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IN TEE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
CLEVELAND

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DOC. 375

Ragaie Kolta, M.D.,)
Plaintiff,)
vs.) Case No 93CV1749
Paul Revere Insurance Co.,)
Defendant.)

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Deposition of Martin Resnick, M.D., a witness herein, called on behalf of the defendant for oral examination pursuant to the Federal Rules of Civil Procedure, taken before Barbara J. Strahler, Court Reporter and Notary Public in and for the State of Ohio, at University Hospitals of Cleveland, 2074 Abington Road, Cleveland, Ohio, 44106, on Tuesday, July 11, 1995, commencing at 9:12 a.m.

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APPEARANCES:

On behalf of the Plaintiff:

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On behalf of the Defendants:

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I N D E X

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E X H I B I T S

Defendant's:	Marked
A	6
B & C	14
D	35

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O B J E C T I O N S

ATTORNEY	PAGE-LINE
Mr. Barrett	15 - 18
Mr. Barrett	35 - 10
Mr. Barrett	37 - 14

- - -

MARTIN RESNICK, M.D.

of lawful age, being first duly sworn, as hereinafter certified, was examined and testified as follows:

CROSS-EXAMINATION

By Ms. Johnson:

Q Dr. Resnick, I just met you a few minutes ago My name is Gerry Johnson, and I represent Paul Revere Life Insurance Company.

Doctor, has your deposition been taken before?

A Noe for this.

Q Not in this particular case, but you've been deposed before?

A Yes.

Q And you're aware of the ground rules. If a question requires some clarification, you will let me know that?

A Yes.

Q And you understand, because a court reporter is taking down your responses, we need a verbal response?

A I understand.

Q Doctor, you have treated Dr. Kolta. Is that correct?

A That's correct.

Q And according to your notes, the first time you saw

Dr Kolta was in 1990 Is that correct?

A That is approximately correct, yes

Q Was Dr. Kolta referred to you?

A To the -- see, I don't have my notes from 1990 here, but to the best of my recollection, he was diagnosed with having cancer of the prostate and came to see me for a second opinion regarding treatment, and subsequently went to Johns Hopkins to have his radical proscatectomy. And that was around 1990.

Q Do you know how Dr Kolta came to seek a second opinion from you specifically?

A Just -- I assumed, just by reputation. I have a fairly good reputation in the Cleveland area, and I see many patients abour, second opinions.

Q And it's my understanding you saw Dr. Kolta that one time in 1990?

A That is correcc.

Q And you indicated that Dr. Kolta elected to have a surgery done at Johns Hopkins?

A That is correct.

Q Do you know why Dr. Kolta opted to go to Baltimore for the surgery?

A He was very concerned with impotency at the time, and at that point, the Hopkins group had the best reported results in maintaining potency.

Q Do you know Dr. Marshall?

A 'Yes

Q Do you know *him* other than in a professional way?

A Well, we socialize, but most of it relates to urological meetings and that kind of thing. So I don't know how you draw the distinction.

Q Do you share other patients with Dr. Marshall?

A There have been a couple other patients ehae have been treated at Johns Hopkins who I follow, but can't specifically remember if they were treated by Dr. Marshall or others at that institution.

Q Doctor, I noticed that you have a file with you today. May I review that?

A Sure.

Q Thank you, Doctor.

(Defendant's Exhibit A marked for identification.)

Q Doctor, I'm handing you what's been marked as Defendant's Exhibit A and I'll ask whether you agree with me that that exhibit is a copy of your office notes from September 29th, 1992 through October 12th, 1993, along with a letter from you to Dr. Kolta *as* well, dated November 5, 1993?

A Yes. That is correct.

Q And I just quickly reviewed your -- the file that

you brought to today's deposition. And it appeared to me chae after October 12th, 1993 you saw Dr Kolta on January 9th, 1994; September 28th, 1994 and March 24th, 1995?

A Also June 15th, 1994.

Q So you have seen Dr. Kolta four times beyond Defendant's A?

A That's correct.

Q I would ask at the end of the deposition if I could get a copy of those four office notes?

