARRIS: Objection. Go ahead.</p> <p>20 A. There was no evidence of nerve damage</p> <p>21 at that time, and, secondly, because I don't</p> <p>22 treat increased intracranial pressure problems,</p> <p>23 it was important to get him to see the</p> <p>24 neurosurgeon or the pediatric neurologist,</p> <p>25 whoever was going to be caring for him, and get</p>	<p style="text-align: right;">Page 64</p> <p>1 A. I can't answer what he would do in</p> <p>2 this sense. Again, he deals with increased</p> <p>3 intracranial pressure -- that is by nature his</p> <p>4 job -- and, therefore, the followup, the care,</p> <p>5 the management that he's going to give to that</p> <p>6 individual is going to be driven by what he finds</p> <p>7 and what he thinks is appropriate.</p> <p>8 Q. Would you agree that, when Kevin was</p> <p>9 diagnosed by you with disc edema, he should have</p> <p>10 been followed closely for the development of</p> <p>11 optic atrophy?</p> <p>12 MS. HARRIS: Objection.</p> <p>13 MS. CARULAS: Objection.</p> <p>14 MS. HARRIS: You know, Jeanne, you use</p> <p>15 words like heightened, closely. Define those</p> <p>16 terms.</p> <p>17 MS. TOSTI: I'm sorry. If the doctor</p> <p>18 has a question, he can ask me to define my terms,</p> <p>19 but that's not for you to do, and I object to</p> <p>20 your interruption and suggestion that I have to</p> <p>21 define terms for you.</p> <p>22 Q. Doctor, if you don't understand my</p> <p>23 question, please let me know and I'll be happy to</p> <p>24 rephrase it or to define a term.</p> <p>25 MS. HARRIS: Jeanne, I'm representing</p>

<p style="text-align: right;">Page 65</p> <p>1 him, and I have every right to ask you to define 2 the terms. 3 MS. TOSTI: No, you do not; the doctor 4 only. I'm not taking your deposition; I'm taking 5 the doctor's, and if he has difficulty with the 6 question that I'm asking, he can ask for an 7 explanation. 8 MS. HARRIS: Well, Jeanne, we can 9 agree to disagree. 10 Now, doctor, if you need the question 11 read back or a definition, please let her know. 12 A. Please give me a definition of what 13 you mean by closely. 14 Q. Well, let's just take the word 15 closely out. 16 Would you agree that when Kevin was 17 diagnosed with disc edema that he should have 18 been followed for the development of optic 19 atrophy? 20 MS. HARRIS: Objection. 21 MS. CARULAS: Note my objection as 22 well. 23 A. Optic atrophy would be a side result 24 of damage to the nerve, and the cause of the 25 damage to the nerve would be what would decide</p>	<p style="text-align: right;">Page 67</p> <p>1 neurosurgeon for evaluation and -- evaluation of 2 what I thought was -- concerned may be increased 3 intracranial pressure, and then I wanted to have 4 Kevin come back in approximately six weeks for 5 evaluation of his crossing. 6 Q. Now, if Kevin indeed had papilledema 7 from increased intracranial pressure, that's not 8 something that you would follow and treat; is 9 that correct? 10 A. I clearly would not treat it. 11 Q. Now, at the end of your note on the 12 bottom left-hand side of the page, there's a 13 reference to Luciano and a reference to Bruce 14 Cohen. Could you tell me what that says and what 15 that refers to. 16 A. It says Mark Luciano, cc, Cleveland 17 Clinic, Bruce Cohen, who I know is also at staff 18 there. 19 Q. And why are there names included down 20 here? 21 A. Because they were involved already in 22 his care. 23 Q. So it was your understanding that, by 24 February 9th of 1998, Dr. Cohen was involved in 25 Kevin's care?</p>
<p style="text-align: right;">Page 66</p> <p>1 how that should be cared for and evaluated, 2 whether he should be referred for -- what kind of 3 followup? 4 Q. Visual field testing. 5 A. I don't know what he should have done. 6 Q. When you referred the patient to the 7 neurosurgeon, was it your understanding that 8 Kevin would receive followup with visual field 9 testing for the disc edema that you diagnosed at 10 the February 9th visit? 11 MS. HARRIS: Objection. 12 A. No. 13 MS. CARULAS: Objection. 14 A. No. Actually, I referred them with 15 the idea that he would be evaluated, and if in 16 fact increased intracranial problems were 17 present, that they would be treated. But I did 18 not send him to the neurosurgeon for evaluation 19 of the disc edema unrelated to pressure problems, 20 and I didn't send him there for visual field 21 testing or a vision evaluation. 22 Q. So when you concluded your visit on 23 February 9th, tell me what was within your plan 24 of care for Kevin. 25 A. I was sending him back to the</p>	<p style="text-align: right;">Page 68</p> <p>1 A. I don't actually recall how I got to 2 put his name there. Perhaps -- I don't recall. 3 And I don't recall whether or not he was involved 4 in his care or not. 5 Q. When Kevin was there on the 9th, did 6 you inform Kevin's parents that he had the disc 7 edema and that his disc edema and symptoms may 8 indicate increased intracranial pressure? 9 A. I think I basically -- what I told 10 them is I was concerned that the things I had 11 seen at the examination may have been related to 12 a problem with his surgery or increased 13 intracranial pressure. Whether I used increased 14 intracranial pressure or not, I don't recall. 15 Whether I told him he had nerve swelling again, 16 specifically that idea, as a result of his 17 increased intracranial pressure, again, I don't 18 recall. But what I did tell them is that I 19 wanted them to go back to see the neurosurgeon. 20 Q. Did you tell them that there may be a 21 risk of vision loss related to the disc swelling? 22 A. I did not. Not that I recall, at 23 least. 24 Q. Did you tell Kevin's parents that they 25 needed to bring him back specifically for</p>

