

<p style="text-align: right;">Page 1</p> <p>1           IN THE COURT OF COMMON PLEAS 2           OF CUYAHOGA COUNTY, OHIO 3           ----- 4   GERALDINE MEDLEN, 5       Plaintiff, 6       vs.           Case No. 425998 7   KAISER PERMANENTE 8   MEDICAL CENTER, et al., 9       Defendants. 10          ----- 11       DEPOSITION OF DARSHAN MISTRY, M.D. 12       Thursday, November 15, 2001 13          ----- 14       Deposition of DARSHAN MISTRY, M.D., a 15   Defendant herein, called by the Plaintiff for 16   examination under the statute, taken before me, 17   Karen M. Patterson, a Registered Merit Reporter 18   and Notary Public in and for the State of Ohio, 19   pursuant to notice of counsel, at the offices of 20   Kaiser Permanente Medical Center, 17406 Royalton 21   Road, Strongsville, Ohio, on the day and date 22   set forth above, at 9:38 o'clock a.m. 23          ----- 24 25</p>	<p style="text-align: right;">Page 3</p> <p>1           DARSHAN MISTRY, 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 5   said as follows: 6       EXAMINATION OF DARSHAN MISTRY, M.D. 7   BY MR. MISHKIND: 8       Q.   Would you please state your name for 9   the record. 10      A.   Darshan Mistry. 11      Q.   Have you ever had your deposition 12   taken before, sir? 13      A.   Yes, one time. 14      Q.   To try to save some time, I'm going 15   to show you what was provided to me by the 16   attorneys -- 17      A.   Okay. 18      Q.   -- from Ohio Permanente. It's a 19   two-page document. We will mark it as 20   Plaintiff's Exhibit 1. What we will do is go 21   off the record, the court reporter will mark it, 22   and I will hand it to you. 23          ----- 24       (Thereupon, PLAINTIFF'S Deposition 25       Exhibit 1 was marked for purposes</p>
<p style="text-align: right;">Page 2</p> <p>1   APPEARANCES: 2       On behalf of the Plaintiff: 3       Becker &amp; Mishkind Co., L.P.A., by 4       HOWARD D. MISHKIND, ESQ. 5       660 Skylight Office Tower 6       1660 W. 2nd Street 7       Cleveland, Ohio 44113 8       (216) 241-2600 9       On behalf of the Defendants: 10      Reminger &amp; Reminger Co., L.P.A., by 11      MARILENA DISILVIO, ESQ. 12      Suite 700 13      The 113 St. Clair Building 14      Cleveland, Ohio 44113 15      (216) 687-1311 16          ---- 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 4</p> <p>1           of identification.) 2          ----- 3       Q.   Doctor, we are back on the record. 4       Is Plaintiff's Exhibit 1 a copy of 5   your professional resume, otherwise known as a 6   curriculum vitae? 7       A.   That's what it looks like to me. 8       Q.   Is it current? 9       A.   It may not be current, actually. 10      This is an old one. It may not be current. 11      Q.   Do you have a current one? 12      A.   No, I don't have any current one. 13      Since I joined this organization, I never made 14   any other resume, and I don't believe there are 15   anymore changes in there since that were made. 16      Q.   Can you tell me, approximateiy, when 17   this would have been prepared? 18      A.   Probably when I joined this OPMG 19   somewhere in 1993. At that time, I submitted 20   this resume to the group. Some things are 21   handwritten here. These are my writings. 22      Q.   Since 1993, there wouldn't be any 23   additional -- 24      A.   There wouldn't be any additions to 25   this resume.</p>

Page 5

1 Q. Where are you licensed to practice  
 2 medicine?  
 3 A. Ohio.  
 4 Q. Any other states?  
 5 A. No other states currently. I used to  
 6 be, but not currently.  
 7 Q. Are you board certified?  
 8 A. Yes, I am.  
 9 Q. In what specialty?  
 10 A. Internal medicine.  
 11 Q. Were you successful in your first  
 12 attempt at becoming board certified?  
 13 A. Yes, I was.  
 14 MS. DISILVIO: Doctor, you're doing a  
 15 great job, but if you would let Mr. Mishkind  
 16 finish his question first, it will make it  
 17 easier for Karen.  
 18 Q. How many times have you had your  
 19 deposition taken?  
 20 A. How many times? Just one time.  
 21 Q. This is the second?  
 22 A. This is the second time.  
 23 Q. What I'm going to do is, whenever  
 24 you're answering a question, I'm going to remain  
 25 silent until I'm absolutely certain that you're

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1 Q. When you have seen Mrs. Medlen as a  
 2 patient, has it always been here in  
 3 Strongsville?  
 4 A. Yes, I believe so. Well, I don't  
 5 recall exactly, because I saw her first time  
 6 long time ago, and I think that would have been  
 7 in another facility because I came to this  
 8 facility nearly three years ago.  
 9 Q. Which facility were you at before?  
 10 A. North Olmsted.  
 11 Q. Is it fair to say that, before coming  
 12 to this facility, you probably saw Mrs. Medlen  
 13 at the other facility?  
 14 A. Yes, sir.  
 15 Q. A moment ago when I asked you whether  
 16 you've had your deposition taken before, you  
 17 told me one other time; true?  
 18 A. That is true.  
 19 Q. How long ago was that?  
 20 A. That I don't remember.  
 21 Approximately, I would say, four or five years  
 22 ago.  
 23 Q. Were you a defendant, someone that  
 24 had been sued in the case?  
 25 A. That is true.

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

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

2 (Pages 5 to 8)

<p style="text-align: right;">Page 9</p> <p>1 A. It was about a stroke. 2 Q. Did the patient die? 3 A. No. The patient did not die. 4 Q. The patient had some neurological 5 complications secondary to a stroke? 6 A. That is true. 7 Q. Was the issue whether or not you 8 should have done something to have prevented or 9 minimized the likelihood of a stroke occurring? 10 MS. DISILVIO: Objection. You can 11 answer. 12 A. That is true. 13 Q. Do you know what the outcome of that 14 case was when it came to court? 15 A. Well, it came in favor of us. 16 Q. Congratulations. 17 So besides the case that you've just 18 told me about that your deposition was taken and 19 it went to trial, today is now the second time? 20 A. That is true. 21 Q. Have you ever had your privileges 22 suspended or revoked? 23 A. No. 24 Q. Have you ever applied for privileges 25 at any hospital and been denied?</p>	<p style="text-align: right;">Page 11</p> <p>1 A. I can't tell for sure. I can't tell. 2 Q. At least once? 3 A. At least once. 4 Q. Do you have a recollection as to 5 whether that would have been, say, from summer 6 up to now, or earlier in the year of 2001? 7 A. Maybe summer up to now. 8 Q. Do you have any recollection as to 9 what the medical condition was that you saw her 10 for? 11 A. No, not at this time. 12 Q. Was it an emergency, or to your 13 recollection, was it a regularly-scheduled -- 14 A. It was not an emergency. I'm sorry, 15 I jumped in between, but it was not an 16 emergency. 17 Q. To your recollection, was it a 18 regularly-scheduled appointment? 19 A. It was a regularly-scheduled 20 appointment. 21 Q. Do you maintain a chart here in 22 Strongsville on Mrs. Medlen? 23 A. Yes, we do maintain charts in the 24 form of notes. Those are scanned in the 25 computer.</p>
<p style="text-align: right;">Page 10</p> <p>1 A. No. 2 Q. When is the last time that you had 3 occasion to see Mrs. Medlen as a patient? 4 A. I don't recall. I have to look into 5 this file when was the last time I saw her. 6 Q. In a moment, what we're going to do 7 is I'm going to have you literally open up the 8 record and refer to it as necessary, because 9 this is not a memory contest. 10 MS. DISILVIO: In fairness, Howard, 11 to both you and the doctor, I have brought 12 progress notes until December 26th, 2000. I 13 don't have anything subsequent to that time with 14 me, so he can comment from April 18, '78 through 15 December 26, 2000. 16 Q. Let me ask him this. Since the end 17 of 2000, roughly over the last ten plus months, 18 without holding you to an absolute, is it your 19 recollection, do you believe, that you have seen 20 Mrs. Medlen sometime in the year 2001? 21 A. Yes, I did. 22 Q. Can you tell me, again, without 23 holding you to an absolute number, can you tell 24 me approximately how many times you would have 25 seen her in the year 2001?</p>	<p style="text-align: right;">Page 12</p> <p>1 Q. If you went to your office right now 2 and wanted to access information on Mrs. Medlen, 3 what would you have to do? 4 A. I just have to open that window. 5 Q. The window? 6 A. Window. There is a window I can 7 access my notes. 8 Q. A window on the computer? 9 A. Yes. 10 Q. I'm envisioning you opening up a 11 window on the building and accessing it. That's 12 not the case? 13 A. No. 14 Q. You would go onto the computer under 15 her name and access your notes? 16 A. That is true. 17 Q. When you saw the patient -- let's 18 talk about in 2001 -- when you saw her for the 19 regularly-scheduled appointment, you would have 20 written down some notes; correct? 21 A. Yes, I do. 22 Q. When you finish seeing the patient, 23 what would you have done with your progress 24 notes? 25 A. I would hand my progress note to my</p>

