IN THE COURT OF COMMON PLEAS
OF CUYAHOGA COUNTY, OHIO

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GERALDINE MEDLEN,
Plaintiff,
vs. Case No. 425998
KAISER PERMANENTE
MEDICAL CENTER, et al.,
Defendants.

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DEPOSITION OF DARSHAN MISTRY, M.D.
Thursday, November 15, 2001

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Deposition of DARSHAN MISTRY, M.D., a Defendant herein, called by the Plaintiff for examination under the statute, taken before me, Karen M. Patterson, a Registered Merit Reporter and Notary Public in and for the State of Ohio, pursuant to notice of counsel, at the offices of Kaiser Permanente Medical Center, 17406 Royalton Road, Strongsville, Ohio, on the day and date set forth above, at 9:38 o'clock a.m.

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APPEARANCES:
On behalf of the Plaintiff:
Becker & Mishkind Co., L.P.A., by
HOWARD D. MISHKIND, ESQ.
660 Skylight Office Tower
1660 W. 2nd Street
Cleveland, Ohio 44113
(216) 241-2600
On behalf of the Defendants:
Reminger & Reminger Co., L.P.A., by
MARILENA DISILVIO, ESQ.
Suite 700
The 113 St. Clair Building
Cleveland, Ohio 44113
(216) 687-1311

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

EXAMINATION OF DARSHAN MISTRY, M.D.
BY MR. MISHKIND:

Q. Would you please state your name for the record.
A. Darshan Mistry.
Q. Have you ever had your deposition taken before, sir?
A. Yes, one time.
Q. To try to save some time, I'm going to show you what was provided to me by the attorneys --
A. Okay.
Q. -- from Ohio Permanente. It's a two-page document. We will mark it as Plaintiff's Exhibit 1. What we will do is go off the record, the court reporter will mark it, and I will hand it to you.

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(Thereupon, PLAINTIFF'S Deposition Exhibit 1 was marked for purposes

of identification.)

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Q. Doctor, we are back on the record. Is Plaintiff's Exhibit 1 a copy of your professional resume, otherwise known as a curriculum vitae?
A. That's what it looks like to me.
Q. Is it current?
A. It may not be current, actually. This is an old one. It may not be current.
Q. Do you have a current one?
A. No, I don't have any current one. Since I joined this organization, I never made any other resume, and I don't believe there are anymore changes in there since that were made.
Q. Can you tell me, approximateiy, when this would have been prepared?
A. Probably when I joined this OPMG somewhere in 1993. At that time, I submitted this resume to the group. Some things are handwritten here. These are my writings.
Q. Since 1993, there wouldn't be any additional --
A. There wouldn't be any additions to this resume.

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Q. Where are you licensed to practice medicine?
A. Ohio.
Q. Any other states?
A. No other states currently. I used to be, but not currently.
Q. Are you board certified?
A. Yes, I am.
Q. In what specialty?
A. Internal medicine.
Q. Were you successful in your first attempt at becoming board certified?
A. Yes, I was.
MS. DISILVIO: Doctor, you're doing a great job, but if you would let Mr. Mishkind finish his question first, it will make it easier for Karen.
Q. How many times have you had your deposition taken?
A. How many times? Just one time.
Q. This is the second?
A. This is the second time.
Q. What I'm going to do is, whenever you're answering a question, I'm going to remain silent until I'm absolutely certain that you're

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done with the answer. Is that fair?
A. That's fair.
Q. Also, when I'm asking you something, even though you may know what the answer is and you're just dying for me to stop talking, as a lot of people are, wait until I'm done before you start answering. Fair?
A. That's fair.
Q. If at the end of my question you have no idea what I was asking you, tell me, Mr. Mishkind, please rephrase the question.
A. I will.
Q. If I don't understand one of your answers, or if for some reason the court reporter doesn't get it down clearly, we may both stop you and ask you to repeat what you just said.
A. Sure.
Q. Now, we are in Strongsville at the Kaiser facility today; correct?
A. That is true.
Q. Your office is located here?
A. My office is located here.
Q. Do you have any other offices?
A. No, I don't have any other office.

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Q. When you have seen Mrs. Medlen as a patient, has it always been here in Strongsville?
A. Yes, I believe so. Well, I don't recall exactly, because I saw her first time long time ago, and I think that would have been in another facility because I came to this facility nearly three years ago.
Q. Which facility were you at before?
A. North Olmsted.
Q. Is it fair to say that, before coming to this facility, you probably saw Mrs. Medlen at the other facility?
A. Yes, sir.
Q. A moment ago when I asked you whether you've had your deposition taken before, you told me one other time; true?
A. That is true.
Q. How long ago was that?
A. That I don't remember. Approximately, I would say, four or five years ago.
Q. Were you a defendant, someone that had been sued in the case?
A. That is true.

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Q. Besides your deposition being taken, did you also have to appear at trial in that case?
A. Yes, I had to.
Q. What was the name of the patient that had filed the claim against you?
A. Difficult for me to remember at this time. Probably, if I don't forget, it was Mr. Pittock, P-I-T-T-O-C-K; something like that.
Q. Did it involve care that had taken place at Kaiser?
A. It did.
Q. Were there other people besides yourself named in the case?
A. There were other people besides my name.
Q. Without giving me a long explanation, can you just tell me very briefly what the subject matter or the issue with this patient pertained to?
MS. DISILVIO: Objection. You may answer.
A. Say that again.
MS. DISILVIO: I objected, but you can go ahead and answer.

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A. It was about a stroke.
Q. Did the patient die?
A. No. The patient did not die.
Q. The patient had some neurological complications secondary to a stroke?
A. That is true.
Q. Was the issue whether or not you should have done something to have prevented or minimized the likelihood of a stroke occurring?
MS. DISILVIO: Objection. You can answer.
A. That is true.
Q. Do you know what the outcome of that case was when it came to court?
A. Well, it came in favor of us.
Q. Congratulations.
So besides the case that you've just told me about that your deposition was taken and it went to trial, today is now the second time?
A. That is true.
Q. Have you ever had your privileges suspended or revoked?
A. No.
Q. Have you ever applied for privileges at any hospital and been denied?

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A. No.
Q. When is the last time that you had occasion to see Mrs. Medlen as a patient?
A. I don't recall. I have to look into this file when was the last time I saw her.
Q. In a moment, what we're going to do is I'm going to have you literally open up the record and refer to it as necessary, because this is not a memory contest.
MS. DISILVIO: In fairness, Howard, to both you and the doctor, I have brought progress notes until December 26th, 2000. I don't have anything subsequent to that time with me, so he can comment from April 18, '78 through December 26, 2000.
Q. Let me ask him this. Since the end of 2000, roughly over the last ten plus months, without holding you to an absolute, is it your recollection, do you believe, that you have seen Mrs. Medlen sometime in the year 2001?
A. Yes, I did.
Q. Can you tell me, again, without holding you to an absolute number, can you tell me approximately how many times you would have seen her in the year 2001?

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A. I can't tell for sure. I can't tell.
Q. At least once?
A. At least once.
Q. Do you have a recollection as to whether that would have been, say, from summer up to now, or earlier in the year of 2001?
A. Maybe summer up to now.
Q. Do you have any recollection as to what the medical condition was that you saw her for?
A. No, not at this time.
Q. Was it an emergency, or to your recollection, was it a regularly-scheduled --
A. It was not an emergency. I'm sorry, I jumped in between, but it was not an emergency.
Q. To your recollection, was it a regularly-scheduled appointment?
A. It was a regularly-scheduled appointment.
Q. Do you maintain a chart here in Strongsville on Mrs. Medlen?
A. Yes, we do maintain charts in the form of notes. Those are scanned in the computer.