A Sure

Q When did you plan to see Dr Kolta again'?

A When I saw him on March 24th, my appointment notes say six months.

Q So sometime in September, you should be seeing him again?

A That's correct.

Q Do you confer with Dr. Marshall periodically about Dr. Kolta?

A No.

Q Doctor, I noticed in your file that ehere are some handwritten notes on yellow sheets of paper. Is thac --

A That's correcc

Q And those handwritten notes appear to follow the

typed version of your office notes. Is that correct?

A That is correct My routine is chat I usually scribble something down when I see the patient And then after the patient leaves the office, I'll dictate a formal note

Q So your handwritten notes are actually written out while the patient is still in your office?

A Yes.

Q And is the purpose of the writing hand -- or writing out notes while the patient is still in your office so that you will be able to record what you consider as significanc or material to the person's condition?

A Right. It's to remind me what I want to say when I dictate a formal note.

a Doctor, if we can focus on your office note of September 29th 1992 you indicated;,that Dr. Kolta was having problems with incontinence, stress incontinence?

A That's correct.

Q Is that note a reflection of what Dr. Kolta reported to you?

A Yes.

Q Does that note indicate any objective basis for Dr.

Kolta's reporting of stress incontinence?

A Well, I just said inconcinence. I didn't say stress incontinence. However, the note is based on patient's history.

Q Is it your opinion that Dr. Kolta suffers from stress incontinence?

A Well, he suffers from incontinence.

Q Your notes indicate that he has stress-related problems with regard to urine retention. Is that correct?

MR BARRETT: Stress-related, stress incontinence, is that what you're referencing?

Q I'm asking you if your note reflects that you indicate --

A I'm looking for the word stress.

Q Line five.

MR. BARRETT: Says stress-related problems.

A Right. I'm sorry. That's correct.

MR. BARRETT: For the record, that says, has stress-related problems, particularly toward the end of the day. Is that --

Q My question, Doctor, is does your note indicate that Dr. Kolta has stress-related problems with regard to urine retention?

A I guess, just so we're sure in terms -- when I'm talking abour. stress-related problems, I'm talking to his inconeinence and urinary -- I'm not talking about a psychological stress.

Q I understand..

A And I'm saying that be has stress-related inconeinence.

Q Did you conduct any diagnostic testing to develop the level -- or to determine the level of Dr. Kolta's incontinence?

A No. I did not do that.

Q Would you agree that a patient's reporting of the number of pads that he uses on a daily basis would be one way of monitoring or determining that level?

A That's used, yes..

Q Now, your office note on September 29, it doesn't indicate the number of pads that Dr. Kolta was using, Is that correct?

A No, it does noe.

Q Do you know how many pads Dr. Kolta was using in 1992?

A Best of my recollection -- it's only my recollection -- is somewhere -- three, four pads a day, but that's not recorded, and I'm not sure of that.

Q And your notes don't indicate any objective quantification of urine leakage or the amount of urine leakage?
A No.
Q Do you have a recollection as to -- if we're looking at the spectrum of urine leakage, starting from perhaps a few drops all the way up to the bladder emptying complereiy, do you have a recollection as to where Dr. Kolta would have fallen?
A Be was somewhere in the middle, because he was urinating, so he did not have complete incontinence, but somewhere in the middle, T don't know if ■ can be any more specific char! that.
Q Do you have any recollection as to Dr. Kolta's frequency of need to urinate on a daily basis?
A As I remember, he has told me that he needs to urinate roughly every two hours.
Q Was that true in September of 1992?
A I don't know that. I don't know that.
Q Is it fair to say that your recollection is that Dr. Kolta has bad to urinate approximately every two hours far the length of rime that you've been treating him?
A I believe that's correct
Q There doesn't stand out in your mind a time when

that level would have dropped or would have increased'?

A Not to my recollection

Q Dr. Kolta told you in September 1992 that as long as he was sitting or sleeping, he did noe have any incontinence problems::

A That's what it states.

Q And his problems seem to really kick up at the end of the day. Is that correct?