<p style="text-align: right;">Page 13</p> <p>1 nurse.</p> <p>2 Q. Where does it go then from that</p> <p>3 point?</p> <p>4 A. That nurse scans that note in the</p> <p>5 computer.</p> <p>6 Q. What happens then with the physical</p> <p>7 note that you prepared?</p> <p>8 A. Physical notes go to some other</p> <p>9 facility for recordkeeping.</p> <p>10 Q. You do not retain a hard copy of the</p> <p>11 note --</p> <p>12 A. No, I don't.</p> <p>13 Q. -- in your office? So you don't have</p> <p>14 a file, per se, with written pages of records</p> <p>15 that you maintain on patients that you're seeing</p> <p>16 on a day-to-day basis; is that true?</p> <p>17 A. That is true.</p> <p>18 Q. The facility that the hard copy of</p> <p>19 the notes goes to, is that the facility where</p> <p>20 all records for Kaiser patients are maintained?</p> <p>21 A. That's what I believe.</p> <p>22 Q. Do you know where that facility is?</p> <p>23 A. No, I don't.</p> <p>24 Q. Do you have to enter some type of a</p> <p>25 password or an access number to get to Mrs.</p>	<p style="text-align: right;">Page 15</p> <p>1 diabetics that you see in your practice;</p> <p>2 correct?</p> <p>3 A. Yes, I do.</p> <p>4 Q. In internal medicine, that is</p> <p>5 probably a fairly significant portion of the</p> <p>6 adult internal medicine practice; correct?</p> <p>7 A. There are a number of patients with</p> <p>8 diabetes.</p> <p>9 Q. At any time since Mrs. Medlen has had</p> <p>10 her amputation of her leg, have you and her</p> <p>11 talked at all about the lawsuit?</p> <p>12 A. Not at all.</p> <p>13 Q. Has she ever brought it up?</p> <p>14 A. Not at all.</p> <p>15 Q. I take it you've not brought it up</p> <p>16 either?</p> <p>17 A. No, I did not.</p> <p>18 Q. Have you and her ever talked about</p> <p>19 the circumstances surrounding why it is that she</p> <p>20 lost her leg?</p> <p>21 A. No. She did not talk to me.</p> <p>22 Q. And did you express any opinions to</p> <p>23 her as to why it is that she lost her leg?</p> <p>24 A. No, I did not.</p> <p>25 Q. She is still your patient; correct?</p>
<p style="text-align: right;">Page 14</p> <p>1 Medlen's record when you look on the window of</p> <p>2 your computer?</p> <p>3 A. Yes. I have to enter her medical</p> <p>4 record number.</p> <p>5 Q. Doctor, I want to back up for one</p> <p>6 second, and then we're going to talk about the</p> <p>7 period of time which is really the subject</p> <p>8 matter of this lawsuit, okay?</p> <p>9 A. Okay.</p> <p>10 Q. You indicated to me that you're board</p> <p>11 certified in internal medicine.</p> <p>12 A. Correct.</p> <p>13 Q. You've not written anything in any</p> <p>14 journals or textbooks in the area of internal</p> <p>15 medicine, have you?</p> <p>16 A. No, I do not.</p> <p>17 Q. Have you any specialty or</p> <p>18 subspecialty within the area of internal</p> <p>19 medicine?</p> <p>20 A. No, I do not.</p> <p>21 Q. Do you have an area of interest that</p> <p>22 you find, from the standpoint of research or</p> <p>23 practice, that you like or concentrate in?</p> <p>24 A. Not really.</p> <p>25 Q. You certainly have patients that are</p>	<p style="text-align: right;">Page 16</p> <p>1 A. She is still my patient.</p> <p>2 Q. When she comes to see you sometime in</p> <p>3 2001, and perhaps before that, normally, is her</p> <p>4 husband with her?</p> <p>5 A. Normally, her husband accompanies</p> <p>6 Mrs. Medlen.</p> <p>7 Q. Is he also a patient of yours?</p> <p>8 A. I think so.</p> <p>9 Q. Do you have a recollection of when</p> <p>10 you last saw him?</p> <p>11 A. No, I don't.</p> <p>12 Q. Can you tell me, like we talked about</p> <p>13 with Mrs. Medlen, in the year 2001, whether you</p> <p>14 saw Mr. Medlen also?</p> <p>15 A. That I don't remember.</p> <p>16 Q. Fair enough. This is a general</p> <p>17 question. How would you describe your</p> <p>18 relationship with the patient, with Mrs. Medlen?</p> <p>19 Do you understand what I mean by that?</p> <p>20 A. My relation with the patient?</p> <p>21 Q. Yes.</p> <p>22 A. As usual, the relations with any of</p> <p>23 the patients, it is a doctor-patient</p> <p>24 relationship. It's a normal doctor-patient</p> <p>25 relationship.</p>

<p style="text-align: right;">Page 17</p> <p>1 Q. Now, to me that may mean one thing;  2 to you it may mean something else, and let me be  3 a little bit more specific, okay?  4 A. Yes.  5 Q. As an attorney, I have clients that  6 I'm able to communicate well with, that I say  7 things to, they listen to me, I give them  8 recommendations, they request information;  9 there's a good line of communication between my  10 client and myself. There are other clients that  11 I know are going to be essentially noncompliant,  12 that I will tell them to do something and they  13 won't do it, and I am always concerned about  14 what they're doing, or they may even be arrogant  15 at times with me. Do you follow the difference?  16 A. Yes, I do.  17 Q. And you probably have patients that  18 listen to what you're saying and understand what  19 you're saying and follow your advice?  20 A. In general, I see all kinds of  21 patients like that, too.  22 Q. So we both have that kind of an issue  23 in our professions.  24 Tell me about Mrs. Medlen in that  25 context. What type of patient has she been,</p>	<p style="text-align: right;">Page 19</p> <p>1 part; true?  2 A. I cannot recollect, yes, any  3 compliance or noncompliance issue at this  4 moment.  5 Q. I'm talking about noncompliance  6 issues. In other words, can you tell me, from  7 what you recall about your patient, that there  8 were situations where she was not complying with  9 what you told her to do?  10 MS. DISILVIO: Objection.  11 A. I cannot say for sure.  12 MS. DISILVIO: I think the answer was  13 he can't recall compliant or noncompliant, and I  14 want his answer to be his honest answer to you,  15 and I think you want that, too.  16 MR. MISHKIND: Well, and I would  17 like, since we now have a local rule dealing  18 with objections, I would like to have compliance  19 with the Local Rule 1213 with regard to  20 depositions and not having you testify,  21 Marilena, with all due respect. I asked him a  22 question concerning noncompliance, and I want to  23 have that question answered. I don't want to  24 have you providing your spin on the testimony.  25 The record will reflect.</p>
<p style="text-align: right;">Page 18</p> <p>1 from your personal experience?  2 MS. DISILVIO: Objection. If you can  3 answer it in that context.  4 A. I can't specify anything in  5 particular, but so far, it was a usual, normal  6 patient that I have a usual, normal relationship  7 as I have relationships with any other patient.  8 Compliant or noncompliant, very difficult to  9 recollect it at this point to me.  10 Q. Nothing that stands out in your mind  11 that would cause you to say that she was  12 noncompliant; true?  13 MS. DISILVIO: Objection. You may  14 answer.  15 A. I cannot comment on that. At this  16 moment, I cannot comment on that because  17 occasions vary. Somebody could be noncompliant;  18 the same patient can be compliant tomorrow.  19 Q. Sure, I understand that.  20 A. Because I have to deal with a number  21 of patients, it's very difficult to recollect  22 specifically one patient.  23 Q. That's why I say, with regard to Mrs.  24 Medlen, you're not able to specifically  25 recollect any examples of noncompliance on her</p>	<p style="text-align: right;">Page 20</p> <p>1 MS. DISILVIO: It will, and we can  2 have it read back, because just as there's a  3 local rule, there's no local rule that says we  4 are allowed to mischaracterize testimony. And  5 the local rule doesn't prevent me from  6 protecting this witness from having his  7 testimony mischaracterized.  8 MR. MISHKIND: You can certainly  9 object. What you've stated before is very clear  10 on the record. My question to him and my  11 subsequent question is very clear on the record.  12 If we need to motion the Court with regard to  13 that, I'm going to do so. I'm going to move on  14 to the next question because I'm not going to  15 have further speeches with regard to testimony.  16 Q. I'm talking about noncompliance,  17 failure on the part of the patient to follow any  18 advice or instructions that you personally can  19 recall.  20 Are there any examples that you can  21 recall that Mrs. Medlen failed to comply with,  22 instructions or recommendations, that you gave  23 to her during the course of your relationship?  24 MS. DISILVIO: Objection.  25 A. Very difficult for me to recall any</p>

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1 such event today.  
 2 Q. Fair enough. What have you reviewed,  
 3 doctor, in order to be in a position to talk to  
 4 me about Mrs. Medlen?  
 5 A. Mostly I reviewed my notes.  
 6 Q. What notes are you referring to?  
 7 A. There are a few notes, four or five  
 8 notes, I happened to review.  
 9 Q. How did you obtain those notes?  
 10 A. I got the record, I got the medical  
 11 record.  
 12 Q. Did you go into a window on your  
 13 computer to access that?  
 14 A. Well, I got the hard copy. From that  
 15 I reviewed.  
 16 Q. So counsel provided you with the hard  
 17 copy of the record; is that correct?  
 18 MS. DISILVIO: Objection. You don't  
 19 need to answer anything about communications  
 20 between you and me, Dr. Mistry.  
 21 Q. Did you have a copy, hard copy, of  
 22 the records in your possession?  
 23 A. Yes, I did.  
 24 Q. How long have you had a copy of the  
 25 records?

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1 Q. Do you know Nancy Holmes?  
 2 A. I heard her name.  
 3 Q. Where did you hear the name from?  
 4 A. Well, we hear the name from other  
 5 colleagues because she is one of the colleagues  
 6 and she does not work in this facility, so I  
 7 happen to hear her name.  
 8 Q. Did you hear it in the context of  
 9 other patients?  
 10 A. May have in the past.  
 11 Q. What about in the context of Mrs.  
 12 Medlen?  
 13 A. I just recently heard.  
 14 Q. You know that back in August, on  
 15 August 4, 1999, Nancy Holmes saw Mrs. Medlen?  
 16 A. I know about that.  
 17 Q. Have you had occasion to talk to  
 18 Nancy Holmes?  
 19 A. No, I did not talk to her at all.  
 20 Q. What about Kathryn Dillon, do you  
 21 know Kathryn Dillon?  
 22 A. I know Kathryn Dillon.  
 23 Q. Who is Kathryn Dillon?  
 24 A. A physician assistant.  
 25 Q. Where does she work?

Page 22

1 A. How long?  
 2 Q. Yes.  
 3 A. Probably a week.  
 4 Q. And that hard copy included not only  
 5 your record, your entries, but also other  
 6 entries; correct?  
 7 A. That is true.  
 8 Q. Did you look at all of the records on  
 9 Mrs. Medlen that you've had for a week?  
 10 A. Not specifically. I might have  
 11 glanced at a few notes, but not specifically  
 12 detailed I reviewed the records.  
 13 Q. Now, there's a volume of records to  
 14 your right. Are those the records that you  
 15 reviewed?  
 16 MS. DISILVIO: That's my copy.  
 17 Q. Do you have a similar copy to that  
 18 copy?  
 19 A. I have the copy, though I don't have  
 20 it with me now.  
 21 MS. DISILVIO: I'll represent to you  
 22 this is what he has.  
 23 A. This looks about the same.  
 24 Q. It looked about the same thickness?  
 25 A. Yes.

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1 A. Right in this facility.  
 2 Q. Does she still work here?  
 3 A. She still works here.  
 4 Q. Doctor, I'm going to show you what  
 5 was marked in Nancy Holmes' deposition as  
 6 Plaintiff's Exhibit 2. I believe that counsel  
 7 has a copy of that opened. Do you recall  
 8 receiving this?  
 9 A. No, I don't, sir. I don't recall  
 10 receiving this note.  
 11 Q. Do you have any reason to believe  
 12 that you didn't receive this note?  
 13 A. Do I have any reason to believe?  
 14 Q. Right.  
 15 A. No. What kind of reason?  
 16 Q. Well, let me rephrase it.  
 17 First, have you seen Nancy Holmes'  
 18 deposition?  
 19 A. No, I did not.  
 20 Q. Were you aware that her deposition  
 21 was taken?  
 22 A. Yes, I am aware.  
 23 Q. Have you been provided with any type  
 24 of a summary at all of her testimony?  
 25 A. I was just told.

