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IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

RODNEY L. McCLENDON,
Plaintiff,
-vs- JUDGE McGINTY CASE NO. 374136

KAISER FOUNDATION HEALTH PLAN OF OHIO, et al.,
Defendants.

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Deposition of PETER O'DONOVAN, M.D., taken as if upon cross-examination before Laura L. Ware, a Notary Public within and for the State of Ohio, at The Cleveland Clinic Foundation, Radiology Department - Hb6, 9500 Euclid Avenue, Cleveland, Ohio, at 4:15 p.m. on Wednesday, July 28, 1999, pursuant to notice and/or stipulations of counsel, on behalf of the Plaintiff in this cause.

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APPEARANCES:

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On behalf of the Plaintiff;

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On behalf of the Defendant Kaiser Foundation Health Plan of Ohio;

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(216) 696-1100,
On behalf of the Defendant The Cleveland Clinic Foundation.

WITNESS INDEX

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PETER O'DONOVAN, M.D., of lawful age, called by the Plaintiff for the purpose of cross-examination, as provided by the Rules of Civil Procedure, being by me first duly sworn, as hereinafter certified, deposed and said as follows:

CROSS-EXAMINATION OF PETER O'DONOVAN, M.D.

BY MR. RUF:

Q. Could you please state your name and spell your name.
A. Peter B. O'Donovan, O, apostrophe, D-O-N-O-V-A-N.
Q. What is your address, Dr. O'Donovan?
A. 2243 Tudor, T-U-D-O-R, Drive, Cleveland Heights, Ohio, 44106.
Q. Doctor, my name is Mark Ruf. I represent Rodney McClendon in a lawsuit that's been brought against Kaiser and the Cleveland Clinic.
If at any time I ask you a question and you do not understand my question, please tell me. If you give me an answer to a question, I'll assume that you understood the question. Okay?
A. (Indicating.)
Q. Also, you need to give verbal answers.
A. Yes.
Q. Who is your employer?
A. The Cleveland Clinic Foundation.

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Q. How long have you been employed by The Cleveland Clinic Foundation?
A. Twenty-four years.
Q. What is your position with the Cleveland Clinic?
A. I'm a thoracic radiologist in the department of radiology.
Q. What does it mean to be a thoracic radiologist?
A. A radiologist is one who interprets images, a thoracic radiologist is one who has a subspecialty interest in radiology of the chest.
Q. Is your practice limited to evaluating x-rays of the chest or do you also evaluate x-rays of other areas of the body?
A. I also evaluate x-rays of other areas.
Q. It's just that thoracic radiology is of particular interest to you?
A. It is of particular interest to me.
Q. Are you board certified in an area of medicine?
A. I'm board certified as a diagnostic radiologist.
Q. When were you board certified?
A. 1979.
Q. When were you licensed to practice medicine in the State of Ohio?
A. 1977.
Q. Has your license ever been subject to any type of

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disciplinary action?
MS. VANCE: Objection. You can answer.
Q. Go ahead.
A. No.
Q. Do you hold any other special certifications in radiology, other than being board certified in diagnostic radiology?
A. No.
Q. Do you know approximately how many films you read per day?
A. Average, I'd say a hundred.
Q. Generally, do you have any interaction with the patient?
MS. VANCE: Now, you're not limiting yourself to an ER setting?
MR. RUF: No.
MS. VANCE: You're just throwing the question wide open.
A. Obviously, when doing some procedures, I do some procedures, the answer would be yes. This would be a small number of cases in comparison to the number of films that I interpret.
Q. Are you involved in the actual taking of the films or does someone else generally do that?
A. Someone else generally does that.

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Q. What's the title for the person that generally does that?
A. Radiographer.
Q. Were you involved --
A. Some people would refer to them as a radiologic technologist.
Q. Were you involved in the actual taking of films of Rodney McClendon?
A. No.
Q. Do you know who the radiographer was that was involved in that process?
A. No.
Q. Is there any way that that can be determined?
A. Yes.
Q. How would that be determined?
A. It will be indicated on the radiographs.
Q. How can you determine from the radiographs who the radiographer is?
A. They each have a specific identifying letter or number or combination of numbers and letters that they're required to put on the film.
Q. Is the radiographer also put on the written report?
A. No.
Q. I'm handing you what's been marked Plaintiff's Exhibits 1 through 3. I believe they're the films

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of February 6th. Could you take a look at those and tell me the number for the radiographer?
A. It was taken by a student, student number 16, and it was supervised, I believe, by there's a J on here and then on the side it's TJ. I don't know who that is, but the J would indicate an individual who would be responsible, I suspect, for supervising S16.
Q. You said the student's number is S16?
A. S for student, student number 16.
Q. Do you know what type of student actually took the films?
A. A student of radiologic technology.
Q. So would that be an intern or resident?
A. No, no, it's a student who is preparing to take board certification to become a technologist, not to become a radiologist, but to become a technologist.
- - - -
(Pager interruption.)
- - - -
MS. VANCE: Do you need to take that?
THE WITNESS: I do, actually.
- - - -
(Thereupon, a recess was had.)
- - - -
Q. Before we took the break, I believe you said that a

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student who was training to be a radiologic technician actually took the films?
A. Uh-huh.
Q. And that student was supervised by someone?
A. Yeah, I believe that's what the U or the J that's on here -- TJ, looks like, TJ on here.
Q. Do you know what the identifying number was for the supervising person?
A. Well, the supervisors would be technologists that are on the staff. The training program is run out of Tri-C, I believe, so the letters would indicate one of our employees, technologists, who are employed by the department. And that's their identifying character is TJ. I don't know exactly who that is, but there would be a master list that would indicate who that is.
Q. So TJ is the identification for the full-time Cleveland Clinic employee that was involved in to actual taking of the films?
A. Correct.
Q. Do you know how x-rays are ordered from the Clinic Radiology Department?
MS. VANCE: Objection for relevance.
A. From the typical radiology department, I mean, we wouldn't normally be ordering x-rays.