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Q. If you went to your office right now and wanted to access information on Mrs. Medlen, what would you have to do?
A. I just have to open that window.
Q. The window?
A. Window. There is a window I can access my notes.
Q. A window on the computer?
A. Yes.
Q. I'm envisioning you opening **up** a window on the building and accessing it. That's not the case?
A. No.
Q. You would go onto the computer under her name and access your notes?
A. That is true.
Q. When you saw the patient -- let's talk about in 2001 -- when you saw her for the regularly-scheduled appointment, you would have written down some notes; correct?
A. Yes, I do.
Q. When you finish seeing the patient, what would you have done with your progress notes?
A. I would hand my progress note to my

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nurse.
Q. Where does it go then from that point?
A. That nurse scans that note in the computer.
Q. What happens then with the physical note that you prepared?
A. Physical notes go to some other facility for recordkeeping.
Q. You do not retain a hard copy of the note --
A. No, I don't.
Q. -- in your office? So you don't have a file, per se, with written pages of records that you maintain on patients that you're seeing on a day-to-day basis; is that true?
A. That is true.
Q. The facility that the hard copy of the notes goes to, is that the facility where all records for Kaiser patients are maintained?
A. That's what I believe.
Q. Do you know where that facility is?
A. No, I don't.
Q. Do you have to enter some type of a password or an access number to get to Mrs.

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Medlen's record when you look on the window of your computer?
A. Yes. I have to enter her medical record number.
Q. Doctor, I want to back up for one second, and then we're going to talk about the period of time which is really the subject matter of this lawsuit, okay?
A. Okay.
Q. You indicated to me that you're board certified in internal medicine.
A. Correct.
Q. You've not written anything in any journals or textbooks in the area of internal medicine, have you?
A. No, I do not.
Q. Have you any specialty or subspecialty within the area of internal medicine?
A. No, I do not.
Q. Do you have an area of interest that you find, from the standpoint of research or practice, that you like or concentrate in?
A. Not really.
Q. You certainly have patients that are

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diabetics that you see in your practice; correct?
A. Yes, I do.
Q. In internal medicine, that is probably a fairly significant portion of the adult internal medicine practice; correct?
A. There are a number of patients with diabetes.
Q. **At** any time since Mrs. Medlen has had her amputation of her leg, have you and her talked at all about the lawsuit?
A. Not at all.
Q. Has she ever brought it up?
A. Not at all.
Q. I take it you've not brought it up either?
A. No, I did not.
Q. Have you and her ever talked about the circumstances surrounding why it is that she lost her leg?
A. No. She did not talk to me.
Q. And did you express any opinions to her as to why it is that she lost her leg?
A. No, I did not.
Q. She is still your patient; correct?

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A. She is still my patient.
Q. When she comes to see you sometime in 2001, and perhaps before that, normally, is her husband with her?
A. Normally, her husband accompanies Mrs. Medlen.
Q. **Is** he also a patient of yours?
A. I think so.
Q. Do you have a recollection of when you last saw him?
A. No, I don't.
Q. Can you tell me, like we talked about with Mrs. Medlen, in the year 2001, whether you saw Mr. Medlen also?
A. That I don't remember.
Q. Fair enough. This is a general question. How would you describe your relationship with the patient, with Mrs. Medlen? Do you understand what I mean by that?
A. My relation with the patient?
Q. Yes.
A. **As** usual, the relations with any of the patients, it is a doctor-patient relationship. It's a normal doctor-patient relationship.

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Q. Now, to me that may mean one thing; to you it may mean something else, and let me be a little bit more specific, okay?
A. Yes.
Q. As an attorney, I have clients that I'm able to communicate well with, that I say things to, they listen to me, I give them recommendations, they request information; there's a good line of communication between my client and myself. There are other clients that I know are going to be essentially noncompliant, that I will tell them to do something and they won't do it, and I am always concerned about what they're doing, or they may even be arrogant at times with me. Do you follow the difference?
A. Yes, I do.
Q. And you probably have patients that listen to what you're saying and understand what you're saying and follow your advice?
A. In general, I see all kinds of patients like that, too.
Q. So we both have that kind of an issue in our professions.
Tell me about Mrs. Medlen in that context. What type of patient has she been,

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from your personal experience?
MS. DISILVIO: Objection. If you can answer it in that context.
A. I can't specify anything in particular, but so far, it was a usual, normal patient that I have a usual, normal relationship as I have relationships with any other patient. Compliant or noncompliant, very difficult to recollect it at this point to me.
Q. Nothing that stands out in your mind that would cause you to say that she was noncompliant; true?
MS. DISILVIO: Objection. You may answer.
A. I cannot comment on that. At this moment, I cannot comment on that because occasions vary. Somebody could be noncompliant; the same patient can be compliant tomorrow.
Q. Sure, I understand that.
A. Because I have to deal with a number of patients, it's very difficult to recollect specifically one patient.
Q. That's why I say, with regard to Mrs. Medlen, you're not able to specifically recollect any examples of noncompliance on her

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part; true?
A. I cannot recollect, yes, any compliance or noncompliance issue at this moment.
Q. I'm talking about noncompliance issues. In other words, can you tell me, from what you recall about your patient, that there were situations where she was not complying with what you told her to do?
MS. DISILVIO: Objection.
A. I cannot say for sure.
MS. DISILVIO: I think the answer was he can't recall compliant or noncompliant, and I want his answer to be his honest answer to you, and I think you want that, too.
MR. MISHKIND: Well, and I would like, since we now have a local rule dealing with objections, I would like to have compliance with the Local Rule 1213 with regard to depositions and not having you testify, Marilena, with all due respect. I asked him a question concerning noncompliance, and I want to have that question answered. I don't want to have you providing your spin on the testimony. The record will reflect.

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MS. DISILVIO: It will, and we can have it read back, because just as there's a local rule, there's no local rule that says we are allowed to mischaracterize testimony. And the local rule doesn't prevent me from protecting this witness from having his testimony mischaracterized.
MR. MISHKIND: You can certainly object. What you've stated before is very clear on the record. My question to him and my subsequent question is very clear on the record. If we need to motion the Court with regard to that, I'm going to do so. I'm going to move on to the next question because I'm not going to have further speeches with regard to testimony.
Q. I'm talking about noncompliance, failure on the part of the patient to follow any advice or instructions that you personally can recall.
Are there any examples that you can recall that Mrs. Medlen failed to comply with, instructions or recommendations, that you gave to her during the course of your relationship?
MS. DISILVIO: Objection.
A. Very difficult for me to recall any

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such event today.
Q. Fair enough. What have you reviewed, doctor, in order to be in a position to talk to me about Mrs. Medlen?
A. Mostly I reviewed my notes.
Q. What notes are you referring to?
A. There are a few notes, four or five notes, I happened to review.
Q. How did you obtain those notes?
A. I got the record, I got the medical record.
Q. Did you go into a window on your computer to access that?
A. Well, I got the hard copy. From that I reviewed.
Q. So counsel provided you with the hard copy of the record; is that correct?
MS. DISILVIO: Objection. You don't need to answer anything about communications between you and me, Dr. Mistry.
Q. Did you have a copy, hard copy, of the records in your possession?
A. Yes, I did.
Q. How long have you had a copy of the records?