A Or that and related to activity.

Q Do your notes reflect that Dr. Kolta reported he had incontinent problems when he was active?

A I don't know if that's in my notes. but it's certainly what I remember him telling me. And I think it went on my subsequent notes. There was some discussion about him -- I just saw it a minute ago, When he was walking, he had problems with incontinence, so I would think that's related to his activity.

Q But in September of '92, you don't have any indication?

A No. The only -- by inference, the fact that he says he does okay when he's sitting or sleeping would imply -- this is just the way I do my notes -- would imply that he has problems: when he's not doing those

activities.

Q And is it fair to say that those problems increased towards the end of the day as opposed to the beginning or middle part of the day?

A That's correct. And that's not uncommon in patients who have incontinence following a radical prostatectomy, that their symptoms or manifestations of incontinence tend to get worse as the day goes on.

Q And by the end of the day sometime after 5:00 or 6:00 in the evening --

A I would probably put it a little earlier than that. Usually patients will -- usually by 2:00 or 3:00 in the afternoon will start to have problems.

Q So for incontinent patients, when you talk about the end of the day, you're really referring to sometime in mid afternoon?

A That's correct.

Q Doctor, you noted that Dr. Kolta was on partial disability in September 1992. Is that correct? I'm looking about the sixth line down.

A Yes.

Q For purposes of this deposieion, I'm going to ask you to equate partial disability with residual disability.

A I don't know -- I mean, I can't tell you what that specificaiiy means. This is probably something he told me, and I can't tell you anything more aboue it, And I can tell you right now I don't know the difference between partial disability. and residual disability.

Q Would you agree that partial disability means something less than total disability?

A Yes.

Q I'm just going to ask you to accept, for purposes of this deposition, that partial disability, which is less than total, equates to residual disability under the Paul Revere policy.

A Can you explain what residual disability means?

Q Yes.

(Defendant'sExhibits B & C marked for identification.)

Q Doctor, I'm handing you what has been labeled as Defendant's Exhibits B and C, and I'm representing to you that Exhibit B is Page 7 from Paul Revere's policy that they issued to Dr. Kolta. And Exhibit C is Page 6 of that policy. I would ask you to look at the definition of total disability on Page 6 and residual disability on Page 7.

MR. BARRETT: Total disability is

right down here.

A And residual disability?

Q Yes. That's ar the top of Page 7.

A Okay.

Q And, Doctor, in order to save time, I'm really focusing on a(1) of residual disability.

A Okay.

Q Would you agree with me that with. regard to the policy's definition of cotal disability, which was at the bottom of Page 6, total disability means that an individual is unable to perform the important duties of his or her occupation?

MR. BARRETT: That's what it says.

A Right. That's what it says.

Q And with regard to residual disability, an individual is unable to perform one or more of the important duties of his occupation?

MR. BARRETT: I'm going to object to this, I'm not quite sure where you're going. The -- it started with Dr. Resnick putting in his note a comment from Dr. Kolta that he's on partial disability. There was no determination made at that rime -- I don't think -- by Cr. Resnick. Unless you're challenging the determination that he has actually made at that time, I'll just object for the

record for now and let you proceed to see where we are. You may be asking the doctor some legal interpretations here.

Q Doctor, if we use the definition of total disability, indicating ehae someone is unable to perform any of the important duties of their occupation, would you agree that by your noting that Dr. Kolta was on partial disability, it would naturally follow tnat he was able to perform some of the duties of his occupation?

A I didn't make a determination whether -- I'm just saying what he told me. So I can't say anything more than that. That was not my judgment that he was on partial disability. It's just that he told me he was on partial disability. What went into that determination, what he was able to perform

no opinion on that. So it just -- a few words that he told me, and that's all.

Q Do you have -- did you have an understanding, then, that Dr. Kolta was working?

A I had an understanding that he was working.

Q And when you noted that he was on partial disability, did that indicate to you that he was

receiving some type of benefit while he was still able to work?

A I don't know.

Q What was your understanding in terms of Dr. Kolta's capability of performing his duties as an anesthesiologist in September of '92?