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Q. Right. If another physician wants to order x-rays, how is that accomplished?
A. I believe there's a system called order entry where the information is entered on the computer, but I'm not really familiar with it. It's not my area.
Q. So you really don't have direct knowledge as to how x-rays are ordered and how the orders are carried out?
A. Correct, that's not my area of expertise.
Q. And so you are also not aware of what documentation is produced when x-rays are ordered?
MS. VANCE: I'm going to object. We're talking generally, or do you want to talk about the Kaiser system? Because I'll tell you if you're talking about a Kaiser patient through the Kaiser ED, that changes things. Right now I think he's answering questions in-house if the patient was in the Clinic.
Q. Let's go back. If there is a Kaiser patient in the Kaiser ER, do you know how x-rays are ordered from the Cleveland Clinic Radiology Department?
A. No.
Q. Do you know what documentation would be produced under that scenario?
A. No. I don't know the full extent of it. I know

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what I would receive when I interpret the films, so I know that that would be part of the documentation, but what else is available, I don't know.
Q. What do you receive?
A. A three-by-five index card with the patient's name, their Clinic number, the accession number of the case, the patient's age and sex, the examination itself, descriptors indicating what the examination is, and there's a space on there for some clinical information which is not always filled out but it's there.
Q. Do you know what the three-by-five index card is called; is that a requisition form?
A. Yeah, I suppose an electronically generated requisition form.
Q. What information is put on the card about the examination itself?
A. Descriptors.
Q. What type of descriptors?
A. To indicate what the examination is. For example, in this case it was a forearm, so it would say forearm, right, left, two views.
Q. Is the information on the three-by-five index card kept in the Cleveland Clinic computer system?
A. I mean, I'm sure that's -- the card is generated by

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the computer. How long the records are kept in the computer, I don't know what the statute of limitations is on that, but I'm sure it's there for a while anyhow.
Q. Do you know if there was a hard copy of the three-by-five index card kept anywhere?
A. I don't think so.
Q. Do you know what happens to the three-by-five index card after the films are read?
A. I toss it in the trash.
Q. Is there any other information that you receive, other than the films and the three-by-five index card?
MS. VANCE: Same scenario, Kaiser patient?
MR. RUF: Yes.
A. Yeah, films come with an envelope and on the outside of the envelope is a little pocket and there may be a little piece of paper. If it's a Kaiser patient there's usually a little piece of paper on there which has a variable amount of information on it.
Q. Is that kept with the films after you read the films?
A. Yeah, it stays in the patient's folder because we put our interpretation on there to make, you know,

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make sure the physician sees it, and we actually sign what we think and put our initials and slide it into the compartment on the front of the envelope.
Q. And what information is on that document?
A. Usually patient's name and maybe something like question mark fracture or rule out fracture, depending upon, question mark pneumonia, depending upon what the area that's been x-rayed is.
Q. As the radiologist do you check to see whether the views that are ordered are actually taken?
A. I assume the views that are -- do I check, no.
Q. Do you know whose responsibility that is?
A. Do I know whose responsibility it is to check to see that the views that are taken are the views that are ordered?
Q. Yes.
A. The individual that would take the films would take the films that were ordered. The technologist would take the films that were ordered.
Q. As a radiologist, do you have any discretion in what views are actually taken?
A. Do I have any discretion? Can you maybe --
Q. In other words, say you have some films and you decide that some additional views might be warranted; is that something that you do as a

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radiologist?
A. Oh, if I decide that additional views are warranted, I have the opportunity to request them, yes.
Q. And what might cause you to decide that additional views are warranted?
A. For example, if you questioned whether or not there was an abnormality on, say, a bone film, because we're all a little different and subject to our own genetic makeup, one might sometimes request the complementary view of the other -- the opposite body part, in this case the other arm, for example, to see if what you were saying was -- what you were seeing was a normal anatomic variant or truly represented a pathologic entity.
Q. Do you review the clinical symptoms of a patient?
A. Do I read the information that's on the three-by-five card before I read the film? Yes.
Q. Is there information on the three-by-five card about the patient's clinical symptoms?
A. Sometimes yes, sometimes no.
Q. Do you know if there was any clinical information for Rodney McClendon on the three-by-five card for him?
A. I couldn't tell you off the top of my head.
Q. Do you agree that a fracture line is the most

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visible if it is parallel to the x-ray beam?
A. Do I agree that if a fracture line is parallel to the x-ray beam it is most visible? I think fractures that are most readily apparent on x-ray are fractures that are comminuted, where there are multiple fragments, you know, the easiest to recognize, which is, I assume, is the direction that you're going. Am I correct?
Q. Well, let me ask this. Can a fracture be invisible when it is 90 degrees to the x-ray beam?
A. Can it be invisible when it's 90 degrees to the x-ray beam? Now, obviously I haven't tested this theory, but I suspect that it could be.
Q. Well, do you agree that --
A. You can certainly have a fracture and be unable to see it on the x-ray.
Q. Okay. Well, let's talk about an elbow specifically then.
A. Okay.
Q. For an elbow do you believe that a fracture may be visible on one view but it may not be visible on another view?
A. Correct.
Q. And what views are available for the elbow?
A. The standard radiographic examination of the elbow

