Condensed Transcript

STATE OF OHIO
CUYAHOGA COUNTY
COURT OF COMMON PLEAS

MICHELLE R. FREEMAN, Executrix of
the Estate of SALLY J. HUERSTER, Deceased,

PLAINTIFF,

Vs. CASE NO. 490991

PARMA HOSPITAL HOME HEALTH CARE, et al.,

DEFENDANT(s).

TELEPHONIC DEPOSITION OF

MARTIN J. RAFF, M.D.

October 23, 2004
10:00 a.m.

517 Ridgewood Place
Louisville, Kentucky

DANYIEL CARPENTER, Notary Public

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APPEARANCES

FOR THE PLAINTIFF, MICHELLE R. FREEMAN, EXECUTRIX OF THE ESTATE OF SALLY J. HUERSTER, DECEASED:
BECKER & MISHKIND CO., LPA
JOHN W. BURNETT, ESQUIRE [VIA TELEPHONE]
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Elyria, Ohio 44035

FOR THE DEFENDANT(S), CARDIOVASCULAR CLINIC, CHRISTINE M. ZIRAFI, M.D., JAMES L. SECHLER, M.D., AND RAJU MODI, M.D.:
BUCKINGHAM, DOOLITTLE & BURROUGHS, LLP
PAUL A. DZENITIS, ESQUIRE [VIA TELEPHONE]
1375 East Ninth Street, Suite 1700
Cleveland, Ohio 44114

FOR THE DEFENDANT(S), PARMA COMMUNITY GENERAL HOSPITAL AND PARMA HOSPITAL HOME HEALTH CARE:
WESTON, HURD, FALLON, PAISLEY & HOWLEY, LLP
KENNETH A. TORGERSON, ESQUIRE [VIA TELEPHONE]
50 Public Square, 2500 Terminal Tower
Cleveland, Ohio 44114

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Telephonic Deposition of Martin J. Raff, M.D.
October 23, 2004

MARTIN J. RAFF, M.D., called on behalf of the Plaintiff, Michelle R. Freeman, Executrix of the Estate of Sally J. Huerster, Deceased, after first being duly sworn, is examined and testifies as follows:

THE REPORTER: Please proceed. Can you hear us all right?

MR. BURNETT: Can you tell us your name, please?

THE WITNESS: Hello?

DIRECT EXAMINATION

BY-MR.BURNETT:

Q. Hello. Tell us your name, please.
A. Martin J. Raff.
Q. Dr. Raff, you're a physician licensed to practice in several states that I see.
A. That's correct.
Q. What's your -- the -- what's your current title?
A. M.D.
Q. You have a position at the -- the Louisville School of Medicine. What's your

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title there --
A. I'm --
Q. -- are you a professor of medicine there?
A. I'm a professor of medicine.
Q. Okay. Do you have a curriculum vitae you brought with you today?
A. No, not with me.
Q. Okay.
A. I thought -- I thought Mr. Torgerson had one.
Q. All right. Yeah, he does. And he'll provide that to me. Talk to me a little bit, please, about how you spend your professional time. What percentage of it is clinical practice; what percentage is in teaching? And tell me what you teach, please.
A. Okay. Teaching and clinical practice are in essence inseparable. I teach predominantly at the bedside. About 95 percent of my time is spent in clinical medical practice. I see patients, both in general internal medicine as well as in consultation in infectious diseases, both in

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hospital and in outpatient settings. Is that sufficient for you?
Q. Yes, it is. And when you say "95 percent of your professional time," I take it that's a normal five-day workweek?
A. Well, no, it includes weekends; and, you know, I'm -- I'm -- well, this year I'm only on every -- every other. But in the past, I've been on virtually every weekend.
Q. Okay. Now, I -- I refer to what we're doing here and what you're doing as medicolegal work. That is, a -- a physician looking at a case and, you know, opining as to whether or not someone deviated from the standard of care.
A. Absolutely.
Q. How long have you been doing this?
A. Approximately since about 1976.
Q. All right. Can you give me an idea of about how many cases you review a year?
A. Roughly a dozen.
Q. Okay. Can you break it down for me, plaintiff versus defense?