6 (Pages 21 to 24)

<p style="text-align: right;">Page 25</p> <p>1 Q. You don't have to talk about any of 2 your discussions. You were just told that her 3 deposition was taken? 4 A. Was taken. That's all I know. 5 MS. DISILVIO: I'm going to tell you 6 not to answer any questions that call for 7 conversations between you and me, okay? 8 THE WITNESS: Okay. 9 Q. If Nancy Holmes sent this to you and 10 you received it, what would your normal 11 procedure have been in terms of what you would 12 have done with it? 13 A. Very difficult to say and very 14 difficult to recall, and if I had received it at 15 that time, and looking at the circumstances at 16 that time, very difficult for me to answer how I 17 would have responded to this note. 18 Q. Tell me why you say that. 19 A. Because I don't know what was the 20 circumstances at that time with Mrs. Medlen when 21 she wrote the note. When did I receive the 22 note, what was the problem on that day? So that 23 is the thing I cannot recall at this moment. 24 And how I would have acted on this, I don't 25 know. If I see the note, all these things are</p>	<p style="text-align: right;">Page 27</p> <p>1 that it would have been communicated with the 2 patient. 3 Q. Would it need to be communicated to 4 the physician that was working with the 5 physician's assistant? 6 A. I cannot say that. 7 Q. Well -- 8 A. Whom she was working with at that 9 time, I cannot say that. 10 Q. Well, let me ask you this, doctor. 11 In a patient, a diabetic patient, that's a high 12 risk amputation patient, that had a history of 13 heel ulcers, that's known in the Kaiser 14 system -- this is not a patient that was new to 15 the Kaiser system -- with the urine glucose and 16 with the CBC results that were obtained on that 17 date, did any action need to be taken with 18 regard to those results? 19 MS. DISILVIO: Objection. 20 A. If I had seen the patient, if I had 21 been there, seen the patient, with all these lab 22 values, I could have judged only at that time. 23 I needed to see the patient. 24 Q. I understand that, doctor. In 25 fairness to you, I understand that you didn't</p>
<p style="text-align: right;">Page 26</p> <p>1 mentioned, I don't know how I would have 2 responded to each factor. 3 Q. Well, if you take, in total, the 4 statement of the urine glucose greater than 5 1000, if you take the other lab values that are 6 referenced on here in the context of this 7 patient, as well as the history that is recorded 8 by Nancy Holmes, of what significance, if any, 9 is all of this information? 10 A. Significance would be whether she did 11 run into some problem, because here it's 12 mentioned that I had seen Mrs. Medlen. That 13 means she had seen. And when this note was 14 written and when I would have received this 15 note, I won't have any recollection. We are 16 assuming that I would have received it. I don't 17 recollect whether I ever received this note or 18 not. My response to my thinking would be this 19 would have been communicated by her to the 20 patient and to the physician who was working 21 with her at that time. 22 Q. Would you expect that this type of 23 information would be communicated to the 24 patient? 25 A. It would be very difficult to assume</p>	<p style="text-align: right;">Page 28</p> <p>1 see the patient. I'm asking you, where a 2 physician's assistant obtains a urine glucose, 3 has a CBC, has the history that the patient 4 gave, and also has available to her the history 5 of the patient being a diabetic, being a high 6 risk amputation, having been treated for foot 7 ulcers, coupled with these lab results, had you 8 been there to see the lab results, what steps or 9 action would you have taken? 10 MS. DISILVIO: Objection. 11 A. If I had been there, but I was not 12 there. 13 Q. I understand that. 14 A. Had I been there, what would have 15 been my judgment? 16 Q. Yes, sir. 17 A. It depends. Only after I see the 18 patient, because I cannot judge just by one 19 piece of information what would have been done 20 or what would not have been done. 21 Q. What would have been within your 22 differential with the CBC -- and do you have the 23 results? You should have them. I can hand them 24 to you if it will make it easier for you. Here 25 is the CBC from August 4th. Exhibits 4, 5, 6,</p>

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

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1 A. Absolutely not. I don't have any  
 2 recollection.  
 3 Q. Certainly this is a patient, with a  
 4 description of the history and with the lab  
 5 results, that needed to be evaluated by a  
 6 physician on that date; correct?  
 7 A. According to what you said, yes,  
 8 because of the new complaints.  
 9 Q. Well, I don't want it to be according  
 10 to what I say. I'm saying honest and factual  
 11 information, am I not?  
 12 A. That is true.  
 13 Q. Now, the diagnosis on that date was  
 14 fever of unknown etiology. Do you know, first,  
 15 whether that diagnosis was arrived at before or  
 16 after the lab results came back?  
 17 A. According to the notes, what you are  
 18 showing, the diagnosis was -- very difficult to  
 19 say whether that was put down before or after  
 20 these lab results.  
 21 Q. Is it fair to say you don't know  
 22 whether it was before or after?  
 23 A. I don't know exactly.  
 24 Q. Now, if you had seen this patient,  
 25 whether it was with Nancy Holmes or with Kathryn

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

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

8 (Pages 29 to 32)



<p style="text-align: right;">Page 33</p> <p>1 talking about varied infections.</p> <p>2 Q. So it would have at least been within</p> <p>3 your thought process to rule out or confirm?</p> <p>4 A. Fever, possible infection, may or may</p> <p>5 not be. Fever does not always mean it's</p> <p>6 infection.</p> <p>7 Q. What about the elevated white blood</p> <p>8 count and the shifts that we have in the CBC?</p> <p>9 A. Does not always point to infection.</p> <p>10 It could happen in a noninfectious problem, too.</p> <p>11 Q. But in a patient that is a diabetic</p> <p>12 that has bilateral heel ulcers that is a high</p> <p>13 risk for amputation, would you agree that a</p> <p>14 reasonable and prudent physician would at least</p> <p>15 consider, with these acute findings and with the</p> <p>16 lab results, the possibility of infection?</p> <p>17 A. May or may not be. Depends on still</p> <p>18 the circumstances, still the symptoms, and I</p> <p>19 actually have to interview the patient.</p> <p>20 Q. And examine the patient?</p> <p>21 A. And examine the patient, yes, sir.</p> <p>22 Q. In a patient that comes in with the</p> <p>23 history that she has, the exam would not just be</p> <p>24 limited to upper body; it would also be to look</p> <p>25 at the patient's lower extremities?</p>	<p style="text-align: right;">Page 35</p> <p>1 Q. And I'm not suggesting in all cases.</p> <p>2 There are other things that can cause an</p> <p>3 elevation of the white blood count; correct?</p> <p>4 A. That is true.</p> <p>5 Q. What else can cause an elevation?</p> <p>6 A. Certain medications. Was the patient</p> <p>7 taking certain medication like steroid</p> <p>8 medications. That can give elevation. If the</p> <p>9 patient has some hematologic disorder, cancer,</p> <p>10 leukemia, they may have elevated white blood</p> <p>11 cell counts and fever at the same time.</p> <p>12 Q. Was this patient taking any</p> <p>13 medications that would cause an elevation in her</p> <p>14 white blood cell count?</p> <p>15 A. I have no idea. I have no</p> <p>16 recollection. That is the reason I answer I</p> <p>17 have to look at all the circumstances, including</p> <p>18 examining the patient and interviewing the</p> <p>19 patient.</p> <p>20 Q. Fair enough. These are the kind of</p> <p>21 things that need to be done on a hands-on basis</p> <p>22 by a physician?</p> <p>23 A. Not necessarily a physician.</p> <p>24 Physician assistant, supported with the</p> <p>25 physician.</p>
<p style="text-align: right;">Page 34</p> <p>1 A. Still it depends. Still it depends</p> <p>2 what are the symptoms, what are the</p> <p>3 circumstances, what are the -- yes, other</p> <p>4 presenting symptoms.</p> <p>5 Q. Would you agree that the lab results</p> <p>6 are consistent with, but not necessarily</p> <p>7 diagnostic of, an infection?</p> <p>8 A. No, I won't.</p> <p>9 Q. Why?</p> <p>10 A. Because if you have -- can you be</p> <p>11 specific? What lab result? Are you talking</p> <p>12 about the white cell count?</p> <p>13 Q. Take a look.</p> <p>14 A. Consistent with infection?</p> <p>15 Q. Consistent with, but not necessarily</p> <p>16 diagnostic of,</p> <p>17 A. Still it may not point to the</p> <p>18 infection etiology. White cell count elevation</p> <p>19 may not always point to the infectious etiology.</p> <p>20 Q. Is that elevation in the white blood</p> <p>21 cell count a finding that you see in patients</p> <p>22 that have a diagnosis of infection?</p> <p>23 A. Not necessarily.</p> <p>24 Q. But in some cases, yes?</p> <p>25 A. In some cases. Not in all cases.</p>	<p style="text-align: right;">Page 36</p> <p>1 Q. Well, doctor, there's no question,</p> <p>2 just so that we can save some time, that the</p> <p>3 physician assistant utilization plan clearly</p> <p>4 requires that the patient be seen by a physician</p> <p>5 when the patient has a new -- let me give you</p> <p>6 the exact word -- when the patient has a new</p> <p>7 condition, the patient needs to be seen and</p> <p>8 personally evaluated by the supervising</p> <p>9 physician prior to initiating any treatment?</p> <p>10 A. Correct.</p> <p>11 Q. If the patient presents with a new</p> <p>12 condition and they're not seen and personally</p> <p>13 evaluated by the supervising physician, that is</p> <p>14 considered to be below accepted practice; true?</p> <p>15 A. I may not say that, but, yes, your</p> <p>16 first part of the question, I agree with that.</p> <p>17 Q. What was the first part of my</p> <p>18 question?</p> <p>19 A. The physician needs to be seen for a</p> <p>20 new problem, a new complaint.</p> <p>21 Q. If the physician doesn't see the</p> <p>22 patient that presents with a new condition,</p> <p>23 that's not good practice, is it?</p> <p>24 A. May not be a good practice, yes.</p> <p>25 Q. If you were there as opposed to some</p>