<p>Page 69</p> <p>1 evaluation related to the disc swelling? 2 MS. HARRIS: Objection. Go ahead. 3 A. I don't recall specifically what I 4 told them as to why I wanted Kevin to come back, 5 but I did ask them to come back for reevaluation. 6 Q. And I think we talked about it 7 before. You had indicated that with the crossing 8 of the eyes, the possibility of some type of a 9 lens correction might be helpful to him; correct? 10 A. Correct. 11 Q. Did you discuss that with the parents? 12 A. Yes. 13 Q. Did you discuss with Kevin's parents 14 that Cleveland Clinic would make a referral for 15 any additional eye evaluation that would be 16 necessary after the neurosurgeon saw him? 17 MS. HARRIS: Objection. 18 A. I did not. 19 Q. Did you assume that Cleveland Clinic 20 would make a referral -- 21 MS. HARRIS: Objection. 22 Q. -- for any eye evaluation that would 23 be necessary? 24 MS. HARRIS: Objection. 25 MS. CARULAS: Objection.</p>	<p>Page 71</p> <p>1 it was that you spoke to? 2 MS. CARULAS: Note an objection. 3 A. An appointment was made for him to go 4 see him. 5 Q. Did you discuss who would be 6 responsible for following Kevin's vision status 7 and checking for signs of resolution of the disc 8 edema? 9 A. I did not discuss it. 10 - 11 (Thereupon, PLAINTIFFS' Deposition 12 Exhibit 2 was mark'd for purposes 13 of identification.) 14 - 15 Q. Doctor, I'm handing you what's been 16 marked as Plaintiffs' Exhibit 2, which is a 17 correspondence dated February 11th, 1998. Bev, 18 it's this letter. I would ask you to look at it, 19 and, if you would please, identify that document 20 for us, if you would. 21 A. This is the letter that I wrote to Dr. 22 Luciano based upon -- regarding the visit I had 23 had with Kevin. 24 Q. Doctor, in the last paragraph of this 25 letter, the fifth line down, it says, "I have</p>
<p>Page 70</p> <p>1 A. I didn't assume one way or the other. 2 You're asking me what was going to happen after 3 the evaluation with Dr. Luciano, and I had no 4 idea what was going to happen. 5 Q. Did you discuss your findings of 6 February 9th, 98 with Kevin's neurosurgeon, Dr. 7 Luciano? 8 A. I did. 9 Q. When did you speak to him? 10 A. That day or the next day, but I 11 believe it was that day. 12 Q. What was the content of that 13 conversation? 14 A. It's not recorded in my notes, but I 15 believe the content would have been related to 16 the idea that he had surgery, he had crossing 17 eyes, and I had seen disc swelling, and that I 18 was concerned that this may be related to 19 increased intracranial pressure. 20 Q. What was Dr. Luciano's response? 21 A. Let me backtrack one of my answers. I 22 don't know if I spoke to him or his nurse or 23 someone who was directly related to his care of 24 patients. 25 Q. What response did you get from whoever</p>	<p>Page 72</p> <p>1 discussed this with Dr. Luciano who will be 2 re-evaluating the child on February 10th." The 3 last paragraph, fifth line down, do you see where 4 I'm reading? 5 A. I see. 6 Q. Did you not discuss Kevin with Dr. 7 Luciano directly? 8 MS. HARRIS: Objection. 9 A. I don't recall whether it was directly 10 or whether it was his specific nurse, someone who 11 would convey the importance of the phone call to 12 him directly. 13 Q. Your letter says you discussed it with 14 Dr. Luciano; correct? 15 A. I consider his nurse, by proxy, him. 16 Q. Doctor, your letter says that you 17 discussed it with Dr. Luciano; correct? 18 MS. HARRIS: Objection. 19 A. The same answer. 20 Q. What was your recommendation regarding 21 glasses for Kevin? 22 A. To obtain the glasses that I had 23 prescribed for him and to wear them full time. 24 Q. Doctor, in your letter, Plaintiffs' 25 Exhibit Number 2, just after the sentence that I</p>