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A. Predominantly plaintiff; about 70 percent.
Q. By the way, have you reviewed a case before with facts similar to these allegations, regarding home-health-care nurses?
A. Not to my recollection.
Q. All right.
THE REPORTER: You might have to turn that up a little bit.
BY MR. BURNETT:
Q. Now, I can make this a very quick deposition, I think. And I'm -- I'm going to ask you if your report of February 9th, 2004, contains all of your opinions.
A. Yes, it does.
Q. All right. I take it, sir, then, you have not evaluated this case and hold no opinions regarding standard of care as to Dr. Zirafi or Dr. Sechler or the cardiovascular --
THE REPORTER: I'm sorry. I need you to repeat that.
THE WITNESS: Wait, wait, wait. Mr. Burnett, you're fading out; you're either not close to the phone or there's something

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wrong with the system.
MR. BURNETT: Okay.
THE WITNESS: But you're very difficult to hear.
MR. BURNETT: I'll start again.
THE WITNESS: Okay.
BY MR. BURNETT:
Q. I take it, sir, that you have not reviewed the case and therefore hold no opinions as to standard-of-care issues as to Dr. Sechler, Dr. Zirafi, and the Cardiovascular Group [sic]; correct?
A. That is correct.
Q. Okay.
A. I did review the case, but I don't hold any opinions.
Q. I take it, also, sir, that you don't hold any opinions as to the cause of death; is that fair?
A. Actually, I do have an opinion.
Q. Okay.
A. I think it's very likely that this unfortunate woman died of an acute pulmonary embolus.
Q. Okay. I -- in -- in perusing

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your -- your report, I'm not seeing that articulated.
A. No, I -- I -- in -- in rereading it over the -- over the past several days, and then trying to think out a sudden cause for asystolic death, sudden arrest, and then rereading the autopsy report, she had multiple small embolic lesions; and I suspect that one of them suddenly impinged upon her conducting system.
Q. Okay.
A. Not at -- not at all uncommon.
Q. Do you hold that opinion to a reasonable degree of medical probability?
A. You know, it's a presumption on my part. I -- I think nobody can say with any degree of certainty exactly why she died; but that seems to be -- yes, that seems to be a probable cause.
Q. Okay. So you think that -- in your opinion, it's more likely than not that was the cause of death?
A. Yeah, I suspect so.
Q. Okay. Was there anything about this woman's clinical condition that made her

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particularly suscepti -- susceptible to the small pulmonary emboli you've referenced?
A. Well, she had been hospitalized for a while. She had multiple underlying illnesses that would lead her to the potential for pulmonary embolization. And although she was anticoagulated, she had these lesions in her -- in her lungs, and that strongly suggests that she had clots somewhere either in her lower extremities or in her abdominal region. And with the toxic megacolon, compression of venous channels would not be at all uncommon, and could lead -- could lead to embolization.
Q. Do you believe that -- having said that, that the toxic megacolon was a substantial contributing factor to her death?
A. Well, I don't know. People survive toxic megacolon. It's a transient -- often a transient condition following an acute inflammatory lesion of the bowel.
Q. Well, we have a -- a woman here, who, I think -- is it fair to say that, at the time of her death, she was suffering from sepsis?

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MR. DZENITIS: Objection. That's Dzenitis.
THE REPORTER: I'm sorry. "At the time of her death," she suffered what?
MR. BURNETT: "She was suffering from sepsis."
THE REPORTER: Sepsis. Okay.
A. You know, "sepsis" has a very specific definition. I will have to go back and look at the vital signs. Hang on just a second. What day were we referring to, the 4th?
MR. DZENITIS: 5th.
BY MR. BURNETT:
Q. Yeah, the 5th.
A. The 5th [examines records]. No, you know. . . No, she did not have a septic syndrome at that time.
Q. Okay. So, did she have C. diff. colitis at that point?
A. Yes.
Q. Okay. And is it fair to say that the C. diff. colitis certainly weakens your system and any response she may have --
THE REPORTER: I'm sorry. I

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cannot hear.
BY MR. BURNETT:
Q. -- pulmonary emboli?
THE WITNESS: He -- Mr. Burnett, we can't hear you again.
BY MR. BURNETT:
Q. Okay. Is it fair to say that the C. diff. colitis weakened her system to the point that she was more susceptible to the pulmonary emboli you referenced earlier?
A. I -- I don't know.
Q. Okay. I want to make sure I understand the basis for your opinion that the pulmonary emboli caused her death. I know you saw them on autopsy. Please tell me each and every other reason you believe the pulmonary emboli were the likely cause of her death.
A. No, it was just the -- the fact that they were there, and that she had a very sudden death in hospital. There are very few things that will produce a sudden asystolic episode in hospital, and -- and I suspect that this is a highly likely cause for an asystolic phenomenon in a patient in

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hospital. You know, it's one of the most underdiagnosed diseases that there is.
Q. Okay. What about other experts who talk about the possibility of -- or probability, perhaps, of a mucus plug?
THE REPORTER: I'm sorry --
A. Yeah, you know, that was in the --
THE REPORTER: Sir, I'm sorry. I cannot hear.
A. He -- again, Mr. Burnett; you've gotta speak up.
MR. BURNETT: Okay.
THE REPORTER: I mean, I'm sitting right here.
BY MR. BURNETT:
Q. Other --
THE WITNESS: The -- the court
BY MR. BURNETT:
Q. Other experts have talked about the possibility or probability of a mucus plug.
A. Yeah, the mucus plug was in the left main- stem bronchus. You know, I -- that could have contributed to it; but it's very unusual to see a mucus plug producing a sudden asystolic phenomenon.