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would be an AP and lateral projection.
Q. And when you talk about an AP view, could you describe what view that is?
A. That would be with the forearm placed flat on the table, the beam centered over the elbow joint, the film placed behind the elbow joint and the beam coming down this way.
Q. Okay.
A. That would be the AP.
Q. Could you take a look at Plaintiff's Exhibits 1 through 3 and tell me if any of those would show the AP view of a forearm?
MS. VANCE: Forearm now?
A. Yeah. That's an AP view of the forearm right there.
Q. I want to go back to the elbow. Could you describe how a lateral view is taken of the elbow?
MS. VANCE: I think he just did.
A. The lateral view is taken generally --
MS. VANCE: I'm sorry.
A. -- with 90 degrees flexion.
Q. Do you agree that a fracture of a radial head may not be visible on a view of the forearm?
A. I do.
Q. Do you have the ability to check on an order for

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x-rays by accessing that information through the Clinic computer system?
A. Yes.
Q. Is that something that you regularly do?
A. No.
MS. VANCE: Again, are you talking about a Kaiser patient or a regular house --
MR. RUF: A Kaiser patient.
MS. VANCE: Let's ask the question again.
Q. Let's assume for the rest of the deposition we're talking specifically about Kaiser patients.
MS. VANCE: Can you ask that question again then just so it's clear on the record.
MR. RUF: Could you read back the question, please.
- - - -
(Thereupon, the requested portion of the record was read by the Notary.)
- - - -
Q. For a Kaiser patient.
A. I --
MS. VANCE: That's calling for does the Clinic computer interface with Kaiser information, that's sort of what he's asking.

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A. I don't know the answer to that.
Q. Have you ever had a Kaiser patient come down to the radiology department and you actually checked on the views that were ordered by the Kaiser physician?
MS. VANCE: Objection.
A. No.
Q. Do you know if it is the standard practice of the radiology department only to take the views that are ordered by Kaiser physicians or the Kaiser emergency room?
MS. VANCE: Laura, can you just repeat that.
- - - -
(Thereupon, the requested portion of the record was read by the Notary.)
- - - -
MS. VANCE: Objection.
MR. LEAK: Objection.
Q. Go ahead.
A. I really am not sure that I know the answer to that.
Q. Would you agree that the standard of care for the Clinic Radiology Department requires the radiology department to take the x-rays that are ordered?
MS. VANCE: I'm going to object.

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You're asking about the standard of care for the department. I'm not sure if there is such a thing. He's a radiologist, he can speak to his standard of care.
Q. If you need to qualify your answer, go ahead.
A. I mean, I think what you're looking for is the standard of care for a technologist, which I'm not really qualified to speak to. I can speak to the standard of care from the radiologist's standpoint.
Q. Please do that.
A. Which is, I mean, my job is to interpret the radiographs, define whether or not an abnormality is present and report on it.
Q. So the standard of care for you as a radiologist is only to interpret the films that have been given to you, correct?
A. Correct. I leave out the only. I would say the standard of care for the radiologist is to interpret the films that have been given to him.
Q. Does the standard of care also require you to determine if the views that have been taken need to be supplemented?
A. In your interpretation, you know, if you feel that you need more information, you can ask for more views.

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Q. How often do you do that?
A. Infrequently.
Q. Out of 100 films that you view, how often would you do that?
A. I read 100 films today and I didn't ask for it once. I didn't ask for additional views once.
Q. Do you know how often it would happen out of a thousand films?
A. I would be surprised if it was once out of a thousand. Now, this is, you know, I'm going to further qualify this by saying this is going to vary depending upon what the makeup of the thousand films is.
For example, if you're reading a thousand mammograms, you know, you're going to request follow-up on a lot more than one in a thousand. You may request an additional view, a different projection on a number of them.
Q. But for a view of an upper extremity you don't very often ask for supplemental views?
A. Right, right, probably less than one in a hundred then.
Q. Do you know if you compared Rodney McClendon's clinical information from -- compared his clinical information to the information you obtained by

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reviewing the x-ray films?
MS. VANCE: Objection. I'm not sure I understand the question.
A. Well, I think you're asking me if I read the information on the three-by-five card --
Q. Yes.
A. -- before I read the films. You know, can I specifically remember doing it? No. Is it my standard practice? Yes. Therefore, I would assume that I did it.
Q. When a patient comes down from the Cleveland Clinic emergency room are you provided with that patient's medical record?
A. No.
Q. Other than the three-by-five index card and the document that's in the envelope, do you receive any other information about the patient?
A. No.
Q. Would you agree that it's common sense that if a patient has severe elbow pain that an x-ray should specifically be taken of the elbow?
MS. VANCE: Objection.
MR. LEAK: Objection. Go ahead.
MS. VANCE: Common sense on whose part?

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Q. Did you understand the question, Doctor?
A. Yeah, I think so. I mean, you're asking if a patient comes in and says my elbow hurts, what are you going to x-ray. You're going to x-ray the elbow.
Q. Would you agree that if a patient is suffering from elbow pain it makes more sense to x-ray the elbow than the forearm?
MS. VANCE: Objection. I'm objecting to the question. You're leaving out a lot of other clinical information that might be available that would enter into that answer, and also he's not the -- he's a radiologist and is not the ED doctor, the person doing the ordering.
Q. Doctor, do you understand the question?
A. I think so, but why don't you state it again for me.
Q. Sure.
MR. RUF: Could you read back the question, please.
- - - -
(Thereupon, the requested portion of the record was read by the Notary.)
- - - -