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

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

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1 A. I did not.
2 Q. -- at six weeks? Do you know if Kevin
3 received any type of ophthalmology followup at
4 the Cleveland Clinic instead of seeing you?
5 A. I would have no way of knowing that.
6 Q. Do you have an opinion as to whether
7 Kevin had papilledema when you saw him on
8 February 9th of 98?
9 A. No. I didn't know what he had,
10 whether it was disc swelling or papilledema.
11 Q. Now, you next saw him on July 14th of
12 98; is that correct?
13 A. Yes, it is.
14 Q. How is it that Kevin came to see you
15 on that date?
16 A. My understanding is it was
17 requested -- he was asked to see me again by Dr.
18 Cohen.
19 Q. Did you obtain any history from him at
20 that visit?
21 A. The history is as you have seen it,
22 basically that he had had a lot of problems, had
23 emergency surgery with a shunt put in, and then
24 shortly before I saw him again was complaining of
25 some difficulty with his vision again.

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1 Q. Did you do an examination of Kevin on
2 July 14th of 98?
3 A. The exam I did is, as I've written it,
4 visual acuity, and then a visual field.
5 Q. Did Kevin have any nerve weakness that
6 you found at that visit?
7 A. I didn't record any if I found any.
8 Q. Did you do a funduscopy exam at that
9 visit?
10 A. I did a funduscopy. Again, it's not
11 written.
12 Q. Did you dilate his eyes?
13 A. I don't believe so. It looks like we
14 crossed it off.
15 Q. Do you recall what your findings were
16 on the funduscopy?
17 A. I believe I saw optic atrophy or optic
18 pallor.
19 Q. Was there any evidence of disc edema
20 at the time that you saw him in July?
21 A. None that I recall.
22 Q. Doctor, you mentioned that you did
23 visual field testing at that visit. Why did you
24 do visual field testing at that visit?
25 A. Because he had returned with a visual