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A. How long?
Q. Yes.
A. Probably a week.
Q. And that hard copy included not only your record, your entries, but also other entries; correct?
A. That is true.
Q. Did you look at all of the records on Mrs. Medlen that you've had for a week?
A. Not specifically. I might have glanced at a few notes, but not specifically detailed I reviewed the records.
Q. Now, there's a volume of records to your right. Are those the records that you reviewed?
MS. DISILVIO: That's my copy.
Q. Do you have a similar copy to that copy?
A. I have the copy, though I don't have it with me now.
MS. DISILVIO: I'll represent to you this is what he has.
A. This looks about the same.
Q. It looked about the same thickness?
A. Yes.

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Q. Do you know Nancy Holmes?
A. I heard her name.
Q. Where did you hear the name from?
A. Well, we hear the name from other colleagues because she is one of the colleagues and she does not work in this facility, so I happen to hear her name.
Q. Did you hear it in the context of other patients?
A. May have in the past.
Q. What about in the context of Mrs. Medlen?
A. I just recently heard.
Q. You know that back in August, on August 4, 1999, Nancy Holmes saw Mrs. Medlen?
A. I know about that.
Q. Have you had occasion to talk to Nancy Holmes?
A. No, I did not talk to her at all.
Q. What about Kathryn Dillon, do you know Kathryn Dillon?
A. I know Kathryn Dillon.
Q. Who is Kathryn Dillon?
A. A physician assistant.
Q. Where does she work?

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A. Right in this facility.
Q. Does she still work here?
A. She still works here.
Q. Doctor, I'm going to show you what was marked in Nancy Holmes' deposition as Plaintiff's Exhibit 2. I believe that counsel has a copy of that opened. Do you recall receiving this?
A. No, I don't, sir. I don't recall receiving this note.
Q. Do you have any reason to believe that you didn't receive this note?
A. Do I have any reason to believe?
Q. Right.
A. No. What kind of reason?
Q. Well, let me rephrase it.
First, have you seen Nancy Holmes' deposition?
A. No, I did not.
Q. Were you aware that her deposition was taken?
A. Yes, I am aware.
Q. Have you been provided with any type of a summary at all of her testimony?
A. I was just told.

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Q. You don't have to talk about any of your discussions. You were just told that her deposition was taken?
A. Was taken. That's all I know.
MS. DISILVIO: I'm going to tell you not to answer any questions that call for conversations between you and me, okay?
THE WITNESS: Okay.
Q. If Nancy Holmes sent this to you and you received it, what would your normal procedure have been in terms of what you would have done with it?
A. Very difficult to say and very difficult to recall, and if I had received it at that time, and looking at the circumstances at that time, very difficult for me to answer how I would have responded to this note.
Q. Tell me why you say that.
A. Because I don't know what was the circumstances at that time with Mrs. Medlen when she wrote the note. When did I receive the note, what was the problem on that day? So that is the thing I cannot recall at this moment. And how I would have acted on this, I don't know. If I see the note, all these things are

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mentioned, I don't know how I would have responded to each factor.
Q. Well, if you take, in total, the statement of the urine glucose greater than 1000, if you take the other lab values that are referenced on here in the context of this patient, as well as the history that is recorded by Nancy Holmes, of what significance, if any, is all of this information?
A. Significance would be whether she did run into some problem, because here it's mentioned that I had seen Mrs. Medlen. That means she had seen. And when this note was written and when I would have received this note, I won't have any recollection. We are assuming that I would have received it. I don't recollect whether I ever received this note or not. My response to my thinking would be this would have been communicated by her to the patient and to the physician who was working with her at that time.
Q. Would you expect that this type of information would be communicated to the patient?
A. It would be very difficult to assume

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that it would have been communicated with the patient.
Q. Would it need to be communicated to the physician that was working with the physician's assistant?
A. I cannot say that.
Q. Well --
A. Whom she was working with at that time, I cannot say that.
Q. Well, let me ask you this, doctor. In a patient, a diabetic patient, that's a high risk amputation patient, that had a history of heel ulcers, that's known in the Kaiser system -- this is not a patient that was new to the Kaiser system -- with the urine glucose and with the CBC results that were obtained on that date, did any action need to be taken with regard to those results?
MS. DISILVIO: Objection.
A. If I had seen the patient, if I had been there, seen the patient, with all these lab values, I could have judged only at that time. I needed to see the patient.
Q. I understand that, doctor. In fairness to you, I understand that you didn't

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see the patient. I'm asking you, where a physician's assistant obtains a urine glucose, has a CBC, has the history that the patient gave, and also has available to her the history of the patient being a diabetic, being a high risk amputation, having been treated for foot ulcers, coupled with these lab results, had you been there to see the lab results, what steps or action would you have taken?
MS. DISILVIO: Objection.
A. If I had been there, but I was not there.
Q. I understand that.
A. Had I been there, what would have been my judgment?
Q. Yes, sir.
A. It depends. Only after I see the patient, because I cannot judge just by one piece of information what would have been done or what would not have been done.
Q. What would have been within your differential with the CBC -- and do you have the results? You should have them. I can hand them to you if it will make it easier for you. Here is the CBC from August 4th. Exhibits 4, 5, 6,

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it looks like 7 and 8.
MS. DISILVIO: What was the question? I'm sorry.
A. Can you please rephrase.
Q. I'm asking you, had you seen this patient on August 4th with the history that is provided to you by Nancy Holmes, 56-year-old female with fever, chills times three days, has a temperature of 101 on Sunday, Monday was achy, Tuesday evening was 101. This a.m. was normal temperature. Body aching. Patient presents complaining of running fever since Sunday night, body aches, and then you have the CBC, the urine showing the glucose. What would have been within your differential diagnosis?
A. Unfortunately, I did not see the patient.
Q. I understand that.
A. I cannot make any comment on that. Just looking at the numbers, I cannot make out anything.
Q. Would you agree that this was a new finding for this patient, a new clinical finding?
MS. DISILVIO: Objection. What was a

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new clinical finding?
A. I do not know, sir, what are the new clinical findings. The CBC, the WBC counts are the new finding, or the body ache was the new finding? I don't know.
Q. Whenever a new clinical issue presents with a patient, the patient needs to be evaluated by the supervising physician; correct?
A. That is true.
Q. If the supervising physician does not evaluate the patient, that's not in keeping with the appropriate protocols here at Kaiser, is it?
A. That is true. New patients, new complaints, yes, they have to be seen by a supervising physician.
Q. Even an existing patient with a new problem has to be seen by the supervising physician; right?
A, That is true.
Q. Do you know who Dr. Yang is?
A. Yes, I know him.
Q. Where does Dr. Yang work?
A. He works at the Parma facility.
Q. Do you have any knowledge that Dr. Yang actually saw the patient on August 4, 19 --

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A. Absolutely not. I don't have any recollection.
Q. Certainly this is a patient, with a description of the history and with the lab results, that needed to be evaluated by a physician on that date; correct?
A. According to what you said, yes, because of the new complaints.
Q. Well, I don't want it to be according to what I say. I'm saying honest and factual information, am I not?
A. That is true.
Q. Now, the diagnosis on that date was fever of unknown etiology. Do you know, first, whether that diagnosis was arrived at before or after the lab results came back?
A. According to the notes, what you are showing, the diagnosis was -- very difficult to say whether that was put down before or after these lab results.
Q. Is it fair to say you don't know whether it was before or after?
A. I don't know exactly.
Q. Now, if you had seen this patient, whether it was with Nancy Holmes or with Kathryn