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MS. VANCE: Objection.
A. Yeah, that would seem to make more sense.
Q. If you take an x-ray of the forearm is there any difficulty in viewing any area of the radial head?
A. The radial head is best evaluated by radiographs of the elbow joint.
MS. VANCE: I'm going to go back and show another objection to the preceding question that asked about whether if a patient came in complaining of elbow pain does it make sense to order an elbow x-ray versus a forearm. I made objections earlier.
In addition to those objections, again, this individual, Dr. O'Donovan, is not a clinical physician from the standpoint of evaluating such patients in an ED setting and ordering x-rays. He's not here for that purpose and doesn't have any other information about this patient's clinical presentation.
A. That's very true.
Q. Doctor, you have had training in the clinical symptoms for elbow fractures, correct?
A. Correct, some 25 years ago.
Q. Could you take a look at Plaintiff's Exhibits 1 through 3, please, and tell me if any fracture of

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the radial head is visible.
A. I do not see a fracture of either the right or left radial heads.
Q. If Rodney McClendon was subsequently diagnosed with a nondisplaced fracture at the head of the right radius, that is not shown on Plaintiff's Exhibits 1 through 3, correct?
A. Correct. Yeah, I don't see a fracture.
Q. Is that the type of fracture that potentially could not show up on a view of the forearm?
MS. VANCE: Objection.
A. Yeah. It may be invisible on the view of the elbow, never mind the forearm.
Q. On Plaintiff's Exhibits 1 through 3 do you observe a slight buckle in the cortical margin of the head of the left radius?
A. Well, I just looked at them and I didn't see it.
Q. Do you know why x-rays were only taken of Rodney McClendon's forearm?
A. No.
Q. Do you know why x-rays were not taken of his right or left elbow?
A. No.
Q. When you're interpreting films, do you realize that the clinician is relying on your expertise in

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radiology in interpreting the films?
MS. VANCE: Objection.
A. Do I realize that the clinician is relying on my expertise? Yes.
Q. You do not expect the clinician to double check your reading by examining the films himself, correct?
A. Well, I can't speak for the standard modus operandi of the physician. I know many physicians look at their own films.
Q. But you don't expect the clinician to do that, do you?
MS. VANCE: Objection. I don't want Dr. O'Donovan's expectations one way or the other to be interpreted as tantamount to or equivalent to the standard of care for any other clinician.
Q. Please answer the question, if you can, Doctor.
THE WITNESS: Read it back for me, please, could you, Laura.
- - - -
(Thereupon, the requested portion of the record was read by the Notary.)
- - - -
MS. VANCE: Objection.
A. Do I expect the clinician to look at his own films?

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I don't really have an opinion one way or the other.
Q. Do you know whether it is the obligation of the clinician to determine if the appropriate views have been taken or it's the determination of the radiologic technician?
MR. LEAK: Objection.
MS. VANCE: Objection.
Q. And if you don't know, that's fine.
A. I guess I don't know. I'm not quite sure where you -- could I have the question read back again. Sorry.
- - - -
(Thereupon, the requested portion of the record was read by the Notary.)
- - - -
MS. VANCE: Objection.
A. I don't know.
Q. Do you know whose obligation it is to see that the views that are ordered are actually done?
MS. VANCE: Objection. I think that's just another way of stating the same question.
A. Yeah, I don't know the answer to that.
Q. Do you know who Todd Richards is?
A. No.

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Q. Do you remember Todd Richards coming down and asking you for a second read of Rodney McClendon's x-rays?
MS. VANCE: Objection.
A. I don't remember anybody asking me for a second read of Todd Richards' x-rays. I don't know who -- or of Rodney McClendon x-rays, and I don't know who Todd Richards is.
Q. I'm handing you what's been marked as Plaintiff's Exhibit 33. Were you the radiologist who actually reviewed and interpreted Rodney McClendon's x-rays of his forearm?
A. Yes.
Q. Is there any other radiologist who would have done that?
MS. VANCE: Who could have or did?
MR. RUF: Who could have or did.
A. One of our residents, a radiologist in training, was there with me on that particular evening and we both looked at Rodney McClendon's films.
Q. If Todd Richards had come down to the radiology department and asked for a reread, would you have been the person that he would have spoken to?
A. He could have spoken either to myself or to the resident.
Q. Were you present with the resident at all times or

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would the resident read films without you being present?
A. I see all the films.
Q. I would guess that you have no independent recollection of reading Rodney McClendon's films on February 6th, 1998?
A. I do have a memory of it.
Q. What do you have a memory of?
A. I have a memory of it being around 5:00, which was the time that I started in the emergency room on that particular day, and it being the first case that I looked at. And I recall the reason I remember it is because it's unusual to get bilateral forearms in rule out fracture.
Q. What do you mean it's unusual?
A. Well, usually you get a single joint or a single long bone or, you know, but to get both forearms.
Q. When you said bilateral forearms rule out fracture, what are you referring to?
A. The radiographic examination was comprised of both forearms.
Q. Was that the differential diagnosis that you received for Rodney McClendon?
MS. VANCE: Objection.
A. You know, that may have been what was on the

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three-by-five card, because my recollection seems to be rule out fracture, but, you know, I can't -- that's when I think back and think of, you know, the films I seem to recall it was rule out fracture, but I'm not 100 percent sure that that's what was on the three-by-five card, but I suspect it was.
Q. Did it only say rule out fracture or did it say rule out fracture of forearms or elbows?
A. I'm not a hundred percent sure that it's even on the three-by-five card.
Q. And since it's February of 1998 you can't say for sure what was on that card?
A. That's true.
Q. What else do you remember about this case?
A. Just that.
Q. Do you remember speaking to anyone about this case?
A. To the resident.
Q. Who was the resident?
A. Eunice Moon.
Q. Is she still here at the Clinic?
A. Yes.
Q. What did you say to Eunice Moon about this case?
A. Something to the effect of, well, what do you think of this. We looked at the films, we decided that there was no fracture. But I remember we both