<p>Page 77</p> <p>1 acuity of counting fingers. 2 Q. What type of visual field testing did 3 you do? 4 A. I did the Humphrey field testing, 5 automated visual field testing. 6 Q. What were the results of that visual 7 field testing? 8 A. Visual field testing showed some loss 9 of visual field in the superior hemifield of both 10 eyes as well as some extension into the right 11 inferior quadrant. 12 Q. Was the visual field defects that you 13 found the same in both the right and the left 14 eye? 15 A. Not exactly. They were sort of 16 similar. 17 Q. What were the differences between the 18 right and the left eye that you found? 19 A. Sensitivity differences and degree of 20 involvement in the different quadrants. 21 22 (Thereupon, PLAINTIFFS' Deposition 23 Exhibits 3A & 3B were mark'd for 24 purposes of identification.) 25</p>	<p>Page 79</p> <p>1 of the eye, you noted optic nerve atrophy; is 2 that correct? 3 A. I believe so, yes. 4 Q. What degree of severity did you note 5 in your evaluation of the inner part of the eye? 6 A. I didn't note it, write it down, so 7 that on July 14th the optic atrophy that was 8 present, I can't quantify other than it was 9 visible and it was -- it was visible to me. 10 Q. You don't have any recollection of the 11 discussion that you had with Kevin's parents; is 12 that correct? 13 A. Not specifically as to what I expected 14 for him or anything like that. I do recall 15 asking what happened when I saw his vision test. 16 Q. You asked what happened? 17 A. Yes. 18 Q. Why did you ask what happened? 19 A. Well, because he had had some vision 20 loss in his left eye. 21 Q. Do you recall any response from 22 Kevin's parents in regard to the information you 23 provided to them? 24 A. Not specifically, no. 25 Q. Now, following the evaluation that you</p>
<p>Page 78</p> <p>1 Q. Doctor, I'm handing you a copy of 2 what's been marked as Plaintiffs' Exhibit 3A and 3 3B, and I would ask you if this is a copy of the 4 printout of the visual field testing that you did 5 on July 14th of 98 of Kevin Kiss. 6 A. It is. 7 Q. Is the pattern that is seen on Kevin 8 Kiss' visual field testing of July 14th, 1998 9 consistent with optic atrophy resulting from 10 chronic papilledema? 11 MS. HARRIS: Objection. 12 MS. CARULAS: Objection. 13 MS. LOESEL: Objection. 14 MS. HARRIS: If you can answer that. 15 A. I can't answer that. I don't know the 16 answer. 17 Q. After you completed the visual field 18 testing, did you discuss the results with Kevin's 19 parents? 20 A. I don't specifically recall what I 21 discussed. I may have said to them that there 22 was vision loss, but I don't recall to what 23 degree of specificity or how specific I was 24 regarding this. 25 Q. When you did the internal examination</p>	<p>Page 80</p> <p>1 did on Kevin on July 14th of 98, did you contact 2 Dr. Luciano regarding your findings of optic 3 atrophy? 4 A. I believe I did. 5 Q. When did you contact him? 6 A. I don't have an exact date; it's not 7 written down, but I do know that Kevin did return 8 to see him shortly thereafter again. 9 Q. Did you talk with him on the phone? 10 A. I believe so, or his representative. 11 Q. What was Dr. Luciano's reaction when 12 you informed him that you had found that Kevin 13 had optic atrophy? 14 A. That I don't recall. 15 Q. Do you recall whether Dr. Luciano said 16 that this -- was he surprised to hear that he had 17 optic atrophy? 18 MS. CARULAS: Objection. 19 A. Again, I don't recall. 20 Q. Do you recall him telling you that Dr. 21 Cohen had observed this several weeks before you 22 had observed it? 23 MS. HARRIS: Objection. He said he 24 doesn't recall whether he talked to Luciano or he 25 talked to his representative.</p>

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

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1 Q. Did you have any contact with the
2 Cleveland Clinic in regard to sending those
3 visual field tests? Did you talk to anybody that
4 said, please send them over?
5 A. Not specifically that I recall
6 speaking to anybody about it. I may have, but
7 it's not something where I made the phone call.
8 I don't recall doing that.
9 Q. So you don't--
10 A. I may have been asked about it. I may
11 have said oh, yes, send them.
12 Q. You don't recall being contacted and a
13 request being made directly to you for those
14 tests?
15 A. It may have been made personally to
16 me, it may have been made by letter, and it may
17 have been made to my telephone answering system.
18 Q. Did you at any time speak to Dr.
19 Kosmorsky about Kevin?
20 A. I may have. I don't recall
21 specifically that I did.
22 Q. Now, when you completed your care of
23 Kevin on July 14th, 1998, what was your plan of
24 care for him?
25 A. I had asked the family to return to

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

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1 type of followup would you do for that?
2 A. I would expect the family to call and
3 make an appointment. Dr. Kosmorsky may suggest
4 to them that they come back in a certain time
5 frame and then we would re-evaluate him at that
6 time.
7 Q. What would your re-evaluation consist
8 of?
9 A. Redo his vision testing and
10 re-evaluate his visual fields.
11 Q. Why would you re-evaluate his visual
12 fields?
13 A. Because the changes that were visible
14 on the first visual field test that I did in July
15 may not be the same when he returns. They may
16 improve. The test was a moderately inaccurate
17 test at the time, so with experience he may do
18 better.
19 Q. Why was it moderately inaccurate?
20 A. Due to the fixation losses that were
21 present.
22 Q. What is a fixation loss?
23 A. The fixation loss is the child is
24 looking at this point at a small light, and
25 actually the computer is registering whether he