<p style="text-align: right;">Page 37</p> <p>1 other physician, you would have expected of  2 yourself to have seen and evaluated the patient  3 for her symptoms; correct?  4 A. I would have expected to see the  5 patient, yes, for this new problem.  6 Q. When you say see the patient, that's  7 actually doing a physical examination as opposed  8 to just standing out in the hallway and not  9 coming in and examining the patient; true?  10 A. Not always, necessarily. Seeing the  11 patient, attending the patient, and what my  12 physician assistant is doing depends whether I  13 would agree with that or not. Sometimes it may  14 be enough.  15 Q. I just want to understand your sworn  16 testimony.  17 What you're suggesting is that your  18 understanding of how you can utilize physician  19 assistants in the State of Ohio and here at  20 Kaiser is that when a patient presents with a  21 new condition -- I want you to listen to my  22 question entirely before you answer it because  23 this is real important -- if a patient presents  24 with a new condition, what you're telling me is  25 that that patient with a new condition does not</p>	<p style="text-align: right;">Page 39</p> <p>1 is when it was, according to any information  2 that you have available to you as an Ohio  3 Permanente Medical Group employee, when you  4 first became aware of these results from the lab  5 tests, the UA, the CBC, from Mrs. Medlen's  6 August 4, '99 visit. When did it first come to  7 your attention?  8 A. I don't recall whether it ever came  9 to my attention or whether anybody ever talked  10 to me or called me about that.  11 Q. In fairness to you, because we have a  12 note that Nancy Holmes says she sent to you at  13 some time, what you're saying to me is she may  14 have sent that to me, but I just can't say one  15 way or another whether I ever received it; true?  16 A. I may have received it at some point.  17 I may have received it.  18 Q. Do you have a recollection of having  19 received it?  20 A. That is the whole problem. I don't  21 have any recollection.  22 Q. Fair enough. So you may or may not  23 have received it?  24 A. I may or may not have received that.  25 Q. In her note, it says she couldn't</p>
<p style="text-align: right;">Page 38</p> <p>1 actually need to be physically examined by a  2 physician?  3 A. No, I did not say that.  4 Q. Just so I'm clear, what you're  5 telling me is, if a patient does present with a  6 new condition, in order to comply with the law  7 and the physician assistant utilization plan at  8 Kaiser, the physician does need to physically  9 examine the patient?  10 A. That is true.  11 Q. Failure to do that is not complying  12 with the utilization plan at Kaiser; correct?  13 A. Maybe, yes.  14 Q. And it's not complying with what you  15 understand the law to be for physician assistant  16 supervision; true?  17 A. Sure.  18 Q. Now, I take it, just so I'm clear and  19 I don't spend a lot of time on something that  20 you have no knowledge of, you have no basis to  21 tell me, from looking at the record, that Dr.  22 Yang actually physically examined Mrs. Medlen on  23 August 4, 1999?  24 A. I don't know that.  25 Q. Now, what I would like to understand</p>	<p style="text-align: right;">Page 40</p> <p>1 find anything wrong with her, thought you might  2 want to see the blood work, and then it says  3 chest x-ray negative. So that if you received  4 Plaintiff's Exhibit 2, is it fair to say that  5 what she is saying in this exhibit is that she  6 was also providing you with the blood work from  7 that visit on August 4, '99?  8 A. According to this note, yes.  9 Q. Is it fair to say, doctor, that you  10 may or may not have received the blood work that  11 she is referencing in this letter that was  12 performed on August 4, '99?  13 A. That is true.  14 Q. Do you have any basis to tell me,  15 because, again, I don't work here; I'm trying to  16 understand the system as I'm going along and I'm  17 just a lawyer, but can you tell me from looking  18 at the records that a physician's assistant or a  19 physician was notified of the blood work and the  20 results of the urinalysis at any time on August  21 4, '99 when the patient was present?  22 A. I don't know. Your question was why  23 it was not communicated or why they did not get  24 it, or what should have happened over there?  25 Q. Well, those are all very good</p>

<p style="text-align: right;">Page 41</p> <p>1 questions. I have a very strong reason to  2 believe that Mrs. Medlen was sent home on August  3 4 and was not told the results of these tests,  4 even though the tests were performed on a  5 Wednesday when she was present. I have,  6 further, very strong reason to believe that on  7 August 5, Thursday, when her husband called,  8 they still did not provide her with the results  9 even though the results were available, and it  10 wasn't until August 6th when she wound up going  11 to the emergency room and seeing Dr. Gajdowski  12 that someone took a look and saw what the  13 results were.  14 If my statement is accurate, do you  15 consider that to be the kind of care that  16 patients at Kaiser should receive?  17 MS. DISILVIO: Objection.  18 A. I cannot comment on that, what kind  19 of judgment -- if they received a phone call, if  20 they received a lab result, what kind of  21 judgment they took in their mind, what kind of  22 discussion they had, what was their best  23 judgment when they saw the patient, and  24 examination was normal, not normal, what kind of  25 instruction was given to the patient. So I</p>	<p style="text-align: right;">Page 43</p> <p>1 patients can be comfortably taken care of as an  2 outpatient if the problem is not that serious.  3 So it depends on all the  4 circumstances. Still, the bottom line is, how  5 is the patient, how did the patient present, how  6 sick was the patient.  7 Q. Let's move past August 4 for a  8 moment. The patient calls Kaiser and the  9 patient is calling to get the results of the  10 tests on a Thursday. The patient certainly is  11 entitled to be advised of the results; correct?  12 A. Yes, patient is usually communicated  13 with the results.  14 Q. If the patient was seen the day  15 before with these test results and now has dry  16 heaves and shakes, what, as a reasonable  17 physician, would you consider with all of the  18 history that you have, the test results, the  19 patient's history, the patient has a fever now  20 at the time of the telephone call of 101, has  21 dry heaves and shakes, what reasonably needs to  22 be done with regard to that patient?  23 MS. DISILVIO: Objection.  24 Q. You can answer.  25 A. Physician who saw the patient needs</p>
<p style="text-align: right;">Page 42</p> <p>1 cannot make any comment on that.  2 Q. If you have a patient where you have  3 a fever of unknown origin and you do tests to  4 determine what the cause of the fever is, would  5 you as a physician want to know the results of  6 those tests?  7 A. Yes.  8 Q. Depending on what?  9 A. What I do with the patient, how I  10 examine the patient, what is my judgment.  11 Judgment from physician-to-physician, they  12 differ. Whether I want to get the blood test  13 result right away to check something or just to  14 follow a few things or just to what you call --  15 let me go slightly back. I'm trying to -- I  16 don't want to confuse anybody. Still it depends  17 on my own judgment. Is the patient acutely ill,  18 acutely sick, does she need care immediately  19 or --  20 Q. Go ahead.  21 A. -- or the patient can be followed  22 with some instruction as an outpatient, blood  23 work is immediately necessary. That means  24 somebody that belongs to -- what you call --  25 needs to go to the emergency care, or whether</p>	<p style="text-align: right;">Page 44</p> <p>1 to reassess the situation. That's what I will  2 say.  3 Q. How do you go about reassessing the  4 patient?  5 A. Either the patient is sick enough  6 they should be seen again, or the care should be  7 directed to some appropriate specialty or  8 facility, depending on the initial judgment, how  9 the patient was instructed and what are the  10 follow-up symptoms, how sick the patient became.  11 Q. Would you agree that the patient  12 needs to be given some communication either to  13 come in or to go someplace?  14 A. Depends on the initial evaluation by  15 the initial physician.  16 Q. Doctor, you're not sitting here today  17 telling me that you believe that the care and  18 treatment that Mrs. Medlen received on August 4,  19 1999 met the standards of care, are you?  20 A. I can't comment on that.  21 Q. Okay.  22 A. It may have met the standard of care,  23 may not have been. Very difficult for me to  24 comment because I did not give her care.  25 Q. But you've had a chance to look at</p>

<p style="text-align: right;">Page 45</p> <p>1 the records and you've had a chance to look at 2 the lab results. 3 A. Still, I cannot make my own judgment 4 based on other people's notes because the 5 patient was not in front of me. 6 Q. Got it. And if the patient wasn't in 7 front of Dr. Yang and wasn't physically 8 evaluated by Dr. Yang, would you agree that you 9 would have more of a problem with the care? 10 MS. DISILVIO: Objection. 11 A. I don't know whether Dr. Yang saw the 12 patient or not. 13 Q. If Dr. Yang didn't see the patient. 14 A. I don't know. 15 Q. If Dr. Yang didn't see the patient -- 16 MS. DISILVIO: What's the question? 17 If Dr. Yang didn't see the patient? 18 MR. MISHKIND: I'm trying to finish 19 it. 20 Q. If Dr. Yang didn't see the patient, 21 would you agree with me that that would be below 22 the standards of care? 23 MS. DISILVIO: Objection. 24 A. Yes, with a new complaint, not seeing 25 the patient.</p>	<p style="text-align: right;">Page 47</p> <p>1 know. 2 Q. You're aware the patient was seen by 3 Dr. Gajdowski in the emergency room at Kaiser on 4 August 6, 1999; true? 5 A. Yes, patient was seen by Dr. 6 Gajdowski in the emergency room. 7 Q. Are you familiar with the clinical 8 findings at that time? 9 A. Not exactly. 10 Q. Are you aware of the fact that, based 11 upon the progression of her symptoms, that she 12 was very promptly transferred to the Cleveland 13 Clinic for further evaluation and treatment? 14 A. That's true. 15 Q. And ultimately underwent debridement, 16 antibiotic treatment and amputations? 17 A. That's what I heard. 18 Q. Is it fair to say, however, that with 19 regard to the specifics of what transpired, 20 you're not intimately familiar with that? 21 A. No, I am not. 22 Q. Do you hold an opinion, doctor, in 23 this case whether the patient's amputation would 24 have been avoided had she been diagnosed with an 25 infection on August 4, 1999?</p>
<p style="text-align: right;">Page 46</p> <p>1 Q. And absent seeing the patient, that 2 would be below the standards of care; true? 3 MS. DISILVIO: Objection. 4 A. I cannot answer for him. 5 Q. I'm not asking you to answer for him, 6 but as a reasonable and prudent doctor, if Dr. 7 Yang, or if you happened to have been in Dr. 8 Yang's position, if you didn't see the patient 9 on that day, that would be below the standards 10 of care; true? 11 MS. DISILVIO: Objection. You niai 12 answer. 13 A. It would have been more consistent to 14 see the patient. It was the responsibility of 15 the physician to see the patient. Let me put it 16 that way. 17 Q. I'll accept that as an answer to my 18 question. 19 Do you show in your records, either 20 on the window of your computer or anything else 21 that you generated, any follow-up in response to 22 this communication by Nancy Holmes to you? 23 A. I don't recall. I don't recall 24 whether I received that note at that time, and 25 what was the further action after that, I don't</p>	<p style="text-align: right;">Page 48</p> <p>1 A. I cannot give any opinion, because I 2 don't know whether it was really infected or not 3 before that. We know on August 6. Before that, 4 I don't know whether it was infected. 5 Q. Fair enough. What I want to 6 understand is, you're not going to take the 7 stand and say that, had everything been done the 8 way that the Medlens and Mr. Mishkind as their 9 attorney is suggesting should have been done on 10 August 4, that it wouldn't have made a 11 difference. You have no opinion one way or 12 another? 13 A. I have no opinion, because I was not 14 present there. 15 Q. Even looking at the records, you have 16 no opinion? 17 A. I cannot form any opinion looking at 18 the record either. 19 Q. Let's talk about Mrs. Medlen now. 20 Recognizing that you saw Mrs. Medlen once, but 21 maybe more than once in 2001, this question may 22 or may not be difficult for you to answer, okay. 23 How do you recall Mrs. Medlen's spirits to be? 24 The reason I ask you that is, given that she has 25 undergone serious operations and amputations,</p>