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looked at the case.
Q. Now, after you reviewed the films and decided there was no fracture, did you produce a written report?
A. Yeah. Yes.
Q. Would that written report be put with the x-rays or does it take time for the report to be transcribed?
A. It takes time for the report to be transcribed.
Q. Do you dictate the report?
A. There are actually two written reports. There is a report dictated, but we also put a note on the little piece of paper that's in the plastic folder on the front of the x-ray folder which we talked about earlier, so there would have been something written there and then there would have been a dictated, formal dictated report which is right here.
Q. If the x-ray -- I'm sorry, if the emergency room physician wants to review your reading of the films, how does the x-ray or how does the emergency room physician do that?
A. They all have different styles, but usually they'll come back with the film and they might say something like can you take another look at this.
Q. Well, for somebody in the Cleveland Clinic emergency department -- I'm sorry, for somebody in the Kaiser

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emergency department how would they know what your reading is if the patient is waiting there in the emergency room?
A. They would come and pick up the films and on the front of the film jacket is a small piece of paper that's stuck in a plastic folder and on that it has the patient's name and it may have some clinical data, such as rule out fracture. And also on that there would be a handwritten note by either me or the resident which was our interpretation of the film, a summary of our interpretation. In this case it probably said something like negative for, no fracture.
Q. Do you write on the x-ray jacket what your findings are?
A. No, just on this piece of paper that's actually in the folder on the front of the jacket.
MS. VANCE: I don't think his answer is complete. You had asked him what are the ways that the physician will know the interpretation. He's talked about the written piece of paper.
Q. Yeah, how else could the physician find out what your reading is?
A. He could pick up the telephone and dial 55800 and

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then plug in the patient's number, and he could actually hear the dictation.
Q. Do you know what happens to the dictation after it's transcribed?
A. I'm assuming that as it's -- it's stored on some sort of disk or tape and after the transcriptionist has typed it and it's been proofread and finalized, that then --
MS. VANCE: I would caution you not to assume how long it lasted on the computer.
A. Yeah, I'm assuming and I'm not going to do that.
Q. So you have no idea how long those tapes are kept, correct?
A. Correct.
Q. Is there anything on the x-ray jacket that indicates what views have been ordered for a patient?
A. I'm not sure.
Q. For Rodney McClendon would there have been anything on his x-ray jacket that would indicate what views were ordered?
A. I'm not sure.
MS. VANCE: You're distinguishing the jacket from that slip that's inside the pocket --
MR. RUF: Yes.

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MS. VANCE: -- on the jacket?
MR. RUF: Yes.
A. There would be nothing on the jacket. There would be nothing on the x-ray jacket. There might be something on the slip, but I'm not sure.
MS. VANCE: Okay.
Q. Do you know if the x-ray jacket for Rodney McClendon is here in the radiology department?
A. I have no idea.
MS. VANCE: I can tell you that I've checked and I've been told that it's -- it does not -- it's not here at The Cleveland Clinic Foundation, that that entire jacket is gone and not part of our film library or inventory of films for this patient.
Q. Are the x-rays and the x-ray jackets for Kaiser patients kept at the Cleveland Clinic Radiology Department or are they sent to Kaiser?
A. I have no idea.
Q. So you have no idea what happens to the actual films and jacket after you read the films?
MS. VANCE: For a Kaiser patient?
Q. For a Kaiser patient.
A. When I read the films they're in a temporary jacket, they're not in the patient's master folder. The

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master folder may not even be on campus at the time the patient appears in the emergency room.
Q. What's the master folder?
A. It's pretty much what it says, it's the master folder, it's the folder in which all radiographic examinations pertaining to that particular individual are kept on a full-time basis.
Q. Do you know where the master folder is kept for Kaiser patients?
A. No.
Q. Were you aware that there was a request for x-rays of both the forearm and elbows for Rodney McClendon?
MS. VANCE: Objection.
A. No.
Q. If x-rays for Rodney McClendon's forearm and elbows were requested, would you expect the x-ray technician to take x-rays of both the forearm and elbows?
MS. VANCE: Objection.
A. Yes.
Q. Based upon your experience here at the Clinic, does the x-ray technician use their own determination in what views to be taken or do they follow the doctor's order for certain views?

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MS. VANCE: Objection.
A. Follow the doctor's order.
Q. Does the radiologic technician have authority to override a doctor's order for certain views?
MS. VANCE: Objection. He said earlier he's not a technologist, and I don't want him to venture into standard of care territory as it relates to technologists.
A. Yeah.
Q. Well, have you worked with radiologic technicians here?
A. Uh-huh, I have.
Q. And you're familiar with what they do here at the Cleveland Clinic?
A. Yes.
Q. Do you know the scope of the authority for a radiologic technician?
A. By far the vast majority of the cases, I suspect, that the technologist takes the film that is requested. Now, if the technologist has a question pertaining to the radiographic examination, then they might seek clarification of the order, but more than that I really can't say.
Q. A radiologic technician is not a doctor, correct?
A. Correct.