21 (Pages 81 to 84)

<p>Page 85</p> <p>1 is looking at that light. And if the child is 2 looking elsewhere, then the visual field testing 3 you're doing is inaccurate because you're not 4 controlling the peripheral vision. 5 Q. Is part of that related to the age of 6 the child that's taking the test in that they 7 aren't able to concentrate on what they're 8 directed to concentrate on? 9 A. Absolutely. 10 Q. And is that also one of the problems 11 when you do confrontational visual field testing 12 with a child of a young age, that they have 13 difficulty concentrating on what you're telling 14 them to concentrate on? 15 MS. CARULAS: Objection. 16 MS. HARRIS: Objection. 17 A. It's a different test. The format is 18 entirely different. 19 Q. I understand that, doctor, but is it 20 also difficult to get them to have their full 21 attention so you get an accurate reading? 22 MS. HARRIS: Objection. 23 MS. CARULAS: Objection. 24 MS. LOESEL: Objection. 25 A. Confrontational fields are inaccurate</p>	<p>Page 87</p> <p>1 page, this child needs referrals in order to be 2 evaluated. So these visits are driven by someone 3 else. I can request it, but someone has to 4 authorize it. 5 Q. In this case, this October 3rd of 98 6 visit, was this a referral that came from 7 someone? 8 A. I don't know. It says saw Dr. 9 Kosmorsky, but I don't know why they came in at 10 that particular moment. 11 Q. Did you also do an examination on 12 Kevin on October 3rd of 98? 13 A. I did. 14 Q. Did you find anything, any new 15 deviations from normal that you felt were 16 significant, anything different than your 17 previous examinations of him? 18 A. The notations are different, but I 19 think the examination is fundamentally unchanged. 20 Q. Did you do visual field testing at 21 this visit? 22 A. I did a different visual field 23 testing, which is the central 40, which is an 24 attempt to further define his central vision 25 loss.</p>
<p>Page 86</p> <p>1 compared to this kind of a test, but both need to 2 be accurate. 3 Q. Once optic atrophy occurs, is there 4 anything that can be done to treat it? 5 A. Not to my knowledge. 6 Q. So the vision loss that occurs from 7 optic atrophy would be permanent then; correct? 8 A. After a period of time, the atrophy 9 stabilizes and the vision loss that you have at 10 that time, yes. Early on, the vision may be poor 11 and then improve with time, signifying not 12 necessarily an improvement in the atrophy, but 13 just a recovery of the vision. 14 Q. When you saw Kevin in July, was his 15 vision at a stable state at that point? 16 A. I have no way of knowing. 17 Q. Now, you then saw him again, I 18 believe, on October 3rd of 98; is that correct? 19 A. Correct. 20 Q. There is a stamp that is not fully 21 legible that is underneath that date. I don't 22 know if it's legible on your record or not. I 23 just see something, no referral, and I don't know 24 what the first word says. 25 A. Has no referral. At the top of this</p>	<p>Page 88</p> <p>1 Q. When you did that test, what were your 2 findings? 3 A. That there was loss of central visual 4 field in the straight ahead region. Again, it's 5 an inaccurate test from the information based 6 upon the fixation losses. It's, again, a 7 difficult test for a child to do, so that I 8 wasn't sure as to the exact pattern that he was 9 going to ultimately demonstrate and felt that his 10 vision loss had actually improved from the 11 previous visit. 12 Q. Were you able to determine whether the 13 improvement was in his right eye, his left eye or 14 both eyes? 15 A. His right eye was 20/20, so the vision 16 had stayed the same. The visual acuity in the 17 left eye had improved. 18 Q. Because you have done two different 19 visual field testings, can you actually say that 20 there was an improvement, or could it be that one 21 test tested slightly different than the other 22 test because it was a different instrument? 23 A. It was the same machine; it was a 24 different test, so the results are different. 25 The improvement came from the visual acuity test,</p>

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1 which was the same test.
 2 Q. Are you confident that there was
 3 actual improvement in the vision when you tested
 4 him on October 3rd, and that that wasn't just a
 5 deviation because of different testing methods?
 6 A. The visual field I can't comment on;
 7 it's a different test, and so I won't comment
 8 whether there's an improvement or not an
 9 improvement there. The visual acuity test was
 10 the same test.
 11 Q. There was an improvement in visual
 12 acuity?
 13 A. There was an improvement in his
 14 measured acuity.
 15 Q. Now, when you did the visual field
 16 testing on October 3rd of 98, did you send those
 17 results to Cleveland Clinic?
 18 A. I don't recall whether I sent the
 19 results of that to Cleveland Clinic or not. I
 20 don't know if my records indicate I sent a letter
 21 back indicating such.
 22 Q. On your handwritten note in the
 23 clinical record, I would like you to just read
 24 through what's in your handwriting.
 25 MS. HARRIS: For what date?