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Dillon, and you had the history on this patient and you came in and you saw the patient and had the benefit of the labs, the urine, and all of the tests that were done on that date, what would you have been required to do in order to meet reasonable and accepted standards of care?
MS. DISILVIO: Objection.
A. I'm supposed to examine the patient and determine the patient by myself. I have to look at all the circumstances. I don't know exactly today what I would have done at that tinie with that patient with all these complaints and symptoms.
Q. Good.
A. It's very difficult for me to say or assume.
Q. Would you have considered, with the elevated white blood count, with the greater than thousand glucose in the urine, with the other labs, the other abnormalities -- and we can go through them, but you have them there -- would you have considered within your differential the possibility of infection?
A. Not exactly. May or may not be. Depends. It all depends. Infection, we are

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talking about varied infections.
Q. So it would have at least been within your thought process to rule out or confirm?
A. Fever, possible infection, may or may not be. Fever does not always mean it's infection.
Q. What about the elevated white blood count and the shifts that we have in the CBC?
A. Does not always point to infection. It could happen in a noninfectious problem, too.
Q. But in a patient that is a diabetic that has bilateral heel ulcers that is a high risk for amputation, would you agree that a reasonable and prudent physician would at least consider, with these acute findings and with the lab results, the possibility of infection?
A. May or may not be. Depends on still the circumstances, still the symptoms, and I actually have to interview the patient.
Q. And examine the patient?
A. And examine the patient, yes, sir.
Q. In a patient that comes in with the history that she has, the exam would not just be limited to upper body; it would also be to look at the patient's lower extremities?

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A. Still it depends. Still it depends what are the symptoms, what are the circumstances, what are the -- yes, other presenting symptoms.
Q. Would you agree that the lab results are consistent with, but not necessarily diagnostic of, an infection?
A. No, I won't.
Q. Why?
A. Because if you have -- can you be specific? What lab result? Are you talking about the white cell count?
Q. Take a look.
A. Consistent with infection?
Q. Consistent with, but not necessarily diagnostic of,
A. Still it may not point to the infection etiology. White cell count elevation may not always point to the infectious etiology.
Q. Is that elevation in the white blood cell count a finding that you see in patients that have a diagnosis of infection?
A. Not necessarily.
Q. But in some cases, yes?
A. In some cases. Not in all cases.

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Q. And I'm not suggesting in all cases. There are other things that can cause an elevation of the white blood count; correct?
A. That is true.
Q. What else can cause an elevation?
A. Certain medications. Was the patient taking certain medication like steroid medications. That can give elevation. If the patient has some hematologic disorder, cancer, leukemia, they may have elevated white blood cell counts and fever at the same time.
Q. Was this patient taking any medications that would cause an elevation in her white blood cell count?
A. I have no idea. I have no recollection. That is the reason I answer I have to look at all the circumstances, including examining the patient and interviewing the patient.
Q. Fair enough. These are the kind of things that need to be done on a hands-on basis by a physician?
A. Not necessarily a physician. Physician assistant, supported with the physician.

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Q. Well, doctor, there's no question, just so that we can save some time, that the physician assistant utilization plan clearly requires that the patient be seen by a physician when the patient has a new -- let me give you the exact word -- when the patient has a new condition, the patient needs to be seen and personally evaluated by the supervising physician prior to initiating any treatment?
A. Correct.
Q. If the patient presents with a new condition and they're not seen and personally evaluated by the supervising physician, that is considered to be below accepted practice; true?
A. I may not say that, but, yes, your first part of the question, I agree with that.
Q. What was the first part of my question?
A. The physician needs to be seen for a new problem, a new complaint.
Q. If the physician doesn't see the patient that presents with a new condition, that's not good practice, is it?
A. May not be a good practice, yes.
Q. If you were there as opposed to some

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other physician, you would have expected of yourself to have seen and evaluated the patient for her symptoms; correct?
A. I would have expected to see the patient, yes, for this new problem.
Q. When you say see the patient, that's actually doing a physical examination as opposed to just standing out in the hallway and not coming in and examining the patient; true?
A. Not always, necessarily. Seeing the patient, attending the patient, and what my physician assistant is doing depends whether I would agree with that or not. Sometimes it may be enough.
Q. I just want to understand your sworn testimony.
What you're suggesting is that your understanding of how you can utilize physician assistants in the State of Ohio and here at Kaiser is that when a patient presents with a new condition -- I want you to listen to my question entirely before you answer it because this is real important -- if a patient presents with a new condition, what you're telling me is that that patient with a new condition does not

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actually need to be physically examined by a physician?
A. No, I did not say that.
Q. Just so I'm clear, what you're telling me is, if a patient does present with a new condition, in order to comply with the law and the physician assistant utilization plan at Kaiser, the physician does need to physically examine the patient?
A. That is true.
Q. Failure to do that is not complying with the utilization plan at Kaiser; correct?
A. Maybe, yes.
Q. And it's not complying with what you understand the law to be for physician assistant supervision; true?
A. Sure.
Q. Now, I take it, just so I'm clear and I don't spend a lot of time on something that you have no knowledge of, you have no basis to tell me, from looking at the record, that Dr. Yang actually physically examined Mrs. Medlen on August 4, 1999?
A. I don't know that.
Q. Now, what I would like to understand

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is when it was, according to any information that you have available to you as an Ohio Permanente Medical Group employee, when you first became aware of these results from the lab tests, the UA, the CBC, from Mrs. Medlen's August 4, '99 visit. When did it first come to your attention?
A. I don't recall whether it ever came to my attention or whether anybody ever talked to me or called me about that.
Q. In fairness to you, because we have a note that Nancy Holmes says she sent to you at some time, what you're saying to me is she may have sent that to me, but I just can't say one way or another whether I ever received it; true?
A. I may have received it at some point. I may have received it.
Q. Do you have a recollection of having received it?
A. That is the whole problem. I don't have any recollection.
Q. Fair enough. So you may or may not have received it?
A. I may or may not have received that.
Q. In her note, it says she couldn't

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find anything wrong with her, thought you might want to see the blood work, and then it says chest x-ray negative. So that if you received Plaintiff's Exhibit 2, is it fair to say that what she is saying in this exhibit is that she was also providing you with the blood work from that visit on August 4, '99?
A. According to this note, yes.
Q. Is it fair to say, doctor, that you may or may not have received the blood work that she is referencing in this letter that was performed on August 4, 99?
A. That is true.
Q. Do you have any basis to tell me, because, again, I don't work here; I'm trying to understand the system as I'm going along and I'm just a lawyer, but can you tell me from looking at the records that a physician's assistant or a physician was notified of the blood work and the results of the urinalysis at any time on August 4, '99 when the patient was present?
A, I don't know, Your question was why it was not communicated or why they did not get it, or what should have happened over there?
Q. Well, those are all very good

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questions. I have a very strong reason to believe that Mrs. Medlen was sent honie on August 4 and was not told the results of these tests, even though the tests were performed on a Wednesday when she was present. I have, further, very strong reason to believe that on August 5, Thursday, when her husband called, they still did not provide her with the results even though the results were available, and it wasn't until August 6th when she wound up going to the emergency room and seeing Dr. Gajdowski that someone took a look and saw what the results were.

If my statement is accurate, do you consider that to be the kind of care that patients at Kaiser should receive?

MS. DISILVIO: Objection.