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Q. Have you read Dr. Crane's deposition transcript?
A. Dr. Who?
Q. Crane, C-r-a-n-e.
A. Yes, I have.
Q. Okay. I take it that you disagree with him as to the cause of her death.
A. I don't recall what he said. Can you elucidate me?
Q. Well, I -- I -- I think he said she had -- he had -- she had an acute cardiac event as a result of ketoacidosis, secondary to the sepsis, secondary to the C. diff. colitis.
THE REPORTER: I'm sorry. I cannot hear him.
THE WITNESS: It -- again, Mr. Burnett, the court reporter is sitting right on top of the phone and we can't hear you.
MR. BURNETT: Okay.
THE REPORTER: I apologize, but I cannot hear.
BY MR. BURNETT:
Q. I will restate it, and I'll just paraphrase that the -- the cause of death was

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essentially sepsis syndrome secondary to C. diff. colitis, which led her to have an acute coronary event.
A. I -- I disagree entirely.
Q. Okay. You -- you bring it all back to the pulmonary emboli?
A. Well, I mean it -- that's -- that's my major possibility. There are several other mechanisms by which she might have expired. The mucus plug is there; she's had atrial fibrillation in the past; and she could have had a myocardial infarction. I mean, it's -- there's a -- a lot of things. And she was not overtly septic at the time this occurreded.
Q. You saw on autopsy she had toxic megacolon; correct?
A. Yes.
Q. Doctor?
A. Yeah. She did.
Q. Okay. Well, what's your -- what's your basis for your statement that she was not septic or she was not -- she did not have sepsis at the time of her death?
A. Systemic-inflammatory-response

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syndrome due to infection is defined as tachypnea with no underlying explanation, tachycardia, leukocytosis or leukopenia, which she did have, and -- and fever or hypothermia. She did not have fever. She had tachypnea, but she had underlying COPD and pulmonary emboli responsible for that, in addition to the mucus plug. But she did not have a significant tachycardia. So she didn't have fever; she didn't have tachycardia; her tachypnea was easily explained by a multiplicity of other reasons. And her leukocytosis was not surprising, in light of the fact that she had a toxic megacolon that was probably secondary to a C. diff. colitis. But that doesn't mean she was septic.
Q. Okay. Let's -- let's talk about the nurses for a minute. I -- I think -- is it -- is it fair for us to say that, if the nursing assessments as indicated in the records are accurate, then you believe the nurses adhered to the standard of care; correct?
A. That's correct.
Q. Okay. However, if you believe

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what, for instance, Christine Huerster testified to: that they had advised the home-health-care nurses of their concern about severe diarrhea, and the home- health-care nurses then did not advise them to, either, A -- either call their -- her internist, Dr. Sechler, or go straight to an emergency room, then in that event, is it fair to say that the nurses -- if -- if that is, in fact, true, the nurses deviated from the standard of care; fair?
A. But there's not a shred of evidence to support that.
Q. Well, I -- but hypothetically.
A. Hypothetically, sure. I mean, if nurses hypothetically are told about a severe illness in a patient, and they ignore it, then that is not within the standard of care. But once again, these records that were kept contemporaneously do not reflect any of that. In retrospect, families have somewhat differing opinions of what may have transpired.
Q. Have you seen in your career, both as a practicing physician and as an expert, cases in which nurses, for whatever reason,

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charted things inaccurately?
A. Of course.
Q. And have you seen, in your practice or in the course of doing medicolegal work, cases in which a patient may have had severe diarrhea and nurses failed to chart that; have you seen that particular failure?
A. No, I -- I have never seen that. The -- and -- and I'll tell you why. Nurses -- when a patient has a very severe diarrhea, nurses have the rather unpleasant responsibility for assisting in its cleanup. And they remember that; and if it's present, they will record it. They are very, very astute about that. And I have -- you know, there are errors in recording; but I have not seen that particular type of error. I mean, nurses are very aware of diarrhea. Hello?
Q. Yes. No, I'm just -- I -- I heard you.
A. Okay.
Q. And, Doctor, I take it you have no opinion as to whether or not earlier administration of Flagyl in this patient would