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Q. A doctor has more medical training than a radiologic technician, correct?
A. Medical training, correct.
Q. Is it your understanding that the role of the radiologic technician is to take the views that are ordered and then submit the films to you for reading?
MS. VANCE: Objection.
A. That's my understanding, unless they have a question in which case they might seek clarification.
Q. Do radiologic technicians ever come to you and ask for a consultation as to whether additional views should be taken?
A. Occasionally.
Q. Do you have any way of determining whether a radiologic technician has actually taken the views that have been ordered by the clinician?
MS. VANCE: Objection. I think we've gone over this before.
A. Yeah, this sounds familiar. It's not something I do.
Q. Do you have any way of determining that?
MS. VANCE: Objection.
A. I'm not a hundred percent sure.
Q. Is that something that you have done in the past

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here at the Cleveland Clinic?
MS. VANCE: Objection.
A. I don't know that I've done it in the emergency room for Kaiser examinations. I don't know. I don't think I've done that.
Q. Do you consider any radiologic texts to have accurate, reliable information?
MS. VANCE: Objection.
A. Do I consider any radiologic texts, as in textbooks?
Q. Yes.
MS. VANCE: Objection.
Q. I'm sorry, is there some confusion about what I'm asking?
A. You're asking --
MS. VANCE: Sounds like you're asking --
A. Are you asking about textbooks written on radiology to have reliable information?
Q. Yes.
A. Yes.
Q. What textbooks do you consider to have accurate and reliable information?
MS. VANCE: Objection under the evidence rules.

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Q. Go ahead, Doctor.
A. Most of those you see behind me you would have faith in.
Q. And the library here contains a number of radiology textbooks?
A. Correct.
Q. Do you consult those textbooks during your practice?
MS. VANCE: Objection.
A. Correct.
Q. And the textbooks include Merrill's Atlas of Radiographic Positions and Radiographic Procedures.
A. I don't know if it's here.
Q. It's over there.
A. Yeah, it's here.
Q. Have you ever consulted that textbook?
MS. VANCE: Objection.
A. Yeah, I believe I have, although not in a long time.
Q. And your library also contains Eisenberg's Atlas of Signs and Radiology?
A. I believe so.
Q. And it also contains Taveras and Ferrucci Radiology?
A. Yes.
Q. And Grainger and Allison Diagnostic Radiology?

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A. I'm not sure about Grainger and Allison. Have you seen it there?
Q. Go ahead and look, Doctor.
MS. VANCE: Well, rather than play a guessing game --
Q. Well, it's the blue book there, Doctor.
A. The Diagnostic Radiology, the blue book.
Q. And your library also contains Sutton, a Textbook of Radiology and Imaging?
A. Yes.
Q. And Gunderman, Essential Radiology?
MS. VANCE: We'll stipulate that the Clinic has a very complete radiology library.
A. Comprehensive.
MS. VANCE: Comprehensive, with journals and texts.
Q. And those radiology textbooks are here for your consultation, correct?
A. Correct.
MS. VANCE: We won't stipulate, however, that any of the books or texts in this library are admissible under the Evidence Rules of Ohio. In fact, we'll specifically refute that and debate that and dispute that point.
MR. RUF: Well, that's up to the Judge

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to decide that issue.
MS. VANCE: Just so it's clear that through this witness' testimony he has not given any imprimatur of authoritativeness to any of these texts such that they should be admissible in evidence under the Rules of Evidence for cross-examination purposes.
MR. RUF: That's not required under the current rule.
MS. VANCE: Under the current rules. Same point is being made here, that Dr. O'Donovan's comments regarding the library contents are not to be interpreted as any assent to the basic requirements of the evidence rules to enable any of these books to be admissible for cross-examination purposes.
Q. Do you remember conversations with anyone other than Eunice Moon about Rodney McClendon's case?
A. No.
Q. Did you ever meet Rodney McClendon?
A. No, not that I recall.
MR. RUF: That's all I have for now, Doctor. I believe that Mr. Leak may have some questions for you.
MR. LEAK: Doctor, my name is Doug

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Leak. We just met. I represent Kaiser.

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CROSS-EXAMINATION OF PETER O'DONOVAN, M.D.
BY MR. LEAK:
Q. The three-by-five index card, that's different from what is put in the compartment that goes with the x-ray jacket?
A. Yes.
Q. Do you know if there's any other copies of the three-by-five index card, other than the one that you get that you dispose of?
A. I don't think there is.
Q. And is that a computer printout or is it handwritten information?
A. It's computer generated.
Q. And you don't know how long that's kept in the Cleveland Clinic computer system?
A. I don't know.
Q. In this case you're not really privy to what was ordered because you really don't have a recollection as to what was on the card, correct?
A. Correct.
Q. Can nurses at the Cleveland Clinic in the emergency room department place an order for particular films?

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MS. VANCE: In the Kaiser emergency room?
MR. LEAK: Yes.
A. I believe so.
Q. You said that if there's an order for elbow films you would expect elbow films, correct?
MS. VANCE: Objection. Wait a minute. Say the question again.
Q. Okay. I thought your testimony was earlier when Mr. Ruf asked you if there's an order for forearm and elbow films you would expect separate films of the elbow; is that correct?
MS. VANCE: Objection.
MR. RUF: To actually be taken?
MR. LEAK: To be taken.
A. Yeah, I would expect that.
Q. Okay. Does that mean you would expect a PA and a lateral view of the elbow if there was a specific order for elbow films?
A. Correct.
Q. Will all radial head fractures show up on PA and lateral views of the elbow?
A. No.
Q. Can you explain why?
A. There is an incidence of fractures being invisible

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immediately after they've been sustained. Exactly what the figure is, I couldn't say, but it's certainly not uncommon and most, I'm sure all, emergency room physicians would be aware of that and would know that should, you know, should symptomatology persist for a week after a fracture, that -- or a week after an injury that no fracture was -- when no fracture was found that that would be good grounds for repeating the radiographic examination.
Q. Does the radiology department receive the triage notes from the nurses, whether it's the radiology tech or you?
A. Certainly the physician doesn't -- the radiologist doesn't. I believe that the technologist does, but again, you know, you need to ask the technologist that.
Q. If you looked at the three-by-five, and I'm talking about in general, not this particular case, if you look at a three-by-five index card and the descriptors, I think you called it for the films?
A. Uh-huh.
Q. If it says forearm, elbow and then you get the films and there's no elbow, will you as the radiologist ask the tech to then take the elbow films?