A. I cannot comment on that, what kind of judgment -- if they received a phone call, if they received a lab result, what kind of judgment they took in their mind, what kind of discussion they had, what was their best judgment when they saw the patient, and examination was normal, not normal, what kind of instruction was given to the patient. So I

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cannot make any comment on that.

Q. If you have a patient where you have a fever of unknown origin and you do tests to determine what the cause of the fever is, would you as a physician want to know the results of those tests?

A. Yes.

Q. Depending on what?

A. What I do with the patient, how I examine the patient, what is my judgment. Judgment from physician-to-physician, they differ. Whether I want to get the blood test result right away to check something or just to follow a few things or just to what you call -- let me go slightly back. I'm trying to -- I don't want to confuse anybody. Still it depends on my own judgment. Is the patient acutely ill, acutely sick, does she need care immediately or --

Q. Go ahead.

A. -- or the patient can be followed with some instruction as an outpatient, blood work is immediately necessary. That means somebody that belongs to -- what you call -- needs to go to the emergency care, or whether

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patients can be comfortably taken care of as an outpatient if the problem is not that serious.

So it depends on all the circumstances. Still, the bottom line is, how is the patient, how did the patient present, how sick was the patient.

Q. Let's move past August 4 for a moment. The patient calls Kaiser and the patient is calling to get the results of the tests on a Thursday. The patient certainly is entitled to be advised of the results; correct?

A. Yes, patient is usually communicated with the results.

Q. If the patient was seen the day before with these test results and now has dry heaves and shakes, what, as a reasonable physician, would you consider with all of the history that you have, the test results, the patient's history, the patient has a fever now at the time of the telephone call of 101, has dry heaves and shakes, what reasonably needs to be done with regard to that patient?

MS. DISILVIO: Objection.

Q. You cananswer.

A. Physician who saw the patient needs

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to reassess the situation. That's what I will say.

Q. How do you go about reassessing the patient?

A. Either the patient is sick enough they should be seen again, or the care should be directed to some appropriate specialty or facility, depending on the initial judgment, how the patient was instructed and what are the follow-up symptoms, how sick the patient became.

Q. Would you agree that the patient needs to be given some communication either to come in or to go someplace?

A. Depends on the initial evaluation by the initial physician.

Q. Doctor, you're not sitting here today telling me that you believe that the care and treatment that Mrs. Medlen received on August 4, 1999 met the standards of care, are you?

A. I can't comment on that.

Q. Okay.

A. It may have niet the standard of care, may not have been. Very difficult for me to comment because I did not give her care.

Q. But you've had a chance to look at

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the records and you've had a chance to look at the lab results.
A. Still, I cannot make my own judgment based on other people's notes because the patient was not in front of me.
Q. Got it. And if the patient wasn't in front of Dr. Yang and wasn't physically evaluated by Dr. Yang, would you agree that you would have more of a problem with the care?
MS. DISILVIO: Objection.
A. I don't know whether Dr. Yang saw the patient or not.
Q. If Dr. Yang didn't see the patient.
A. I don't know.
Q. If Dr. Yang didn't see the patient --
MS. DISILVIO: What's the question? If Dr. Yang didn't see the patient?
MR. MISHKIND: I'm trying to finish it.
Q. If Dr. Yang didn't see the patient, would you agree with me that that would be below the standards of care?
MS. DISILVIO: Objection.
A. Yes, with a new complaint, not seeing the patient.

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Q. And absent seeing the patient, that would be below the standards of care; true?
MS. DISILVIO: Objection.
A. I cannot answer for him.
Q. I'm not asking you to answer for him, but as a reasonable and prudent doctor, if Dr. Yang, or if you happened to have been in Dr. Yang's position, if you didn't see the patient on that day, that would be below the standards of care; true?
MS. DISILVIO: Objection. You niay answer.
A. It would have been more consistent to see the patient. It was the responsibility of the physician to see the patient. Let me put it that way.
Q. I'll accept that as an answer to my question.
Do you show in your records, either on the window of your computer or anything else that you generated, any follow-up in response to this comniunication by Nancy Holmes to you?
A. I don't recall. I don't recall whether I received that note at that time, and what was the further action after that, I don't

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know.
Q. You're aware the patient was seen by Dr. Gajdowski in the emergency room at Kaiser on August 6, 1999; true?
A. Yes, patient was seen by Dr. Gajdowski in the emergency room.
Q. Are you familiar with the clinical findings at that time?
A. Not exactly.
Q. Are you aware of the fact that, based upon the progression of her symptoms, that she was very promptly transferred to the Cleveland Clinic for further evaluation and treatment?
A. That's true.
Q. And ultimately underwent debridement, antibiotic treatment and amputations?
A. That's what I heard.
Q. Is it fair to say, however, that with regard to the specifics of what transpired, you're not intimately familiar with that?
A. No, I am not.
Q. Do you hold an opinion, doctor, in this case whether the patient's amputation would have been avoided had she been diagnosed with an infection on August 4, 1999?

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A. I cannot give any opinion, because I don't know whether it was really infected or not before that. We know on August 6. Before that, I don't know whether it was infected.
Q. Fair enough. What I want to understand is, you're not going to take the stand and say that, had everything been done the way that the Medlens and Mr. Mishkind as their attorney is suggesting should have been done on August 4, that it wouldn't have made a difference. You have no opinion one way or another?
A. I have no opinion, because I was not present there.
Q. Even looking at the records, you have no opinion?
A. I cannot form any opinion looking at the record either.
Q. Let's talk about Mrs. Medlen now. Recognizing that you saw Mrs. Medlen once, but maybe more than once in 2001, this question may or may not be difficult for you to answer, okay. How do you recall Mrs. Medlen's spirits to be? The reason I ask you that is, given that she has undergone serious operations and amputations,

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when you have seen her most recently, is she despondent, or does she seem to be upbeat in terms of your communication? Do you follow me?
A. I'm following you, but I don't recall exactly any emotional aspects or psychological aspects of the patient at that time. Looking at my note, I saw her for some kind of problem, or symptom, what I addressed. No, I really don't recall how was she emotionally or how was she accepting the whole situation before or after that,
Q. All right. Let's talk about what you have seen her for.
A. Okay.
Q. Can you tell me, before August of 1999, what conditions you treated her for?
A. I have to go to my note.
Q. Go right ahead. Tell me, before August of '99, what conditions were you treating her for?
A. August of '99. This is a visit that shows in December 1996.
Q. Was '96 the first time that you would have seen her as a patient?
A. I would have contacted the patient on

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that day, it looks like to me. I just said spoke to the patient. That means I may not have physically seen the patient, but I may have talked to her on the phone.
Q. And what was the problem that caused you to talk to her on the phone?
A, It looks like she was having cough, productive cough, and congestion.
Q. You knew back in '96, according to the progress notes, that she had been treated for foot ulcers; correct?
A. That is there from the sheet, yes.
Q. And that she also had, obviously, the diagnosis of diabetes?
A, That is true.
Q. And, in fact, one of the diagnoses showed DM ulcer, which is diabetes mellitus ulcer; correct?
A. That's correct.
Q. Tell me the reason that the Ohio Pernianente Medical Group or Kaiser has this ongoing diagnosis on patients.
A. So if the patient has been seen by any new doctor or physician, someone can get an idea about a past medical history about the

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patient.
Q. It's very helpful, isn't it?
A. It is helpful.
Q. In fact, I think it's sort of unique to the Kaiser system, or --
A. That is true.
Q. Right. And it really gives you sort of a cheat sheet, if you will, in terms of the medical history on the patient right there and then; correct?
A. That's true.
Q. So this encounter in '96 was a telephone encounter, you believe?
A. I believe it was a telephone encounter.
Q. It looks like you prescribed some antibiotics.
A. Antibiotics.
Q. You did not see her on that date, though, did you?
A. No, it doesn't look like I saw her on that day.
Q. You made a point of determining whether or not she had fever, shortness of breath or chest pain; correct?