A I can't remember specifically remember, September of '92. I can give you a general impression, just over rile course of my care for him, but I can't specifically talk about -- because . just don't remember.

Q So you don't know exactly what Dr. Kolta was able to do and what he was noe able to do in September of '92?

A No.

Q This general recollection, that I would like you to share with me in a minute, is that based on your impressions of Dr. Kolta and treatment of Dr. Koita over the last three years?

A Correct.

Q What is your general understanding of Dr. Kolta's abilities and his inabilities?

A Well, he did try to work and fulfill his responsibilities as an anesthesiologist, but because of the problems related to urinary control with his

getting wet, having to void frequenciy, odor, embarrassment, social concerns, he was preoccupied with. these concerns so that he was -- ne *did* not feel that he could function as *an* anesthesiologist

Q And these problems of getting wee, the odor, the embarrassment and preoccupation, they're all factors that Dr. Kolta merely mentioned to you?

A Yeah. He told me about them. Yes.

Q Other than the patient's history to you and complaining of these problems that we just mentioned, do you have any objective or diagnostic basis to determine what Dr. Kolta was able to do and not able to do with regard to work responsibilities?

A No. I'm not an anesthesiologist. I can't comment on that,

Q But as a treating urologist, do you have any diagnostic or objective basis?

A I think from what he told me. And as I said, I've known him over several years. He is unable to function as an anesthesiologist, based on our conversations and --

Q And that's based solely on the history that he's reporting to you?

A Right. I know he's incontinent. I've examined him. He's wet when I examined him, so I know he's

incontinent. It's based on -- I've not seen him in the workplace, if that's what you mean.

Q But in terms -- let's put aside the fact that Dr. Kolta is incontinent, if we agree on that basis, for purposes of this deposition What I'm trying to get at is do you have any objective or diagnostic basis to determine his level of incontinence and its impact an his ability or inability to function as an anesthesiologist?

A Other than what he's told me?

Q Other than patient history.

A No.

Q Okay. Did Dr. Kolta tell you he range of duties that he was able to accomplish in September of '92?

A Not that I can remember.

Q Did Dr. Kolta report to you that in September of '92 he had to work a shorter workday?

A In my recollection, it seems to be, but I really can't be sure of chat. And it really relates more of -- my dealings with him over the past few years than September of '92.

Q So is it fair to say that in September of '92, you don't have any particular recollection, one way or the other, with regard to Dr. Kolta's work as an anesthesiologist?

A No. That's correct.
Q Dr. Kolta told me in his deposition that in September of '92 he was working at Lorain Hospital and working essentially from about 7:00 in the morning until about 5:00 or 6:00 at night. Were you aware that those were the hours that Dr. Kolta was keeping?
A No.
Q Did he report to you having any problems keeping that schedule?
A No. The -- as I said, my comments relate to not September of '92, but the general terms, and he was having problems working, I know, because of the incontinence and some of the things we've already discussed. But again, I can't give you the specifics of when I became aware of that, specifically in September of '32.
Q Did you have any discussions with Dr. Kolta about himself quitting work or resigning from work?
A Again, I believe he told me somewhere in this interval that he was unable to work. When that was and what he did about it, I do not know.
Q You next saw Dr. Kolta in December '92, and at that point, your note indicates that he, Dr. Kolta, is unable to work. Is that correct?

A That's correcc

Q And is that statement a reflection of the history that Dr. Kolta reported to you?

A Yes.

Q You indicate that Dr Kolta was totally disabled in December of 92 because of persistent incontinence?

A That's correcc.

Q Do you understand, based on your conversations with Dr. Kolta, tnat totai disability meant inability to perform any or nis work duties?

A I can't give *you* the legal definition, obviously, but this is probably what he told me. I assumed that he was unable to work, period.

Q And the basis for the total disability is, again, Dr. Kolta's report to you that he has persistent incontinence?

A Correct.

Q By December of '92 when you're aware that Dr. Kolta is nor. working, do you know how many pads he was usıng on a daily basis?