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MS. VANCE: Objection.
Q. Do you understand what I'm saying?
A. I do understand what you're saying. There would be two separate cards. You wouldn't get an index card with forearm, elbow. There would be -- each would be a specific radiographic examination and each specific radiographic examination has a separate accession number and a computer generated card --
Q. Got you.
A. -- is made for each accession number.
Q. Let's assume that there were, in this case, there was an order for forearm, wrist and elbow. Does that mean you would expect to see three different three-by-five index cards?
A. Yes.
Q. And so if you have three different index cards and you only have a set of forearms, will you then speak to the tech and say, hey, where's the rest of the films?
A. Where's the rest of the exam, yeah.
Q. You mentioned something about this case. You recall this case because bilateral films were taken of the forearm for a suspicion to rule out fracture?
A. Usually when you get a case that says rule out fracture, you get one body part or you may get, you

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know, a wrist, an elbow, a shoulder, or one extremity. But to get both forearms, rule out fracture is an unusual request. That's the reason that I remember it.
Q. Did you do any further investigation to find out, you know, why are we getting this particular set of films for this rule out fracture?
A. That brings me back to the question that I was asked earlier, which is my recollection. My recollection is one of thinking that this was unusual and the reason now that it, you know, that I'm thinking back on it, the reason I thought it was unusual was because it was rule out fracture.
So that's why I think that the three-by-five card stated rule out fracture. But do I remember actually reading rule out fracture off the three-by-five card? I wish I could tell you that I did, but I don't.
Q. I want to talk about after you have reviewed the films. If a PA came back in this case to speak to someone, it could have been you or it could have been your resident; is that correct?
A. Correct.
Q. Is it unusual to have either the PA or the emergency room physician bring the films to you and say, hey,

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look, you know, the patient's complaining of this, can we take another look at that; is that unusual?
A. Not that unusual.
Q. If someone came back from the emergency room department, whether it is the emergency room physician or the PA, and gave you a clinical presentation, can you assess that clinical presentation or make a determination as to whether or not the proper films were taken as a radiologist?
MS. VANCE: Objection.
Q. In other words, can you take that clinical information and then make a determination as to whether or not the proper views were taken?
MS. VANCE: Objection. Just based on that very, very general question?
MR. LEAK: Yeah.
A. It is a very general question. You know, I mean, if they came back with an x-ray of the foot and told me the patient had abdominal pain, well, then, I would say, well, I think you x-rayed the wrong body part.
Q. Let's assume that someone came back and discussed the clinical presentation of Mr. McClendon and said that this man is still having pain upon extension. From a radiological standpoint, what suspicions would that raise for you?

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MS. VANCE: Objection. I'm objecting just because I think that's limited information sort of in a vacuum, and you're asking this witness to render some sort of impression or opinion or thought process about just that information.
I'm not sure that that represents a realistic scenario of what might have happened or, in fact, did happen in this case. That's my objection.
Q. Well, I guess basically, Doctor, then in general if someone presented a case to you clinically of pain upon extension as a radiologist what suspicions would you raise?
A. Pain upon extension would suggest pain on motion at a joint and therefore you would, you know, your suspicion would center on the joint.
Q. And what joint is that --
MS. VANCE: Objection.
Q. -- that you're talking about?
A. Well, the -- well, if the extension is in the case of the forearm, then the joint would be the elbow joint.
Q. And if that was the presentation and you didn't have views of the elbow, would you then request

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additional films to include elbow films?
MS. VANCE: Objection.
A. I mean, this is conjecture and I really don't know. You know, I can't answer these questions insofar as it's conjecture.
Q. I guess I'm just trying to determine if you had a suspicion of some problem with the elbow joint and you don't have those films available or they weren't taken, can you as the radiologist ask to bring the patient back and have additional films taken?
MS. VANCE: Objection. That just presupposed so much more of what the role of the radiologist is to even have such suspicion in the first place.
Q. I'm trying to find out what your role is as a radiologist.
A. It's the interpretation of the films. I mean, if somebody came after the films had been taken and said, look, can you go over this again, I would look at the films and say, you know, either look there's something here I didn't see or, you know, I still don't see anything.
Q. And whose responsibility would it be if the films didn't include the elbow and there was a suspicion for a problem with the elbow?

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MS. VANCE: Objection.
Q. And I'm talking about in the context if someone came back and gave you back the films.
A. In that scenario there would be a conversation between the individual that came back and myself. You know, and if the films were of the forearm and the individual came back and said, well, you know, my concern is for an area that's not well seen on the film, you know, my question would be, well, why did you order this in the first place, you know.
Q. Assuming that was the person who placed the order then, correct?
A. Well, you know, I mean, that would be the individual to talk to, yeah.
Q. The person that ordered the films?
A. Yeah, the person that evaluated the patient and decided what should be x-rayed, yeah.
MR. LEAK: Thank you, Doctor, I have nothing further.
MR. RUF: Doctor, I have a follow-up question or two.
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RECROSS-EXAMINATION OF PETER O'DONOVAN, M.D.
BY MR. RUF:
Q. I want you to assume that Todd Richards testified as