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A. That is true.
Q. Had she had any of those symptoms, what would you have done?
A. I would have called to see the patient by myself.
Q. When next did you see the patient, or have any encounter with the patient, I should say?
A. April 17th, '97.
Q. Was this an appointment?
A. Yes, it was an appointment.
Q. You were treating her as her primary medical physician at this time; correct?
A. Correct,
Q. In fact, the previous note had Dr. Kaleupu, K-A-L-E-U-P-U --
A. Correct.
Q. -- as the primary. And then come April of '97, Dr. Mistry is there?
A. That is true.
Q. Can you explain to me why his name was gone and your name was on?
A. Patient might have preferred to change the physician. That's the only thing I can say from this.

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Q. Was the other doctor still around?
A. No, she is not around. She is not here. She used to work at the company a long time ago.
Q. Mrs. Medlen may have requested you because she liked you, or you may have been --
A. Because she might be leaving the company.
Q. And you may have been the only person that was next in line or something?
A. Yes, because there were only two physicians at the North Olmsted facility, me and her.
Q. By process of elimination, she may have wound up with you whether she wanted you or not?
A. That is true.
Q. I'm not suggesting that is good or bad. I just want to understand the process of her going from her to you.
This was a follow-up visit and she was being seen for insulin treatment for her diabetes?
A. Yes. She was on insulin treatment.
Q. Can you tell me what you noted on

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that date? I'm having a difficult time.
A. Follow-up visit. She was complaining of chronic low back pain without radiation. Patient compliant with medication.
Q. I'm sorry, what?
A. Patient compliant with the medication.
Q. That goes to one of those issues that we talked about before?
A. That's true.
Q. She was taking what she was told to take?
A. Yes.
Q. Go ahead.
A. Concerned about increasing weight.
Q. Aren't we all?
A. Yes. Vital signs stable and physical examination unremarkable.
Q. No new diagnoses added to the list?
A. No new diagnoses added.
Q. There are some additional notes on the next sheet that you made for that visit.
A. Yes, sir. It has all the laboratory workup, all the blood tests.
Q. Before you start to read it, read it

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slowly so that we don't make the court reporter's life more miserable than it is sometimes.
A. Okay. I just mention continue with the current medications. Laboratory, fasting blood sugar, BUN, creatinine, glycated hemoglobin, lipids, LEPs and urinalysis.
Q. Along the right-hand side you have today?
A. Today.
Q. What does that mean?
A. Today on the date of visit.
Q. In the North Olmsted Medical Center where she was being seen, you had a lab right there that could do all of that?
A. We had a lab right there.
Q. And how soon would the results be processed by the lab?
A. Within 24 hours.
Q. What else do you have noted?
A. Low back exercises, instructions. Dietary referral for weight reduction purpose, and follow-up after six months.
Q. Now, ASPR, what does that stand for?
A. Well, I did not write that. I don't

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know exactly what is ASPR. That's the nurse who mentioned some kind of abbreviation, but I don't understand what exactly it stands for.
Q. Is that the nurse's signature, E. --
A, It looks like there is a nurse's signature who discharged the patient from the office.
Q. To the right of the nurse's signature there is --
A. There is my signature.
Q. And then it looks like we have the --
A. Prescription written down at the bottom,
Q. There are two prescriptions there, doctor; is that correct?
A. There is only one -- yes, there are two prescriptions.
Q. It looks like on April 17th she also had an eye exam. I don't know if you're --
A. That I'm not familiar. I'm not aware about that.
Q. Let's go to the next encounter that you had with her. What would that date, please, be?
A. August 25th.

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Q. 1997?
A. 1997.
Q. What were your findings on that date?
A. My findings, patient presented for the left pedal edema, and findings were for pitting edema, one to two plus. That is a grading of the edema.
Q. You said?
A, Edema, E-D-E-M-A, that's the swelling of the soft tissues; left lower leg, ankle, with increased warmth, without tenderness.
Q. It looks like you added venous stasis --
A. Venous stasis.
Q. -- as a new diagnosis.
A. As a new diagnosis.
Q. Did you order any tests to be perfornied to determine the cause of the venous stasis?
A. Doesn't look like I ordered any test.
Q. You were also considering cellulitis at that time; correct?
A. Yes. That was part of that because I question marked the venous stasis because it could have been cellulitis.

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Q. How did you go about differentiating between it being venous stasis versus cellulitis?
A. Most likely, most commonly, clinical examination.
Q. Do your records reflect that you arrived at that time at a final diagnosis as to the likely --
A. No, it does not reflect that I arrived at one particular diagnosis. I'm putting down two differential diagnoses and trying to work on both diagnoses with the hope of reassessment at a later date.
Q. When does it say on your note for that visit in August that you were planning to see her next?
A. It does not say that. Usually we try to instruct the patients, any kind of worsening -- I did not write it over here, but many times it happens, we instruct the patient verbally.
Q. It would have been more on a p.r.n. basis?
A. More on a p.r.n. basis.
Q. No indication on that visit that she

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was noncompliant; true?
A. On this visit so far, yes.
Q. My statement is accurate?
A. Yes.
Q. When did you next have any contact with her after August 1997?
A. My next visit, September 7, 1999.
Q. I'm sorry, what was the date?
A. September 7, 1999. August '97 to September '99.
Q. What were her symptoms in September of '99?
A. Diarrhea. Follow-up, diarrhea since came home from nursing home.
Q. Had you seen her when she was in the nursing home?
A. No, I did not. We do not go to nursing home.
Q. Do you know why she had been in the nursing home?
A. Probably after the surgery, for rehabilitation purpose, she was placed in nursing home.
Q. What was she being rehabilitated for?
A. Well, this is September, so I'm

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assuming after her amputation.
Q. Which date are you referring to?
A. September 7, 1999.
Q. I'm sorry, which year?
A. '99.
Q. '99, okay. Did she have a Kaiser doctor that was her primary doctor while she was in the nursing home after her amputation?
A. I don't know.
Q. No indication on September 7, '99 when you saw her for the diarrhea that patient was noncompliant; correct?
A. Correct.
Q. When did you see her after September 7?
A. December 26, 2000.
Q. What were her symptoms when you saw her in December of 2000?
A. That says cough and cold for four days,
Q. Between when you had seen her in September of '99 and when you saw her in December of 2000, were there any appointments that she failed to keep with you or failed to schedule during that period of time?