A Not specifically. As I told you before, I believe ıt was three to four But I can't remember. It's obviously not recorded.

Q Ts it fair to say that it's your recollection that Dr. Kolta used and uses three to four pads a day and

has pretty much remained consistent with that from the time you first saw him in September of '92 through rhe present?

A Yes. I think that's correct.

Q With regard to the amount of Dr. Kolta's incontinence, do you have any underscanding as to where he falls in that spectrum? In other words, did he report to you that his pads are very wet or slightly wet, or do you have any recollection or understanding?

A No.

Q And that would be true of September of '92 through the current time?

A Yeah, I mean, they're wet, but the degree of how wer they are, I really can't tell you.

Q And you know that they're wet, because that's what Dr. Kolta told you?

A That is. And when I've examined him in the office, I've noeiced he's wet.

Q Is he very wet, slightly wet?

A I don't know how to quantitate it. They're not dripping, soaked, if that's what you mean. But they're more than damp, so they're somewhere in the middle.

Q On how many occasions during the time that you have

seen Dr. Kolta has his pad been more than slightly damp?

A I can't remember.

Q When you do examine Dr. Kolta, is it your recollection that his pad is always at least slightly damp:;

A. That's my recollection.

Q And I think you told me before that throughout this three-year period that we're discussing, that is, '92 through '95, your understanding is that Dr. Kolta's need to urinate is about every two hours?

A Correct.

Q In December, when Dr. Kolta came to see you, did he report any particular history that would have caused his December '92 checkup to be different or in contrast to his September '92 checkup?

A I can't remember, based on my notes.

Q Well, you don't have any report of any increased need to urinate. Is that correct?

A No.

Q And you don't nave any report of an increase in the number of pads?

A Correct.

Q And you don't nave any report of an increase in the

amount of incontinence? By amount I'm calking aboue the condition or the pads

A No. I understand. Correct

Q Is it fair to say that the term persistent incontinence was Dr. Kolta's term? That is what he reported to you?

A Yeah. That's base6 cn history.

Q You had Dr. Kolta placed on Ephedrine?

A. Ephedrine, correct.

Q And ne reported to you that he was not having much luck with that. Is that correct?

A That's correct.

Q And at the same time he was on Entex?

A Correct

Q And had some minimal response to that?

A That's what it says, right.

Q Since he was reporting either no favorable response or minimal favorable response to his medications, did you think about changing those?

A Generally, if they're not responding, we will usually discontinue the medication.

Q Did you do that in Dr Kolta's case? Do you know?

A I assume *so,* because subsequent notes do not state that he's OR the medication. But I -- because usually -- I can't say it's 100 percent, but usually

if a patient is mainrained on medication, you know, I continue to note that. But sometimes it slips through. But I would make the assumption -- and I can't remember He's *not* on any medication, we'll say, as of April 1393

Excuse me April of '93 says continues to be inconcinene with minimal effect with. Entex so I assume he's on it then In July of '33 I would, again, make the assumption that he's probably not But, as I said it may have slipped through. They may not have recorded it.

Q So what you're telling me is that perhaps at times Dr. Kolta was on Entex, and then other times he was not taking it?

A He probably had a trial of it, and he was certainly on it for a while, but I believe it's been discontinued. But specifically when, I don't know.

Q What was the purpose of these medications?

A They are what's called stimulating agenes, ana they tend to stimulate the sphincter, external urinary sphincter, to help urinary control.

Q And by Dr. Kolta's reporeing, they weren't doing a very good job for him?

A Correct.

Q Were there other medications that you could have

selected to --

A The other types of medications that are used to relax the urinary bladder, which are -- are called anticholinergic a-n-t-i-c-h-o-l-i-n-e-r-g-i-c, agents, I will use those if a patiene is having incontinence due to what we call inhibited bladder constructions or irritable bladder. And based on the history, I did not think that was the situation. We didn't use that medication. But that's the other type of medication that's used for incontinence.

Q So the way you were trying to attack this from a pharmaceutical standpoint is to focus on the sphincter and not the bladder?

A Correct.