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

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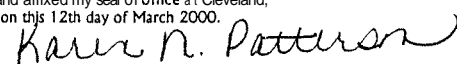
1 MS. TOSTI: October 3rd, 98.
 2 A. Positive MG pupil left eye.
 3 Retinoscopy plus 75, plus .75. O atrophy, left
 4 eye. Mild atrophy right eye, and otherwise VMP,
 5 vessels macular peripheral normal OU. Next
 6 visit, 24-2, six months long. Humphrey visual
 7 field on the side, central 40 right normal,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

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1 concern to you regarding Kevin's eyesight?
 2 A. The question was asked, does the
 3 patient have a disease in his left eye.
 4 Q. Did you respond to that question?
 5 A. I don't recall what my response was.
 6 I'm sure I said he had problems with his vision,
 7 yes.
 8 Q. Do you recall any conversations that
 9 you had with Kevin's mother from that visit?
 10 A. Other than asking him to wear
 11 protective lenses, not specifically, no, but
 12 protective lenses are a conversation in itself.
 13 Q. Doctor, under the June 1st, 99 visit,
 14 could you tell us what you have written in your
 15 handwriting at the bottom.
 16 A. I don't know where you're referring
 17 to. Which part?
 18 Q. After the HVF, there's a line, see
 19 prints both eyes. What's written under that?
 20 A. Retinoscopy, plus one, plus one,
 21 bilateral optic nerve pathology left greater than
 22 right. One year AM.
 23 Q. Now, there's a stamp in the notes that
 24 says letter dictated. Did you dictate a letter?
 25 A. I did.

23 (Pages 89 to 92)

<p>Page 93</p> <p>1 Q. Who was that letter dictated to? 2 A. Morrie Levinson, Bruce Cohen, Michelle 3 Levy. If I dictated any other ones, I have to 4 continue digging. 5 Q. That's fine, doctor. What was the 6 reason that you were dictating those letters? 7 A. To inform them what I was seeing at 8 this visit. 9 Q. Would that be in regard to Kevin's 10 vision loss? 11 A. It would be revolved to his 12 examination, yes, because of his vision loss. 13 Q. Is the loss of visual acuity one of 14 the later findings of chronic papilledema? 15 MS. HARRIS: Objection. 16 MS. CARULAS: Objection. 17 A. Again, they're findings of 18 papilledema. I don't know where to put it in the 19 time scale, whether it's necessarily early on or 20 later on, but it certainly can be a late finding. 21 Q. Do you have an opinion as to when 22 Kevin developed vision loss? 23 MS. HARRIS: Objection. 24 A. I have no knowledge as to when he 25 developed vision loss other than after February</p>	<p>Page 95</p> <p>1 to who was supposed to monitor the papilledema. 2 A. The monitoring of the papilledema 3 would be the setting of his entire care, which 4 would have been related to his intracranial 5 pressure. 6 Q. Would that be Dr. Luciano's job? 7 A. It could be. It could be Dr. Cohen's 8 job, it could be Dr. Kosmorsky's job; any of 9 these individuals that were involved in the care. 10 Q. Do you have any criticism of the care 11 that was rendered to Kevin by the Cleveland 12 Clinic? 13 A. I don't have enough knowledge about 14 intracranial issues. 15 Q. Do you have an opinion as to what 16 caused Kevin's visual loss? 17 A. It's presumptive. I don't know what 18 caused it. I believe, I would assume, it's 19 related to problems related to the cyst 20 fenestration and the reasons for the need for the 21 ventricular peritoneal shunt and issues related 22 to that. 23 Q. Do you have an opinion as to whether 24 it was caused by increased intracranial pressure? 25 A. Not directly.</p>
<p>Page 94</p> <p>1 14th, 98. 2 Q. Do you have an opinion as to whether 3 Kevin's optic atrophy and resulting vision loss 4 was preventable? 5 A. No. 6 MS. CARULAS: Objection. 7 A. I don't. 8 Q. Do you have an opinion as to whose 9 responsibility it was to monitor Kevin's 10 papilledema? 11 MS. CARULAS: Objection. 12 MS. HARRIS: Objection as to the word 13 monitor. 14 A. I'm not going to monitor his 15 papilledema. I'm not going to monitor his 16 intracranial pressure. 17 Q. So your opinion is that it wasn't your 18 responsibility to monitor Kevin for papilledema; 19 correct? 20 A. Correct. 21 Q. Do you have an opinion as to whose 22 responsibility it was? 23 A. You're asking me who is supposed to 24 treat it. 25 Q. I'm asking if you have an opinion as</p>	<p>Page 96</p> <p>1 Q. His vision loss. 2 Doctor, I'm going to hand you a copy 3 of the August 18th, 1999 transcript of the 4 conversation that you had with Kathy Mulligan, 5 and I would like you to just review it, if you 6 would, and tell me if your testimony today has 7 been consistent with what you said in that 8 transcribed conversation of August 18th, 99. 9 MS. HARRIS: Cease and desist. He 10 will not answer these questions. This 11 transcribed statement that your office took was 12 questions by your paralegal -- I assume it's a 13 paralegal -- who told this doctor, under the 14 guise of Michael Becker, under his signature, 15 that he was not going to be sued. She took 16 this. We have no idea of the dictating 17 equipment, we have no idea whether this is an 18 accurate translation, and, in fact, half of the 19 questions in this thing don't even make sense. 20 He is not answering any questions about the 21 accuracy or the inaccuracy of your translation. 22 End of subject. 23 MS. TOSTI: Are you instructing him 24 not to -- 25 MS. HARRIS: I am instructing --</p>