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A. I cannot say with me, actually, because we did not offer anybody appointments at that time. But she looks like she was under care of other subspecialties and they were following her problem in different ways.
Q. Is it fair to say that Mrs. Medlen was not only seen by you, but by a number of other doctors?
A. A number of other doctors too.
Q. But speaking from your personal experience, as of December of 2000 when you last saw her, according to the note, you see no evidence of any noncompliance on the patient's part; correct?
A. That is true. That is correct.
Q. Can you tell me, doctor, from that December 2000 note, or from anything that you can recollect, how she seemed to be adapting to having her leg amputated?
A. Difficult to say. Very difficult to recollect.
Q. Nothing that stands out in your mind?
A. Exactly. Not out of the ordinary that stands out, that she behaved in some different way, or she was depressed or either

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extremes. I don't recall.
Q. Fair enough. When you saw her in December of 2000, as her internist, would you have examined the area where the amputation --
A. I may or may not have examined the area.
Q. Her presenting symptoms in December of 2000 were what?
A. Cough and cold.
Q. What was determined to be the cause?
A. Well, what I wrote down, I have to go back to my note. Nasopharyngeal inflammation. Bilateral facial and frontal tenderness, and there is indication of sinusitis.
Q. Were any labs ordered?
A. Yes, labs were ordered.
Q. And what did the labs show?
A. Chemistry, sugar, cholesterol, liver functions.
Q. What were the results?
A. I have no idea. I don't know now. I don't remember.
Q. Well, you have got the records in front of you, so I'm asking you to tell me what the records reflect.

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A. This record? This just reflects the progress note. It does not reflect the laboratory values. This is the day when the laboratories were ordered, but the results go in some different -- in different folders.
Q. So how would you know what the results of the labs were?
A. The results will come back to me the next day.
Q. All right. And if the labs were abnormal?
A. I will act on that --
Q. And do what?
A. -- appropriately.
Q. Okay.
A. Adjust the medications, if needed.
Q. Do you see any indication in your record on or after December 26, 2000 that you took any action relative to those labs?
A. I can't recall at this moment. I would have to go back to my records after this date.
Q. Assuming there were no notes after December 26, 2000 other than your note sometime in 2001, which you told me you at least remember

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summer to fall time period, if there was no immediate action taken after December 2000, would it be fair to assume that, when you received the lab results, that they were within normal limits for this patient?
A. I don't recall. If they would not have been within normal limits, I would have done something for that. I would have ordered medications for that.
Q. Fair enough. If they were within normal limits, it would be reasonable for you to have no notes by you after that, because no action was taken?
A. That is true.
Q. And no action would be required?
A. Yes.
Q. Fair enough. We are almost done, doctor.
Did you ever have occasion to talk to Dr. Matalavage about his management of Mrs. Medlen's heel ulcers?
A. Not at all. I don't recall.
Q. Doctor, as a physician, when a patient that has a history of diabetes that is at a high risk of amputation presents with a

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recent history of fever and complains of body aching and chills, prior to doing any testing, what is within your differential as a potential cause?
MS. DISILVIO: Objection.
A. Just assuming -- I need to see the patient.
Q. I know. But presented to you as you're taking your boards for internal medicine and you're given the history on this patient --
A. Okay.
Q. -- she's a diabetic, she's a high risk amputation, she has been treated for bilateral foot ulcers, she presents with a recent history, three days of fever, she has body aches and chills, before ordering any labs, what, Dr. Mistry, is within your preliminary differential diagnosis?
MS. DISILVIO: Objection.
A. Only after physical examination.
Q. What would the physical examination consist of?
A. Well, I have to check symptoms, other circumstances, too, symptoms, her medications. I have to put many things together before making

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any list of differential diagnosis.
Q. Would your physical examination be limited to upper body if the patient has mild throat pain, or would you do a full body examination?
A. Not necessarily. Depends on the symptoms and priorty of the areas to be examined according to the symptoms.
Q. Can you tell from this record on August 4th whether or not the physical exam was adequate or inadequate?
A, I cannot say that.
Q. Is elevation in temperature a finding that is seen in patients that have an infection?
A. Not necessarily.
Q. Can you have an elevation in temperature in a patient that also has laboratory findings consistent with an infection?
A. Not necessarily.
Q. Are you saying that --
A. If you can be specific.
Q. If you have an elevation in temperature --
A. Right.

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Q. -- other than low grade, if you have an elevation in temperature, does that cause you to think away from infection?
MS. DISILVIO: Objection.
A. No, you cannot say that. We cannot say that. You have to collect other data.
Q. But certainly, in a symptom complex, a patient that's diagnosed with infection, it's not uncommon to see elevation in temperature as well; true?
A. They may have elevated temperature with infection.
Q. They don't necessarily have to have elevated temperature?
A. That is true.
Q. But to say the patient has an elevation in temperature, therefore, it can't be an infection, that would be a silly statement; true?
A. That is true, but usually with ongoing infection, some people will have some continuous fever. That's true, too.
Q. Patients that have peripheral neuropathy, that are diabetics, that have foot ulcers, are they more prone to infections?

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A. Mayor may not be.
Q. Doctor, I have some documents which are referred to as Kaiser Permanente of Ohio encounter system documents. They're apparently an e-mail type of system that's used here at Kaiser. As I'm talking, you're sort of looking over. Do you know what I'm referring to?
A. I think I know what you're referring to.
Q. This encounter system where messages are sent back and forth by some type of an e-mail system, is that used frequently in the Kaiser system?
A. Yes, it is.
Q. What's the purpose of it?
A. Message. There is the appropriate message for the patients to be conveyed to appropriate providers. That's the whole intention.
Q. With what purpose in mind?
A. Communication.
Q. Communication?
A. Communication about the patient.
Q. So that communication can take place and potential action can take place by the

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physicians?
A. That is true.
Q. I want to ask you just a couple questions, There's an encounter system document that I have that's dated August 7, '99. It has you as the sender.
A. Yes.
Q. Then it says, patient needs to be seen by podiatry ASAP for follow-up in office, and it's got a DM after that.
A. Yes.
Q. Do you see that document?
A. I do.
Q. Is the DM most likely your initials?
A. That is me.
Q. Is it fair to say that this encounter form that I'm referring to was likely generated by you?
A. Yes.
Q. You somewhat hesitated when you said yes.
A. I was just looking at the name again.
Q. And there aren't too many --
A. Sender is me. This was generated by me.

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Q. Explain this document to me.
A. In what way?
Q. In whatever way you can.
A. Because I don't know the previous message, in what context I responded in this way. I need to see that.
Q. Tell me what the date was that you were sending this message.
A. That was August 9th.
Q. And who is it that, according to this document, had been the sender?
A. Sender is me. It is sent to my nurse.
Q. Who had provided the original comniunication to you that caused you --
A. That's what I'm trying to find out. I must have got some input from somewhere. In that context, I must have responded in this way. So I should have some kind of message from the patient or from some of the staff members.
Q. You see on the top portion of that there's a reference to Parma emergency department.
A. Parma emergency room, but something is missing here. Some part is missing

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somewhere. I need to see that part, why I responded in this way, why patient needs to be seen by podiatry, is she having some active foot problem at that time, or I wanted to see the patient in the office.
Q. And you're generating this on August 9?
A. August 9.
Q. That would be Monday.
A. Probably, yes.
Q. From that communication by you, is it fair to say that you did not know that this patient was in the Cleveland Clinic Foundation undergoing --
A. Very difficult for me to recall at this moment, and how much information did I have about this patient on this date.
Q. Is it fair to say that you did not know that the patient was in the Cleveland Clinic undergoing major treatment in an effort to salvage her leg, otherwise, you would not have made that note that she needed to be seen by podiatry ASAP for follow-up in the office?
A. That's why I told you, I need to see the actual message, what kind of message came to

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me. Somebody messaged me, patient is in Clinic, I responded that way; patient is being discharged from the Clinic, I responded in that way; or patient was in nursing home, I responded in that way. So the top portion, some part is missing.
Q. So the top portion of this document, which was provided to me by counsel for Kaiser, does not relate to your response?
A. No, because there is no text over here.
Q. I agree with you. I'm just trying to understand.
MR. MISHKIND: Marilena, do you have the message that Dr. Mistry would be responding to?
MS. DISILVIO: I have everything that I sent to you.
MR. MISHKIND: Again, I'm assuming you understand the hieroglyphics of the system better than I do, so I'm wondering whether you have --
MS. DISILVIO: I have it in exactly the sanie order; that is, that there is a Parma emergency department entry above Dr. Mistry's