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to the following about the conversation with the radiologist at the Cleveland Clinic.
A. I'm sorry, who's Todd Richards?
Q. Todd Richards is the PA that saw Rodney McClendon in the ER.
A. Okay.
Q. Todd Richards has given the following testimony: "What I remember about the conversation of this radiologist is that I told him that Mr. McClendon is a 42-year-old male who is having pain in his right upper extremity upon, you know, greater than or the latter ten degree extension and the pain is nonspecific. And I told him that despite the x-ray being negative he has no point tenderness or any kind of sign of a specific or localized swelling over the bony prominences, so I asked him to reread the x-ray, and that's where it was left."
Assuming that did occur, would you make any recommendation as to additional views to be taken or would you only reread the x-ray?
MS. VANCE: Objection.
A. I would, again we're talking conjecture here and I don't recall any conversation with any individual other than my resident with regard to this particular case, but I, again, we're talking

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conjecture, but I would assume in that situation I would say, you know, if this discomfort that the patient has persists then the area should be re-x-rayed in seven to ten days. It's kind of standard.
Q. Why is it standard?
A. For the reasons that I mentioned earlier, that is that a significant number of fractures are not visible on x-rays taken immediately after the fractures are sustained. They may become visible at seven to ten days by virtue of the healing process, the callus that's laid down at the site of the fracture is radiographically visible.
Q. Now, if Todd Richards, the PA, testified to the following: "So you told the radiologist your concern based on the clinical findings and then you left it up to his discretion what to do at that point?" And he answered, "Absolutely."
Would he have been mistaken in the role of the radiologist?
MS. VANCE: Objection.
MR. LEAK: Objection.
MS. VANCE: Go ahead, Doctor.
A. Yes.
Q. And why do you say that?

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A. That conversation that, you know, that data that Mr. Richards claims that he conversed with the radiologist about, he should be conversing with the clinician, you know, he should be looking at the x-rays and saying, well, the clinical information is this and this is the radiographic picture, what should we do here. That's the clinician's call, you know, or Mr. Richards' call, depending upon who's responsible for the care of the patient.
Q. If Mr. Richards wanted to have additional views taken, do you know how that would be accomplished?
A. Yeah, he orders them, the same way as he ordered the first set.
Q. Would a Kaiser PA or a Kaiser physician have the authority to go to the radiologic technician and ask for additional views to be done?
A. I'm not sure what the pecking order is over there, who orders what, how these things are accomplished. It's really not my area of expertise. I don't work in the Kaiser emergency room, I don't know how the chain of command works over there.
Q. Well, do you know if Kaiser employees, whether they're physicians, nurses or other employees, have the authority to ask a radiologic technician to take additional views?

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A. They can order more x-rays, I think. I mean, that's my sense of the question that I was asked.
MS. VANCE: Well, sure, they ordered them in the first instance, so they can order more if they want more.
THE WITNESS: Yes.
Q. Did you review anything before your deposition today?
A. Did I review anything? I met with -- I did have a look at copies of this report here, yeah. And I met with my attorney, the attorney in this case, yeah.
Q. Did you actually review any films?
A. No.
Q. And did you look for either the master folder or the x-ray jacket for Rodney McClendon?
A. No.
Q. Do you consider any radiology textbooks to be authoritative?
MS. VANCE: Objection. How do you define authoritative, unquestionably accepted from cover to cover without debate or question?
If that's the definition, do you find any of these textbooks to be authoritative to the point where you would accept it

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unquestionably from cover to cover without question?

MR. RUF: Well, I would object to you giving a definition.

MS. VANCE: That's how it's been widely interpreted and that's how the case law is determined.

Q. Doctor, for the previous textbooks that were listed do you consider those textbooks to have accurate and reliable information?

MS. VANCE: Objection.

A. By and large, yes.

Q. And is that why they're kept here in the Cleveland Clinic radiology library?

MS. VANCE: Objection.

A. They're kept here as a reference.

Q. Well, you're not going to have textbooks here that contain inaccurate and unreliable information, are you, Doctor?

MS. VANCE: Objection.

A. I don't think you can look at any textbook and say everything that's in this is gospel, you know. I mean, everything has to be taken at face value. But the textbooks that are here, the majority of the material that's in them is good.

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MR. RUF: Okay. Thank you, Doctor.

MS. VANCE: Doctor, I have one further question I'd like to ask of you just to clarify some of the earlier testimony.

MR. RUF: Objection.

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DIRECT EXAMINATION OF PETER O'DONOVAN, M.D.

BY MS. VANCE:

Q. Doctor, would you also have an expectation that a clinician who's examining a patient and appreciating the patient's symptomatology and expressions of discomfort, who also has available the x-ray views that have, in fact, been taken, if that clinician has any question or concern about whether the appropriate views have been taken or additional views ought to be taken, would you expect that that clinician has the authority or the ability to obtain additional views as part of their examination and evaluation of the patient?

MR. LEAK: Objection.

A. Yes.

MS. VANCE: No waiver of signature.

PETER O'DONOVAN, M.D.

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CERTIFICATE

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

I, Laura L. Ware, a Notary Public within and for the State of Ohio, do hereby certify that the within named witness, PETER O'DONOVAN, M.D., was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth in the cause aforesaid; that the testimony then given was reduced by me to stenotypy in the presence of said witness, subsequently transcribed into typewriting under my direction, and that the foregoing is a true and correct transcript of the testimony so given as aforesaid.

I do further certify that this deposition was taken at the time and place as specified in the foregoing caption, and that I am not a relative, counsel or attorney of either party or otherwise interested in the outcome of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Cleveland, Ohio, this day of , 1999.

Laura L. Ware, Ware Reporting Service
3860 Wooster Road, Rocky River, Ohio 44116
My commission expires May 17, 2003.