<p style="text-align: right;">Page 49</p> <p>1 when you have seen her most recently, is she  2 despondent, or does she seem to be upbeat in  3 terms of your communication? Do you follow me?  4 A. I'm following you, but I don't recall  5 exactly any emotional aspects or psychological  6 aspects of the patient at that time. Looking at  7 my note, I saw her for some kind of problem, or  8 symptom, what I addressed. No, I really don't  9 recall how was she emotionally or how was she  10 accepting the whole situation before or after  11 that,  12 Q. All right. Let's talk about what you  13 have seen her for.  14 A. Okay.  15 Q. Can you tell me, before August of  16 1999, what conditions you treated her for?  17 A. I have to go to my note.  18 Q. Go right ahead. Tell me, before  19 August of '99, what conditions were you treating  20 her for?  21 A. August of '99. This is a visit that  22 shows in December 1996.  23 Q. Was '96 the first time that you would  24 have seen her as a patient?  25 A. I would have contacted the patient on</p>	<p style="text-align: right;">Page 51</p> <p>1 patient.  2 Q. It's very helpful, isn't it?  3 A. It is helpful.  4 Q. In fact, I think it's sort of unique  5 to the Kaiser system, or --  6 A. That is true.  7 Q. Right. And it really gives you sort  8 of a cheat sheet, if you will, in terms of the  9 medical history on the patient right there and  10 then; correct?  11 A. That's true.  12 Q. So this encounter in '96 was a  13 telephone encounter, you believe?  14 A. I believe it was a telephone  15 encounter.  16 Q. It looks like you prescribed some  17 antibiotics.  18 A. Antibiotics.  19 Q. You did not see her on that date,  20 though, did you?  21 A. No, it doesn't look like I saw her on  22 that day.  23 Q. You made a point of determining  24 whether or not she had fever, shortness of  25 breath or chest pain; correct?</p>
<p style="text-align: right;">Page 50</p> <p>1 that day, it looks like to me. I just said  2 spoke to the patient. That means I may not have  3 physically seen the patient, but I may have  4 talked to her on the phone.  5 Q. And what was the problem that caused  6 you to talk to her on the phone?  7 A. It looks like she was having cough,  8 productive cough, and congestion.  9 Q. You knew back in '96, according to  10 the progress notes, that she had been treated  11 for foot ulcers; correct?  12 A. That is there from the sheet, yes.  13 Q. And that she also had, obviously, the  14 diagnosis of diabetes?  15 A. That is true.  16 Q. And, in fact, one of the diagnoses  17 showed DM ulcer, which is diabetes mellitus  18 ulcer; correct?  19 A. That's correct.  20 Q. Tell me the reason that the Ohio  21 Pernianente Medical Group or Kaiser has this  22 ongoing diagnosis on patients.  23 A. So if the patient has been seen by  24 any new doctor or physician, someone can get an  25 idea about a past medical history about the</p>	<p style="text-align: right;">Page 52</p> <p>1 A. That is true.  2 Q. Had she had any of those symptoms,  3 what would you have done?  4 A. I would have called to see the  5 patient by myself.  6 Q. When next did you see the patient, or  7 have any encounter with the patient, I should  8 say?  9 A. April 17th, '97.  10 Q. Was this an appointment?  11 A. Yes, it was an appointment.  12 Q. You were treating her as her primary  13 medical physician at this time; correct?  14 A. Correct,  15 Q. In fact, the previous note had Dr.  16 Kaleupu, K-A-L-E-U-P-U --  17 A. Correct.  18 Q. -- as the primary. And then come  19 April of '97, Dr. Mistry is there?  20 A. That is true.  21 Q. Can you explain to me why his name  22 was gone and your name was on?  23 A. Patient might have preferred to  24 change the physician. That's the only thing I  25 can say from this.</p>

<p style="text-align: right;">Page 53</p> <p>1 Q. Was the other doctor still around?</p> <p>2 A. No, she is not around. She is not</p> <p>3 here. She used to work at the company a long</p> <p>4 time ago.</p> <p>5 Q. Mrs. Medlen may have requested you</p> <p>6 because she liked you, or you may have been --</p> <p>7 A. Because she might be leaving the</p> <p>8 company.</p> <p>9 Q. And you may have been the only person</p> <p>10 that was next in line or something?</p> <p>11 A. Yes, because there were only two</p> <p>12 physicians at the North Olmsted facility, me and</p> <p>13 her.</p> <p>14 Q. By process of elimination, she may</p> <p>15 have wound up with you whether she wanted you or</p> <p>16 not?</p> <p>17 A. That is true.</p> <p>18 Q. I'm not suggesting that is good or</p> <p>19 bad. I just want to understand the process of</p> <p>20 her going from her to you.</p> <p>21 This was a follow-up visit and she</p> <p>22 was being seen for insulin treatment for her</p> <p>23 diabetes?</p> <p>24 A. Yes. She was on insulin treatment.</p> <p>25 Q. Can you tell me what you noted on</p>	<p style="text-align: right;">Page 55</p> <p>1 slowly so that we don't make the court</p> <p>2 reporter's life more miserable than it is</p> <p>3 sometimes.</p> <p>4 A. Okay. I just mention continue with</p> <p>5 the current medications. Laboratory, fasting</p> <p>6 blood sugar, BUN, creatinine, glyated</p> <p>7 hemoglobin, lipids, LEPs and urinalysis.</p> <p>8 Q. Along the right-hand side you have</p> <p>9 today?</p> <p>10 A. Today.</p> <p>11 Q. What does that mean?</p> <p>12 A. Today on the date of visit.</p> <p>13 Q. In the North Olmsted Medical Center</p> <p>14 where she was being seen, you had a lab right</p> <p>15 there that could do all of that?</p> <p>16 A. We had a lab right there.</p> <p>17 Q. And how soon would the results be</p> <p>18 processed by the lab?</p> <p>19 A. Within 24 hours.</p> <p>20 Q. What else do you have noted?</p> <p>21 A. Low back exercises, instructions.</p> <p>22 Dietary referral for weight reduction purpose,</p> <p>23 and follow-up after six months.</p> <p>24 Q. Now, ASPR, what does that stand for?</p> <p>25 A. Well, I did not write that. I don't</p>
<p style="text-align: right;">Page 54</p> <p>1 that date? I'm having a difficult time.</p> <p>2 A. Follow-up visit. She was complaining</p> <p>3 of chronic low back pain without radiation.</p> <p>4 Patient compliant with medication.</p> <p>5 Q. I'm sorry, what?</p> <p>6 A. Patient compliant with the</p> <p>7 medication.</p> <p>8 Q. That goes to one of those issues that</p> <p>9 we talked about before?</p> <p>10 A. That's true.</p> <p>11 Q. She was taking what she was told to</p> <p>12 take?</p> <p>13 A. Yes.</p> <p>14 Q. Go ahead.</p> <p>15 A. Concerned about increasing weight.</p> <p>16 Q. Aren't we all?</p> <p>17 A. Yes. Vital signs stable and physical</p> <p>18 examination unremarkable.</p> <p>19 Q. No new diagnoses added to the list?</p> <p>20 A. No new diagnoses added.</p> <p>21 Q. There are some additional notes on</p> <p>22 the next sheet that you made for that visit.</p> <p>23 A. Yes, sir. It has all the laboratory</p> <p>24 workup, all the blood tests.</p> <p>25 Q. Before you start to read it, read it</p>	<p style="text-align: right;">Page 56</p> <p>1 I know exactly what is ASPR. That's the nurse who</p> <p>2 mentioned some kind of abbreviation, but I don't</p> <p>3 understand what exactly it stands for.</p> <p>4 Q. Is that the nurse's signature, E. --</p> <p>5 A. It looks like there is a nurse's</p> <p>6 signature who discharged the patient from the</p> <p>7 office.</p> <p>8 Q. To the right of the nurse's signature</p> <p>9 there is --</p> <p>10 A. There is my signature.</p> <p>11 Q. And then it looks like we have the --</p> <p>12 A. Prescription written down at the</p> <p>13 bottom,</p> <p>14 Q. There are two prescriptions there,</p> <p>15 doctor; is that correct?</p> <p>16 A. There is only one -- yes, there are</p> <p>17 two prescriptions.</p> <p>18 Q. It looks like on April 17th she also</p> <p>19 had an eye exam. I don't know if you're --</p> <p>20 A. That I'm not familiar. I'm not aware</p> <p>21 about that.</p> <p>22 Q. Let's go to the next encounter that</p> <p>23 you had with her. What would that date, please,</p> <p>24 be?</p> <p>25 A. August 25th.</p>