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response time, and I will certainly check to see for you if there is anything else.
Q. Do you know who Lisa Smith is?
A. No.
MS. DISILVIO: This may be your answer here. There's a note that begins two pages earlier from the record that you showed the doctor that is from the Parma emergency department the same date, 8-7-99.
MR. MISHKIND: I'm on that right now. I'm asking whether he knows who Lisa Smith is.
MS. DISILVIO: So the question is, do you know who Lisa Smith is?
MR. MISHKIND: Yes.
MS. DISILVIO: That's the question; do you know who Lisa Smith is.
A. No, I don't know. It's just ER. Must be some person in the emergency room sending a message to me.
Q. Now, that message that you're referring to now, this is one that's dated on August 7, '99, it looks like the origin time is 5:05 p.m.?
A. Yes.
Q. Does that look to be accurate?

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A. Yes.
Q. This is not something that you were generating; this is something that was routed to you; correct?
A. Correct, and August 7th was what day? Was it Saturday?
Q. August 7th would have been Saturday.
A. Saturday. This would have been Monday. So it looks like the weekend. The message was sitting there, and I retrieved the message on Monday, and I responded.
Q. Is it fair to say that the communication that you received from the Parma emergency department on August 7th at 5:05 p.m. didn't tell you that your patient had already been transferred and admitted to the Cleveland Clinic Foundation?
A. No. This message doesn't tell anything about that.
Q. The communication that you had from the emergency department that was generated at 5:05 p.m. on August 7th did not contain any information that the patient was at the Cleveland Clinic Foundation; true?
A. That is true.

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Q. So if you were responding solely to this message, you would have had no way to know?
A. No clue where the patient is at that time.
Q. All right. Certainly, if the emergency department knew that the patient had been admitted to the hospital, that's something that could have been included in this communication to you as her primary medical physician; correct?
MS. DISILVIO: Objection.
A. Maybe. Maybe. They may have responded in that way.
Q. Had it been communicated in this message, then you would not have said in your response that the patient needs to be seen in podiatry ASAP or follow-up in office?
A. Very difficult to say, because there are 48 hours in between. I won't know in two days where the patient is, whether the patient is still in the hospital or the patient is being discharged or sent to another place.
Q. How long is a confinement for an amputation, normally?
A. Normally 24, 48 hours, uncomplicated

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recovery. Maximum 72 hours. That's what I see by working here.
Q. Did you have any occasion to see or treat Mrs. Medlen for any complications that she has had since her amputation as a result of the amputation?
A. Not that I recall.
Q. Do you recall any incidents where she had any physical complications by virtue of her prosthesis or ambuiation?
A. Not that I recall. Most likely those kinds of problems and complications post-surgery are communicated to the surgeons.
Q. When you go on to your computer and look in the window under Mrs. Medlen's name, are you able to pull up all of the encounter system communications as well as her progress notes?
A. Most of the time.
MS. DISILVIO: Can we go off the record for a minute?
(Discussion off the record.)
Q. Doctor, did you ever have occasion to talk to Dr. Gajdowski concerning his examination of your patient in the emergency room?
A. This patient?

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Q. Yes.
A. No. I don't recall.
Q. Doctor, I have another encounter system document that is sent to you on August 9th, it looks like within about an hour, almost two hours, after the last encounter document you referred to that you said patient needs to be seen by podiatry, and this one seems to have been routed to you by Angela Woodard. First, do you know who Angela Woodard is?
A. No, I don't.
Q. This was routed to you on August 9 at about 9:50 a.m.; true?
A. That's true.
Q. And you have no reason to believe that this wasn't received by you, do you?
A. No. I don't have any reason to believe I did not receive that.
Q. When the encounter documentation comes to you, does it pop up on your computer screen?
A. Yes. It comes on my computer screen.
Q. Like an e-mail that I would get?
A. No, not like an e-mail. We have to keep refreshing. It's a window that contains

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all the messages. We have to keep refreshing.
Q. This would have been sent to you, but as to when you would have seen it, is that difficult to answer?
A. Say that again. Yes.
Q. This would have been sent to you at 9:50 a.m.?
A. 9:50 a.m.
Q. As to when you personally would have seen it on your computer screen --
A. Not at that time, not usually at that time. I may open it another time.
Q. Unless you happen to have been looking at your computer at that time?
A. Yes.
Q. But this told you that the patient had been admitted on August 7 with the diagnosis of gas gangrene?
A. Yes.
Q. What is that?
A. It's a necrosis of the soft tissues that usually happens as a result of infection.
Q. How is it treated?
A. Many ways. Debridement, foot care, intravenous antibiotics.

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Q. Do you know what type of intravenous antibiotics are used?
A. There are various different kinds of antibiotics people use. It all depends on the infectious disease specialist or the primary care physician taking care of the patient is using the best judgment.
Q. Does gas gangrene always lead to amputation?
A. It does not always lead to amputation. It may lead to some complication like that.
Q. Is it important to diagnose gas gangrene as early as possible?
A. It is important to diagnose gas gangrene, yes, sir.
Q. The earlier you diagnose it, the earlier you can start appropriate antibiotic therapy?
A. That is true, and, as necessary, surgical debridement.
Q. The earlier you treat it with antibiotics and, as necessary, surgical debridement, that increases the likelihood of saving the leg; true?

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MS. DISILVIO: Objection.
A. It may. Not necessarily. It may, because you don't know at the time when the gas gangrene happened if the limb can be saved at that time or not.
Q. You certainly recognize that earlier is much better than later in terms of diagnosing gas gangrene?
A. That is standard, yes. Yes, sir.
Q. Doctor, are there any encounters that you specifically remember, either by way of seeing Mrs. Medlen, talking with her, or communicating through the encounter system, that we haven't talked about today?
A. No. I don't recall --
Q. Okay.
A. -- any such encounters.
Q. All right. There was one item that I think you were trying to remember early in the deposition, and I can't remember what it was and I was going to ask you whether you remember it now, but I can't even tell you what it was. It was a question I had asked you earlier, but I'll just leave it at that. When I look at my notes, if I remember what it is, I'll write to

Marilena.

Other than that, doctor, I have no further questions for you. Thank you very much for your time.

MS. DISILVIO: We'll read it, please. If you would send one directly to the doctor and a mini and big transcript for myself.

(Deposition concluded at 11:25 o'clock a.m.)

(Signature not waived.)

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AFFIDAVIT

I have read the foregoing transcript from page 1 through 81 and note the following corrections:

PAGE	LINE	REQUESTED CHANGE

_____
DARSHAN MISTRY, M.D.

Subscribed and sworn to before me this _____ day of _____, 2001.

_____
Notary Public

My commission expires _____.

CERTIFICATE

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

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

I do further certify that this deposition was taken at the time and place specified and was completed without adjournment; that I am not a relative or attorney for either party or otherwise interested in the event of this action. I am not, nor is the court reporting firm with which I am affiliated, under a contract as denned in Civli Rule 28(D).

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Cleveland, Ohio, on this 21st day of November 2001.

Karen M. Patterson

Karen M. Patterson, Notary Public
Withln and for the State of Ohio
My commission expires October 7, 2004.