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have avoided the toxic megacolon.
A. No, I -- I don't have any opinion concerning that. I -- I pretty much agreed with Dr. Yaffe's assessment of the situation: that there are varying ways of approaching this; that some physicians will immediately empirically institute therapy with metronidazole, and others wait to see what the results of stool-toxin assays are. And I -- I don't think there is a deviation from standard of care; that's a clinical judgment call, based upon what the patient looks like and a variety of other factors.
Q. You have, of course, treated C. diff. colitis empirically in the past, I take it, as an infectious-disease specialist?
A. Yes, I -- I do that with regularity.
Q. Okay. And certainly, we can agree that, with an older patient with multiple comorbidities, the sooner you treat for C. diff. colitis, the better the chan -- chance the patient has of surviving; is that fair?
A. I don't think that's necessarily so. I don't think the rapidity of

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institution of therapy necessarily has much to do with it, particularly in a 24-hour period.
Q. With this patient, however, is it more likely than not that, given her presentation on Friday evening, you would have initiated Flagyl presumptively?
A. I would have, yes.
MR. DZENITIS: Objection. That's Dzenitis.
BY MR. BURNETT:
Q. I'm sorry. I didn't hear your answer, Doctor.
A. I said I -- I probably would have; but again, it would have depended upon what I was seeing in the patient. There are -- I mean, but I'm speaking as an infectious-diseases expert, now. And I mean, I would have done a -- a Wright's stain of the stool and a variety of other things that a general internist might not have done as a standard of care.
Q. And you were board-certified in internal medicine before you were board-certified as an infectious-disease specialist; correct?

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A. That's correct.
Q. Okay. And this doctor, Dr. Zirafi, accepted care of this patient, in essence, as an -- as an internist that evening; is that fair?
THE REPORTER: I'm sorry --
A. Yeah.
THE REPORTER: -- I cannot hear him.
THE WITNESS: Would you repeat that, Mr. Burnett?
BY MR. BURNETT:
Q. Yeah, sure. Dr. Zirafi accepted the care of this patient in her capacity as an internist; isn't that fair?
A. Yes.
MR. BURNETT: Okay. Doctor, I'm going to pass the questions to other counsel and review my notes, and see if any -- if I have anything additional I want -- need to ask you.
THE WITNESS: Okay.
CROSS EXAMINATION
BY-MR.DZENITIS:
Q. Doctor, my name is Paul Dzenitis;

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I represent Dr. Zirafi, Dr. Sechler, and Cardiovascular Clinic.
A. Yes, sir.
Q. Doctor, I just want to make sure I have my notes here correctly. With respect to the decision to treat a patient empirically with Flagyl, with suspected C. diff., that is a decision that is based upon the clinical judgment of the physician who is treating the patient at the time; correct?
A. Absolutely. That's what I just said.
Q. And some physicians, some internal-medicine specialists, will wait for the stool-toxin assays to be returned before starting Flagyl; is that correct?
A. Absolutely, and there's a -- a lot of valid evidence to suggest that that is quite appropriate.
Q. And what is that valid evidence?
A. The literature pretty much says because that -- because there are multiple causes of diarrhea that can occur in hospital, that establishing a clear diagnosis prior to institution of therapy is a quite

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reasonable judgment call.
Q. Is there a risk to prescribing Flagyl empirically without having the toxin assays back that's discussed in the literature?
A. Yes. Flagyl is -- is an agent, particularly it -- it may interfere with Coumadin if the patient is on Coumadin; there may be drug interactions. It will suppress appetite and cause nausea and vomiting in some individuals. There are a lot of reasons not to institute antibiotic therapy on an empiric basis.
Q. Doctor, Ms. Huerster had a history of atrial fibrillation; is that correct, sir?
A. Yes.
Q. And she was on anticoagulation therapy for that?
A. Yes.
Q. And the decision to wait until -- or the decision to get an infectious-disease specialist and to wait until toxin assays would be returned would be acceptable within the standard of care, would you agree?
A. Absolutely.

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Q. You indicated earlier you spend -- I -- the phone was cutting out -- it was 95 percent of your practice or professional time within the practice of medicine?
A. Yes.
Q. And you are licensed in Kentucky and what other states, sir?
A. Kentucky and Indiana, both states in which I practice actively; as well as Texas, New York, and Pennsylvania, where my licenses are on a suspended basis; that is, I -- I don't -- I don't pay the full amount to keep them fully active, but I could reactivate them at any time.
Q. Dr. Raff, have you worked in your capacity as an expert witness for the firm of Becker and Mishkind before, sir?
A. Yes.
Q. I haven't heard -- Doctor, are you thinking?
A. I'm sorry?
Q. Are you thinking about the answer? I didn't hear an answer to that.
A. I said "Yes."
Q. Okay. On how many occasions, sir?