<p style="text-align: right;">Page 57</p> <p>1 Q. 1997?</p> <p>2 A. 1997.</p> <p>3 Q. What were your findings on that date?</p> <p>4 A. My findings, patient presented for</p> <p>5 the left pedal edema, and findings were for</p> <p>6 pitting edema, one to two plus. That is a</p> <p>7 grading of the edema.</p> <p>8 Q. You said?</p> <p>9 A. Edema, E-D-E-M-A, that's the swelling</p> <p>10 of the soft tissues; left lower leg, ankle, with</p> <p>11 increased warmth, without tenderness.</p> <p>12 Q. It looks like you added venous</p> <p>13 stasis --</p> <p>14 A. Venous stasis.</p> <p>15 Q. -- as a new diagnosis.</p> <p>16 A. As a new diagnosis.</p> <p>17 Q. Did you order any tests to be</p> <p>18 performed to determine the cause of the venous</p> <p>19 stasis?</p> <p>20 A. Doesn't look like I ordered any test.</p> <p>21 Q. You were also considering cellulitis</p> <p>22 at that time; correct?</p> <p>23 A. Yes. That was part of that because I</p> <p>24 question marked the venous stasis because it</p> <p>25 could have been cellulitis.</p>	<p style="text-align: right;">Page 59</p> <p>1 was noncompliant; true?</p> <p>2 A. On this visit so far, yes.</p> <p>3 Q. My statement is accurate?</p> <p>4 A. Yes.</p> <p>5 Q. When did you next have any contact</p> <p>6 with her after August 1997?</p> <p>7 A. My next visit, September 7, 1999.</p> <p>8 Q. I'm sorry, what was the date?</p> <p>9 A. September 7, 1999. August '97 to</p> <p>10 September '99.</p> <p>11 Q. What were her symptoms in September</p> <p>12 of '99?</p> <p>13 A. Diarrhea. Follow-up, diarrhea since</p> <p>14 came home from nursing home.</p> <p>15 Q. Had you seen her when she was in the</p> <p>16 nursing home?</p> <p>17 A. No, I did not. We do not go to</p> <p>18 nursing home.</p> <p>19 Q. Do you know why she had been in the</p> <p>20 nursing home?</p> <p>21 A. Probably after the surgery, for</p> <p>22 rehabilitation purpose, she was placed in</p> <p>23 nursing home.</p> <p>24 Q. What was she being rehabilitated for?</p> <p>25 A. Well, this is September, so I'm</p>
<p style="text-align: right;">Page 58</p> <p>1 Q. How did you go about differentiating</p> <p>2 between it being venous stasis versus</p> <p>3 cellulitis?</p> <p>4 A. Most likely, most commonly, clinical</p> <p>5 examination.</p> <p>6 Q. Do your records reflect that you</p> <p>7 arrived at that time at a final diagnosis as to</p> <p>8 the likely --</p> <p>9 A. No, it does not reflect that I</p> <p>10 arrived at one particular diagnosis. I'm</p> <p>11 putting down two differential diagnoses and</p> <p>12 trying to work on both diagnoses with the hope</p> <p>13 of reassessment at a later date.</p> <p>14 Q. When does it say on your note for</p> <p>15 that visit in August that you were planning to</p> <p>16 see her next?</p> <p>17 A. It does not say that. Usually we try</p> <p>18 to instruct the patients, any kind of</p> <p>19 worsening -- I did not write it over here, but</p> <p>20 many times it happens, we instruct the patient</p> <p>21 verbally.</p> <p>22 Q. It would have been more on a p.r.n.</p> <p>23 basis?</p> <p>24 A. More on a p.r.n. basis.</p> <p>25 Q. No indication on that visit that she</p>	<p style="text-align: right;">Page 60</p> <p>1 assuming after her amputation.</p> <p>2 Q. Which date are you referring to?</p> <p>3 A. September 7, 1999.</p> <p>4 Q. I'm sorry, which year?</p> <p>5 A. '99.</p> <p>6 Q. '99, okay. Did she have a Kaiser</p> <p>7 doctor that was her primary doctor while she was</p> <p>8 in the nursing home after her amputation?</p> <p>9 A. I don't know.</p> <p>10 Q. No indication on September 7, '99</p> <p>11 when you saw her for the diarrhea that patient</p> <p>12 was noncompliant; correct?</p> <p>13 A. Correct.</p> <p>14 Q. When did you see her after September</p> <p>15 7?</p> <p>16 A. December 26, 2000.</p> <p>17 Q. What were her symptoms when you saw</p> <p>18 her in December of 2000?</p> <p>19 A. That says cough and cold for four</p> <p>20 days,</p> <p>21 Q. Between when you had seen her in</p> <p>22 September of '99 and when you saw her in</p> <p>23 December of 2000, were there any appointments</p> <p>24 that she failed to keep with you or failed to</p> <p>25 schedule during that period of time?</p>

<p style="text-align: right;">Page 61</p> <p>1 A. I cannot say with me, actually,  2 because we did not offer anybody appointments at  3 that time. But she looks like she was under  4 care of other subspecialties and they were  5 following her problem in different ways.  6 Q. Is it fair to say that Mrs. Medlen  7 was not only seen by you, but by a number of  8 other doctors?  9 A. A number of other doctors too.  10 Q. But speaking from your personal  11 experience, as of December of 2000 when you last  12 saw her, according to the note, you see no  13 evidence of any noncompliance on the patient's  14 part; correct?  15 A. That is true. That is correct.  16 Q. Can you tell me, doctor, from that  17 December 2000 note, or from anything that you  18 can recollect, how she seemed to be adapting to  19 having her leg amputated?  20 A. Difficult to say. Very difficult to  21 recollect.  22 Q. Nothing that stands out in your mind?  23 A. Exactly. Not out of the ordinary  24 that stands out, that she behaved in some  25 different way, or she was depressed or either</p>	<p style="text-align: right;">Page 63</p> <p>1 A. This record? This just reflects the  2 progress note. It does not reflect the  3 laboratory values. This is the day when the  4 laboratories were ordered, but the results go in  5 some different -- in different folders.  6 Q. So how would you know what the  7 results of the labs were?  8 A. The results will come back to me the  9 next day.  10 Q. All right. And if the labs were  11 abnormal?  12 A. I will act on that --  13 Q. And how what?  14 A. -- appropriately.  15 Q. Okay.  16 A. Adjust the medications, if needed.  17 Q. Do you see any indication in your  18 record on or after December 26, 2000 that you  19 took any action relative to those labs?  20 A. I can't recall at this moment. I  21 would have to go back to my records after this  22 date.  23 Q. Assuming there were no notes after  24 December 26, 2000 other than your note sometime  25 in 2001, which you told me you at least remember</p>
<p style="text-align: right;">Page 62</p> <p>1 extremes. I don't recall.  2 Q. Fair enough. When you saw her in  3 December of 2000, as her internist, would you  4 have examined the area where the amputation --  5 A. I may or may not have examined the  6 area.  7 Q. Her presenting symptoms in December  8 of 2000 were what?  9 A. Cough and cold.  10 Q. What was determined to be the cause?  11 A. Well, what I wrote down, I have to go  12 back to my note. Nasopharyngeal inflammation.  13 Bilateral facial and frontal tenderness, and  14 there is indication of sinusitis.  15 Q. Were any labs ordered?  16 A. Yes, labs were ordered.  17 Q. And what did the labs show?  18 A. Chemistry, sugar, cholesterol, liver  19 functions.  20 Q. What were the results?  21 A. I have no idea. I don't know now. I  22 don't remember.  23 Q. Well, you have got the records in  24 front of you, so I'm asking you to tell me what  25 the records reflect.</p>	<p style="text-align: right;">Page 64</p> <p>1 summer to fall time period, if there was no  2 immediate action taken after December 2000,  3 would it be fair to assume that, when you  4 received the lab results, that they were within  5 normal limits for this patient?  6 A. I don't recall. If they would not  7 have been within normal limits, I would have  8 done something for that. I would have ordered  9 medications for that.  10 Q. Fair enough. If they were within  11 normal limits, it would be reasonable for you to  12 have no notes by you after that, because no  13 action was taken?  14 A. That is true.  15 Q. And no action would be required?  16 A. Yes.  17 Q. Fair enough. We are almost done,  18 doctor.  19 Did you ever have occasion to talk to  20 Dr. Matalavage about his management of Mrs.  21 Medlen's heel ulcers?  22 A. Not at all. I don't recall.  23 Q. Doctor, as a physician, when a  24 patient that has a history of diabetes that is  25 at a high risk of amputation presents with a</p>

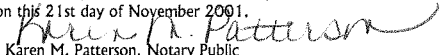


<p style="text-align: right;">Page 65</p> <p>1 recent history of fever and complains of body 2 aching and chills, prior to doing any testing, 3 what is within your differential as a potential 4 cause? 5 MS. DISILVIO: Objection. 6 A. Just assuming-- I need to see the 7 patient. 8 Q. I know. But presented to you as 9 you're taking your boards for internal medicine 10 and you're given the history on this patient -- 11 A. Okay. 12 Q. -- she's a diabetic, she's a high 13 risk amputation, she has been treated for 14 bilateral foot ulcers, she presents with a 15 recent history, three days of fever, she has 16 body aches and chills, before ordering any labs, 17 what, Dr. Mistry, is within your preliminary 18 differential diagnosis? 19 MS. DISILVIO: Objection. 20 A. Only after physical examination. 21 Q. What would the physical examination 22 consist of? 23 A. Well, I have to check symptoms, other 24 circumstances, too, symptoms, her medications. 25 I have to put many things together before making</p>	<p style="text-align: right;">Page 67</p> <p>1 Q. -- other than low grade, if you have 2 an elevation in temperature, does that cause you 3 to think away from infection? 4 MS. DISILVIO: Objection. 5 A. No, you cannot say that. We cannot 6 say that. You have to collect other data. 7 Q. But certainly, in a symptom complex, 8 a patient that's diagnosed with infection, it's 9 not uncommon to see elevation in temperature as 10 well; true? 11 A. They may have elevated temperature 12 with infection. 13 Q. They don't necessarily have to have 14 elevated temperature? 15 A. That is true. 16 Q. But to say the patient has an 17 elevation in temperature, therefore, it can't be 18 an infection, that would be a silly statement; 19 true? 20 A. That is true, but usually with 21 ongoing infection, some people will have some 22 continuous fever. That's true, too. 23 Q. Patients that have peripheral 24 neuropathy, that are diabetics, that have foot 25 ulcers, are they more prone to infections?</p>
<p style="text-align: right;">Page 66</p> <p>1 any list of differential diagnosis. 2 Q. Would your physical examination be 3 limited to upper body if the patient has mild 4 throat pain, or would you do a full body 5 examination? 6 A. Not necessarily. Depends on the 7 symptoms and priority of the areas to be examined 8 according to the symptoms. 9 Q. Can you tell from this record on 10 August 4th whether or not the physical exam was 11 adequate or inadequate? 12 A. I cannot say that. 13 Q. Is elevation in temperature a finding 14 that is seen in patients that have an infection? 15 A. Not necessarily. 16 Q. Can you have an elevation in 17 temperature in a patient that also has 18 laboratory findings consistent with an 19 infection? 20 A. Not necessarily. 21 Q. Are you saying that -- 22 A. If you can be specific. 23 Q. If you have an elevation in 24 temperature -- 25 A. Right.</p>	<p style="text-align: right;">Page 68</p> <p>1 A. Mayor may not be. 2 Q. Doctor, I have some documents which 3 are referred to as Kaiser Permanente of Ohio 4 encounter system documents. They're apparently 5 an e-mail type of system that's used here at 6 Kaiser. As I'm talking, you're sort of looking 7 over. Do you know what I'm referring to? 8 A. I think I know what you're referring 9 to. 10 Q. This encounter system where messages 11 are sent back and forth by some type of an 12 e-mail system, is that used frequently in the 13 Kaiser system? 14 A. Yes, it is. 15 Q. What's the purpose of it? 16 A. Message. There is the appropriate 17 message for the patients to be conveyed to 18 appropriate providers. That's the whole 19 intention. 20 Q. With what purpose in mind? 21 A. Communication. 22 Q. Communication? 23 A. Communication about the patient. 24 Q. So that communication can take place 25 and potential action can take place by the</p>