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1 MS. TOSTI: Let me finish. Are you 2 instructing your client not to answer my question 3 as to whether the transcription that I have 4 provided to him is consistent with what he has 5 testified to today? Are you instructing him not 6 to answer that question? 7 MS. HARRIS: I am absolutely telling 8 him that. 9 MS. TOSTI: Okay. 10 MS. HARRIS: I think this is unfair, 11 unreasonable and irresponsible. 12 MS. TOSTI: I have no further 13 questions for you, doctor. 14 MS. CARULAS: No questions. 15 MS. LOESEL: No questions. 16 MS. HARRIS: Are you writing this up? 17 MS. TOSTI: Yes. 18 MS. HARRIS: When she writes it up, he 19 will not waive signature. Would you send a copy 20 to me, I'll get it to him for signature. 21 Can we waive the seven days signing, 22 Jeanne? 23 MS. TOSTI: Yes. How long do you 24 want? 25 MS. HARRIS: Three weeks max, four	1 AFFIDAVIT 2 I have read the foregoing transcript from 3 page 1 through 98 and note the following 4 corrections: 5 PAGE LINE REQUESTED CHANGE 6 7 8 9 10 11 12 13 14 15 16 17 18 ANDREAS MARCOTTY, M.D. 19 20 Subscribed and sworn to before me this 21 _____ day of _____, 2000. 22 23 24 Notary Public 25 My commission expires _____.
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1 weeks. 2 3 (Deposition concluded at 3:40 o'clock p.m.) 4 (Signature not waived.) 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	1 CERTIFICATE 2 State of Ohio,) 3) SS: 4 County of Cuyahoga.) 5 I, Karen M. Patterson, a Notary Public 6 within and for the State of Ohio, duly 7 commissioned and qualified, do hereby certify 8 that the within named ANDREAS MARCOTTY, M.D. was 9 by me first duly sworn to testify to the truth, 10 the whole truth and nothing but the truth in the 11 cause aforesaid; that the testimony as above set 12 forth was by me reduced to stenotypy, afterwards 13 transcribed, and that the foregoing is a true and 14 correct transcription of the testimony. 15 I do further certify that this deposition 16 was taken at the time and place specified and was 17 completed without adjournment; that I am not a 18 relative or attorney for either party or 19 otherwise interested in the event of this action. 20 IN WITNESS WHEREOF, I have hereunto set my 21 hand and affixed my seal of office at Cleveland, 22 Ohio, on this 12th day of March 2000. 23  24 Karen M. Patterson, Notary Public 25 Within and for the State of Ohio My commission expires October 7, 2004.

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