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A. Gee, at least two or possibly three.
Q. Okay. Have you worked with Mr. Burnett before?
A. I'm not sure.
MR. DZENITIS: Those are all my questions. Thank you, sir.
REDIRECT EXAMINATION
BY-MR.BURNETT:
Q. Doctor, let me ask you if you've ever testified in a case with issues similar to this, relative to the C. diff. colitis and the prescription of -- of Flagyl; that -- those issues?
A. You know, I -- I honestly don't remember, sir.
Q. Okay. I want to make sure we --
THE WITNESS: Speak up.
BY MR. BURNETT:
Q. I want to make sure we've been accurate in our language in this deposition. You've used the term "possibility" a couple of times, and then "probability," and then "likely."
A. When I say "likely," I mean

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"'probable' that is within a reasonable degree of medical certainty."

Q. That's -- that's what I'm getting at. We, you know, when --

A. Greater -- greater than 50 percent.

Q. Can you hear me?

A. Yeah.

Q. When I talk to people about this, I say, you know, "If you are 51 percent or greater certain, have -- have a 51 percent or greater certainty of a fact, then we can talk in terms of a reasonable degree of medical probability."

A. Yeah. Well, that's what I'm -- that's what I say. When I say something is "probable" or "likely," that's what I'm -- that's what I'm referring to.

Q. Okay. So, in this case, when you -- well, when you testify as to the -- the -- the multiple emboli causing her death, you -- you hold that opinion -- are you telling me you think that's likely?

A. Yes.

Q. Okay. All right. And -- and the reason you didn't put that in your report is

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why?

A. Well, I wasn't asked to. I was really asked only to assess my op -- in my opinion whether the -- the nurses deviated from an acceptable standard of care by ostensibly or presumably ignoring diarrhea. And it wasn't until I reread both Neil Crane's deposition and Dr. Yaffe's deposition, and there seemed to be such a discrepancy in what they were claiming was the cause of death, that I went back and reread the terminal events and the autopsy findings to see whether or not I could figure out what had transpired.

Q. Okay. And you came up with -- with a third opinion, a third different opinion as to the cause of death?

A. Exactly [laughs].

MR. BURNETT: Okay. All right, Doctor. I don't have any other questions.

MR. DZENITIS: This is Dzenitis. I have no other questions.

MR. BURNETT: Court Reporter, I'll need this transcript as soon as possible, please.

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THE REPORTER: Okay.

[WHEREUPON, off-the-record remarks are made.]

MR. TORGERSON: I would like to get a copy of the deposition when transcribed, and when we fax it, we'll make that notice known to other counsel in the case here.

THE REPORTER: Okay. Great. Well, thank you so much.

MR. TORGERSON: Thank you.

MR. DZENITIS: Danyiel, before you hang up --

THE REPORTER: Yes.

MR. DZENITIS: -- this is Paul Dzenitis. We'd like to -- I'd like a copy of the deposition as well.

THE REPORTER: Okay. Can you spell your last name for me, please?

THE WITNESS: I -- I have it.

THE REPORTER: Oh. He has it.

MR. DZENITIS: And, Danyiel, do you have e-mail capabilities?

THE REPORTER: Yes, sir, I do.

MR. DZENITIS: Could you send a

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copy of that via e-mail, as well, to me?

THE REPORTER: Certainly.

[WHEREUPON, off-the-record remarks are made.]

MR. BURNETT: Danyiel?

THE REPORTER: Yes.

MR. BURNETT: I'd ask you to send one to someone in our office. I'll give you the address when you're ready to copy it. John Burnett talking.

[WHEREUPON, the Telephonic Deposition of Martin J. Raff, M.D., concludes at 10:25 a.m.]

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CERTIFICATE OF REPORTER

STATE OF KENTUCKY AT LARGE:

I, DANYIEL CARPENTER, Notary Public for the State of Kentucky at Large, do hereby certify that the foregoing was reported by stenographic and mechanical means, which matter was held on the date, and at the time and place set out in the caption hereof, and that the foregoing constitutes a true and accurate transcript of same.

I further certify that I am not related to any of the parties, nor am I an employee of or related to any of the attorneys representing the parties, and I have no financial interest in the outcome of this matter.

GIVEN under my hand and Notarial seal this day of , 2004.

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Notary Public

My Commission Expires: JANUARY 10, 2008

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