<p style="text-align: right;">Page 69</p> <p>1 physicians?</p> <p>2 A. That is true.</p> <p>3 Q. I want to ask you just a couple</p> <p>4 questions, There's an encounter system document</p> <p>5 that I have that's dated August 7, '99. It has</p> <p>6 you as the sender.</p> <p>7 A. Yes.</p> <p>8 Q. Then it says, patient needs to be</p> <p>9 seen by podiatry ASAP for follow-up in office,</p> <p>10 and it's got a DM after that.</p> <p>11 A. Yes.</p> <p>12 Q. Do you see that document?</p> <p>13 A. I do.</p> <p>14 Q. Is the DM most likely your initials?</p> <p>15 A. That is me.</p> <p>16 Q. Is it fair to say that this encounter</p> <p>17 form that I'm referring to was likely generated</p> <p>18 by you?</p> <p>19 A. Yes.</p> <p>20 Q. You somewhat hesitated when you said</p> <p>21 yes.</p> <p>22 A. I was just looking at the name again.</p> <p>23 Q. And there aren't too many --</p> <p>24 A. Sender is me. This was generated by</p> <p>25 me.</p>	<p style="text-align: right;">Page 71</p> <p>1 somewhere. I need to see that part, why I</p> <p>2 responded in this way, why patient needs to be</p> <p>3 seen by podiatry, is she having some active foot</p> <p>4 problem at that time, or I wanted to see the</p> <p>5 patient in the office.</p> <p>6 Q. And you're generating this on August</p> <p>7 9?</p> <p>8 A. August 9.</p> <p>9 Q. That would be Monday.</p> <p>10 A. Probably, yes.</p> <p>11 Q. From that communication by you, is it</p> <p>12 fair to say that you did not know that this</p> <p>13 patient was in the Cleveland Clinic Foundation</p> <p>14 undergoing --</p> <p>15 A. Very difficult for me to recall at</p> <p>16 this moment, and how much information did I have</p> <p>17 about this patient on this date.</p> <p>18 Q. Is it fair to say that you did not</p> <p>19 know that the patient was in the Cleveland</p> <p>20 Clinic undergoing major treatment in an effort</p> <p>21 to salvage her leg, otherwise, you would not</p> <p>22 have made that note that she needed to be seen</p> <p>23 by podiatry ASAP for follow-up in the office?</p> <p>24 A. That's why I told you, I need to see</p> <p>25 the actual message, what kind of message came to</p>
<p style="text-align: right;">Page 70</p> <p>1 Q. Explain this document to me.</p> <p>2 A. In what way?</p> <p>3 Q. In whatever way you can.</p> <p>4 A. Because I don't know the previous</p> <p>5 message, in what context I responded in this</p> <p>6 way. I need to see that.</p> <p>7 Q. Tell me what the date was that you</p> <p>8 were sending this message.</p> <p>9 A. That was August 9th.</p> <p>10 Q. And who is it that, according to this</p> <p>11 document, had been the sender?</p> <p>12 A. Sender is me. It is sent to my</p> <p>13 nurse.</p> <p>14 Q. Who had provided the original</p> <p>15 communication to you that caused you --</p> <p>16 A. That's what I'm trying to find out.</p> <p>17 I must have got some input from somewhere. In</p> <p>18 that context, I must have responded in this way.</p> <p>19 So I should have some kind of message from the</p> <p>20 patient or from some of the staff members.</p> <p>21 Q. You see on the top portion of that</p> <p>22 there's a reference to Parma emergency</p> <p>23 department.</p> <p>24 A. Parma emergency room, but something</p> <p>25 is missing here. Some part is missing</p>	<p style="text-align: right;">Page 72</p> <p>1 me. Somebody messaged me, patient is in Clinic,</p> <p>2 I responded that way; patient is being</p> <p>3 discharged from the Clinic, I responded in that</p> <p>4 way; or patient was in nursing home, I responded</p> <p>5 in that way. So the top portion, some part is</p> <p>6 missing.</p> <p>7 Q. So the top portion of this document,</p> <p>8 which was provided to me by counsel for Kaiser,</p> <p>9 does not relate to your response?</p> <p>10 A. No, because there is no text over</p> <p>11 here.</p> <p>12 Q. I agree with you. I'm just trying to</p> <p>13 understand.</p> <p>14 MR. MISHKIND: Marilena, do you have</p> <p>15 the message that Dr. Mistry would be responding</p> <p>16 to?</p> <p>17 MS. DISILVIO: I have everything that</p> <p>18 I sent to you.</p> <p>19 MR. MISHKIND: Again, I'm assuming</p> <p>20 you understand the hieroglyphics of the system</p> <p>21 better than I do, so I'm wondering whether you</p> <p>22 have --</p> <p>23 MS. DISILVIO: I have it in exactly</p> <p>24 the same order; that is, that there is a Parma</p> <p>25 emergency department entry above Dr. Mistry's</p>

<p style="text-align: right;">Page 73</p> <p>1 response time, and I will certainly check to see  2 for you if there is anything else.  3 Q. Do you know who Lisa Smith is?  4 A. No.  5 MS. DISILVIO: This may be your  6 answer here. There's a note that begins two  7 pages earlier from the record that you showed  8 the doctor that is from the Parma emergency  9 department the same date, 8-7-99.  10 MR. MISHKIND: I'm on that right now.  11 I'm asking whether he knows who Lisa Smith is.  12 MS. DISILVIO: So the question is, do  13 you know who Lisa Smith is?  14 MR. MISHKIND: Yes.  15 MS. DISILVIO: That's the question;  16 do you know who Lisa Smith is.  17 A. No, I don't know. It's just ER.  18 Must be some person in the emergency room  19 sending a message to me.  20 Q. Now, that message that you're  21 referring to now, this is one that's dated on  22 August 7, '99, it looks like the origin time is  23 5:05 p.m.?  24 A. Yes.  25 Q. Does that look to be accurate?</p>	<p style="text-align: right;">Page 75</p> <p>1 Q. So if you were responding solely to  2 this message, you would have had no way to know?  3 A. No clue where the patient is at that  4 time.  5 Q. All right. Certainly, if the  6 emergency department knew that the patient had  7 been admitted to the hospital, that's something  8 that could have been included in this  9 communication to you as her primary medical  10 physician; correct?  11 MS. DISILVIO: Objection.  12 A. Maybe. Maybe. They may have  13 responded in that way.  14 Q. Had it been communicated in this  15 message, then you would not have said in your  16 response that the patient needs to be seen in  17 podiatry ASAP or follow-up in office?  18 A. Very difficult to say, because there  19 are 48 hours in between. I won't know in two  20 days where the patient is, whether the patient  21 is still in the hospital or the patient is being  22 discharged or sent to another place.  23 Q. How long is a confinement for an  24 amputation, normally?  25 A. Normally 24, 48 hours, uncomplicated</p>
<p style="text-align: right;">Page 74</p> <p>1 A. Yes.  2 Q. This is not something that you were  3 generating; this is something that was routed to  4 you; correct?  5 A. Correct, and August 7th was what day?  6 Was it Saturday?  7 Q. August 7th would have been Saturday.  8 A. Saturday. This would have been  9 Monday. So it looks like the weekend. The  10 message was sitting there, and I retrieved the  11 message on Monday, and I responded.  12 Q. Is it fair to say that the  13 communication that you received from the Parma  14 emergency department on August 7th at 5:05 p.m.  15 didn't tell you that your patient had already  16 been transferred and admitted to the Cleveland  17 Clinic Foundation?  18 A. No. This message doesn't tell  19 anything about that.  20 Q. The communication that you had from  21 the emergency department that was generated at  22 5:05 p.m. on August 7th did not contain any  23 information that the patient was at the  24 Cleveland Clinic Foundation; true?  25 A. That is true.</p>	<p style="text-align: right;">Page 76</p> <p>1 recovery. Maximum 72 hours. That's what I see  2 by working here.  3 Q. Did you have any occasion to see or  4 treat Mrs. Medlen for any complications that she  5 has had since her amputation as a result of the  6 amputation?  7 A. Not that I recall.  8 Q. Do you recall any incidents where she  9 had any physical complications by virtue of her  10 prosthesis or amputation?  11 A. Not that I recall. Most likely those  12 kinds of problems and complications post-surgery  13 are communicated to the surgeons.  14 Q. When you go on to your computer and  15 look in the window under Mrs. Medlen's name, are  16 you able to pull up all of the encounter system  17 communications as well as her progress notes?  18 A. Most of the time.  19 MS. DISILVIO: Can we go off the  20 record for a minute?  21 (Discussion off the record.)  22 Q. Doctor, did you ever have occasion to  23 talk to Dr. Gajdowski concerning his examination  24 of your patient in the emergency room?  25 A. This patient?</p>

<p style="text-align: right;">Page 77</p> <p>1 Q. Yes.</p> <p>2 A. No. I don't recall.</p> <p>3 Q. Doctor, I have another encounter</p> <p>4 system document that is sent to you on August</p> <p>5 9th, it looks like within about an hour, almost</p> <p>6 two hours, after the last encounter document you</p> <p>7 referred to that you said patient needs to be</p> <p>8 seen by podiatry, and this one seems to have</p> <p>9 been routed to you by Angela Woodard. First, do</p> <p>10 you know who Angela Woodard is?</p> <p>11 A. No, I don't.</p> <p>12 Q. This was routed to you on August 9 at</p> <p>13 about 9:50 a.m.; true?</p> <p>14 A. That's true.</p> <p>15 Q. And you have no reason to believe</p> <p>16 that this wasn't received by you, do you?</p> <p>17 A. No. I don't have any reason to</p> <p>18 believe I did not receive that.</p> <p>19 Q. When the encounter documentation</p> <p>20 comes to you, does it pop up on your computer</p> <p>21 screen?</p> <p>22 A. Yes. It comes on my computer screen.</p> <p>23 Q. Like an e-mail that I would get?</p> <p>24 A. No, not like an e-mail. We have to</p> <p>25 keep refreshing. It's a window that contains</p>	<p style="text-align: right;">Page 79</p> <p>1 Q. Do you know what type of intravenous</p> <p>2 antibiotics are used?</p> <p>3 A. There are various different kinds of</p> <p>4 antibiotics people use. It all depends on the</p> <p>5 infectious disease specialist or the primary</p> <p>6 care physician taking care of the patient is</p> <p>7 using the best judgment.</p> <p>8 Q. Does gas gangrene always lead to</p> <p>9 amputation?</p> <p>10 A. It does not always lead to</p> <p>11 amputation. It may lead to some complication</p> <p>12 like that.</p> <p>13 Q. Is it important to diagnose gas</p> <p>14 gangrene as early as possible?</p> <p>15 A. It is important to diagnose gas</p> <p>16 gangrene, yes, sir.</p> <p>17 Q. The earlier you diagnose it, the</p> <p>18 earlier you can start appropriate antibiotic</p> <p>19 therapy?</p> <p>20 A. That is true, and, as necessary,</p> <p>21 surgical debridement.</p> <p>22 Q. The earlier you treat it with</p> <p>23 antibiotics and, as necessary, surgical</p> <p>24 debridement, that increases the likelihood of</p> <p>25 saving the leg; true?</p>
<p style="text-align: right;">Page 78</p> <p>1 all the messages. We have to keep refreshing.</p> <p>2 Q. This would have been sent to you, but</p> <p>3 as to when you would have seen it, is that</p> <p>4 difficult to answer?</p> <p>5 A. Say that again. Yes.</p> <p>6 Q. This would have been sent to you at</p> <p>7 9:50 a.m.?</p> <p>8 A. 9:50 a.m.</p> <p>9 Q. As to when you personally would have</p> <p>10 seen it on your computer screen --</p> <p>11 A. Not at that time, not usually at that</p> <p>12 time. I may open it another time.</p> <p>13 Q. Unless you happen to have been</p> <p>14 looking at your computer at that time?</p> <p>15 A. Yes.</p> <p>16 Q. But this told you that the patient</p> <p>17 had been admitted on August 7 with the diagnosis</p> <p>18 of gas gangrene?</p> <p>19 A. Yes.</p> <p>20 Q. What is that?</p> <p>21 A. It's a necrosis of the soft tissues</p> <p>22 that usually happens as a result of infection.</p> <p>23 Q. How is it treated?</p> <p>24 A. Many ways. Debridement, foot care,</p> <p>25 intravenous antibiotics.</p>	<p style="text-align: right;">Page 80</p> <p>1 MS. DISILVIO: Objection.</p> <p>2 A. It may. Not necessarily. It may,</p> <p>3 because you don't know at the time when the gas</p> <p>4 gangrene happened if the limb can be saved at</p> <p>5 that time or not.</p> <p>6 Q. You certainly recognize that earlier</p> <p>7 is much better than later in terms of diagnosing</p> <p>8 gas gangrene?</p> <p>9 A. That is standard, yes. Yes, sir.</p> <p>10 Q. Doctor, are there any encounters that</p> <p>11 you specifically remember, either by way of</p> <p>12 seeing Mrs. Medlen, talking with her, or</p> <p>13 communicating through the encounter system, that</p> <p>14 we haven't talked about today?</p> <p>15 A. No. I don't recall --</p> <p>16 Q. Okay.</p> <p>17 A. -- any such encounters.</p> <p>18 Q. All right. There was one item that I</p> <p>19 think you were trying to remember early in the</p> <p>20 deposition, and I can't remember what it was and</p> <p>21 I was going to ask you whether you remember it</p> <p>22 now, but I can't even tell you what it was. It</p> <p>23 was a question I had asked you earlier, but I'll</p> <p>24 just leave it at that. When I look at my notes,</p> <p>25 if I remember what it is, I'll write to</p>

<p style="text-align: right;">Page 81</p> <p>1 Marilena. 2 Other than that, doctor, I have no 3 further questions for you. Thank you very much 4 for your time. 5 MS. DISILVIO: We'll read it, please. 6 If you would send one directly to the doctor and 7 a mini and big transcript for myself. 8 (Deposition concluded at 11:25 o'clock a.m.) 9 (Signature not waived.) 10 ----- 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 83</p> <p>1 CERTIFICATE 2 3 State of Ohio, ) 4 ) SS: 5 County of Cuyahoga. ) 6 7 8 I, Karen M. Patterson, a Notary Public 9 within and for the State of Ohio, duly 10 commissioned and qualified, do hereby certify 11 that the within named DARSHAN MISTRY, M.D. was 12 by me first duly sworn to testify to the truth, 13 the whole truth and nothing but the truth in the 14 cause aforesaid; that the testimony as above set 15 forth was by me reduced to stenotypy, afterwards 16 transcribed, and that the foregoing is a true 17 and correct transcription of the testimony. 18 19 I do further certify that this deposition 20 was taken at the time and place specified and 21 was completed without adjournment; that I am not 22 a relative or attorney for either party or 23 otherwise interested in the event of this 24 action. I am not, nor is the court reporting 25 firm with which I am affiliated, under a contract as denned in Civil 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, Notary Public Within and for the State of Ohio My commission expires October 7, 2004. 21 22 23 24 25</p>
<p style="text-align: right;">Page 82</p> <p>1 AFFIDAVIT 2 I have read the foregoing transcript from 3 page 1 through 81 and note the following 4 corrections: 5 PAGE LINE REQUESTED CHANGE 6 7 8 9 10 11 12 13 14 15 16 17 18 _____ 19 DARSHAN MISTRY, M.D. 20 Subscribed and sworn to before me this 21 _____ day of _____, 2001. 22 23 _____ 24 Notary Public 25 My commission expires _____.</p>	

<b>A</b>	<b>acutely</b> 42:17,18 <b>adapting</b> 61:18 <b>added</b> 54:19,20 57:12 <b>additional</b> 4:23 54:21 <b>additions</b> 4:24 <b>addressed</b> 49:8 <b>adequate</b> 66:11 <b>adjournment</b> 83:14 <b>Adjust</b> 63:16 <b>admitted</b> 74:16 75:7 78:17 <b>adult</b> 15:6 <b>advice</b> 17:19 20:18 <b>advised</b> 43:11 <b>AFFIDAVIT</b> 82:1 <b>affiliated</b> 83:16 <b>affixed</b> 83:18 <b>aforsaid</b> 83:11 <b>after</b> 28:17 31:16 31:19,22 46:25 49:10 55:23 59:6 59:21 60:1,8,14 63:18,21,23 64:2 64:12 65:20 69:10 77:6 <b>afterwards</b> 83:11 <b>again</b> 8:23 10:22 40:15 44:6 69:22 72:19 78:5 <b>against</b> 8:6 <b>age</b> 3:1 <b>ago</b> 7:6,8,15,19,22 53:4 <b>agree</b> 29:22 33:13 34:5 36:16 37:13 44:11 45:8,21 72:12 <b>ahead</b> 8:25 42:20 49:18 54:14 <b>al</b> 1:8 <b>allowed</b> 20:4 <b>almost</b> 64:17 77:5 <b>along</b> 40:16 55:8 <b>already</b> 74:15 <b>always</b> 7:2 17:13 33:5,9 34:19 37:10 79:8,10 <b>ambulation</b> 76:10 <b>amputated</b> 61:19 <b>amputation</b> 15:10 27:12 28:6 33:13 47:23 60:1,8 62:4	64:25 65:13 75:24 76:5,6 79:9,11 <b>amputations</b> 47:16 48:25 <b>Angela</b> 77:9,10 <b>ankle</b> 57:10 <b>another</b> 7:7 39:15 48:12 75:22 77:3 78:12 <b>answer</b> 6:1,4 8:22 8:25 9:11 18:3,14 19:12,14,14 21:19 25:6,16 35:16 37:22 43:24 46:4 46:5,12,17 48:22 73:6 78:4 <b>answered</b> 19:23 <b>answering</b> 5:24 6:7 <b>answers</b> 6:14 <b>antibiotic</b> 47:16 79:18 <b>antibiotics</b> 51:17,18 78:25 79:2,4,23 <b>anybody</b> 39:9 42:16 61:2 <b>anymore</b> 4:15 <b>anything</b> 10:13 14:13 18:4 21:19 29:21 40:1 46:20 61:17 73:2 74:19 <b>apparently</b> 68:4 <b>appear</b> 8:2 <b>APPEARANCES</b> 2:1 <b>applied</b> 9:24 <b>appointment</b> 11:18 11:20 12:19 52:10 52:11 <b>appointments</b> 60:23 61:2 <b>appropriate</b> 30:12 44:7 68:16,18 79:18 <b>appropriately</b> 63:14 <b>approximately</b> 4:16 7:21 10:24 <b>April</b> 10:14 52:9,19 56:18 <b>sire</b> 14:14,18,21 62:4,6 <b>areas</b> 66:7 <b>around</b> 53:1,2 <b>arrived</b> 31:15 58:7	58:10 <b>arrogant</b> 17:14 <b>ASAP</b> 69:9 71:23 75:17 <b>asked</b> 7:15 19:21 80:23 <b>asking</b> 6:3,10 28:1 29:5 46:5 62:24 73:11 <b>aspects</b> 49:5,6 <b>ASPR</b> 55:24 56:1 <b>assistant</b> 23:24 27:5 28:2 35:24 36:3 37:12 38:7,15 40:18 <b>assistants</b> 37:19 <b>assume</b> 26:25 32:16 64:3 <b>assuming</b> 26:16 60:1 63:23 65:6 72:19 <b>attempt</b> 5:12 <b>attending</b> 37:11 <b>attention</b> 39:7,9 <b>attorney</b> 17:5 48:9 83:15 <b>attorneys</b> 3:16 <b>August</b> 23:14,15 28:25 29:6 30:25 38:23 39:6 40:7 40:12,20 41:2,7 41:10 43:7 44:18 47:4,25 48:3,10 49:15,19,21 56:25 58:15 59:6,9 66:10 69:5 70:9 71:6,8 73:22 74:5 74:7,14,22 77:4 77:12 78:17 <b>available</b> 28:4 39:2 41:9 <b>avoided</b> 47:24 <b>aware</b> 24:20,22 39:4 47:2,10 56:20 <b>away</b> 42:13 67:3 <b>aim</b> 1:22 29:10 77:13 78:7,8 81:8	68:11 <b>bad</b> 53:19 <b>based</b> 45:4 47:10 <b>basis</b> 13:16 35:21 38:20 40:14 58:23 58:24 <b>became</b> 39:4 44:10 <b>Becker</b> 2:3 <b>becoming</b> 5:12 <b>before</b> 1:16 3:12 6:6 7:9,11,16 16:3 20:9 31:15,19,22 37:22 43:15 48:3 48:3 49:10,15,18 54:9,25 65:16,25 82:20 <b>begins</b> 73:6 <b>behalf</b> 2:2,9 <b>behaved</b> 6:1,24 <b>being</b> 3:3 8:1 28:5,5 53:22 55:14 58:2 59:24 72:2 75:21 <b>believe</b> 4:14 7:4 10:19 13:21 24:6 24:11,13 41:2,6 44:17 51:13,14 77:15,18 <b>belongs</b> 42:24 <b>below</b> 36:14 45:21 46:2,9 <b>benefit</b> 32:3 <b>besides</b> 8:1,13,15 9:17 <b>best</b> 41:22 79:7 <b>better</b> 72:21 80:7 <b>between</b> 11:15 17:9 21:20 25:7 58:2 60:21 75:19 <b>big</b> 8:1,7 <b>bilateral</b> 33:12 62:13 65:14 <b>bit</b> 17:3 <b>blood</b> 32:18 33:7 34:20 35:3,10,14 40:2,6,10,19 42:12,22 54:24 55:6 <b>board</b> 5:7,12 14:10 <b>boards</b> 65:9 <b>body</b> 29:11,13 30:4 33:24 65:1,16 66:3,4 <b>both</b> 6:16 10:11 17:22 58:12
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