Q You indicated char, Dr. Kolta reported to you that he had tried to use an external device. Is that correct?

A Yeah. I believe in the note it states that he used an external device, but it had inflammation and irritation associated with it.

Q Do you know wnat external device that was?

A Probably a condom catheter.

Q Is that referred to as a Texas caeheter?

A Correct.

Q Do you know when Dr. Kolta attempted to use this?

A Probably sometime between September 29th, 1992 and December 15th, 1992.

Q Would it surprise you that the only reference to Dr. Kolta using a Texas catheter is in Dr. Cherukuri's notes from May of 1991?

A Who's Dr. Cherukuri?

Q Another physician who has treated Dr. Kolta.

A It would not surprise me that he *had* tried it But I wasn't aware of it from these notes

Q And you weren't aware of how long ago he had tried it?

A No. As I said, just based on that note, I made that assumption, which obviously was incorrect.

Q Again, you don't have any independent basis to know that Dr. Kolta used or attempted to use the Texas catheter other than whae he told you?

A No, just based on history.

Q Do you. know how long in terms of on a daily basis Dr. Kolta wore the Texas catheter?

A No.

Q Did he tell you how many days he wore it in a row?

A No.

Q So you don't know if he wore it all day, every day?

A Don't know.

Q If a skin irritation was a problem in using the

catheter, would you agree that if Dr Kolta restricted his use of the caeheter to a period of the day when his incontinence is worse, that that wouid probably lessen the risk of irritation?

A I can't say, because it is variable. Some patients are just unable to tolerate the Texas catheter. And if you look in the history of Texas catheters, or condom catheters, there are all different kinds that have been developed over the years, because, generally, thev just don't really work very well. So some patients tolerate them very well; they seay on for days. Some patients are irritated right from the beginning, just from the catheter itself, irrespective of any urinary irritation. So I can't -- I understand the question. I just don't know if I can give you a reasonable answer, because it's so variable with people.

Q So the literature indicates that some people have irritation with the catheter from the minute they put it on?

A Correct.

Q That it's irrespective of the length of time they put it on?

A Correct, And I think part of that is borne out from the fact thae. there have been so many different

types of Texas catheters produced, different kinds and materials and whatever. If there was one satisfactory kind. there would have been one. And there was a period of time about 15, 20 years ago, there were a lor: of them coming out;,a lot more activity than we see today, as far as new developments

Q Would you say char, the design of the catheter nas improved vastly over tne years?

A Well, there was a lot of activity, as I said, probably about 15 years ago or so, where there seemed to me there were a bunch of new ones coming out. I am not aware of any real new designs that have come out in the last five years. There may be. I'm just not aware of them.

Q Doctor, the lase, sentence of your first paragraph in December of '92 says that because of the frequent need to urinate and general irritability, you were unable to attend Dr. Kolta. What did you mean by chat?

A I don't know. I saw that when I was -- either I was not interpreted when I was dictated -- I reaily don't know what it means.

Q Do you remember if irritability meant -- referred to Dr. Kolta's mental state at that point or skin

irritability?

a Well, I would assume I'm using ehe frequency of irritability of urination Usually when I use the term irritabilitv when I'm talking aboue urination it's frequency, urgency, a feeling that you have to urinate. So I'm making the assumption that that's what I'm referring to.

Q If we can move to April of '93, because I think the next time you saw Dr. Kolta, again, you report that he was still incontinent?

A Correct.

Q find, again, you told me before that with regard to tne level and amount of incontinence, your general recoiiection is it's remained constant through the --

A Correct.

Q In July of '93, you saw Dr. Kolta again and you noted that he was still unable to work. Again, is that Dr. Kolta's reporting to you that he was unable to work?

A Correct.

Q Is there anything cnat stands out in your mind in Septetnher of '92 when Dr. Kolta was working and July of '93 when he reported that he was still unable to work?

A No.
Q Your last office entry that is part of this exhibit is October 12th, 1993?
A No, It's November 5th, 1993. That -- on the same page Just Keep going, Counsel.
Q Okay. So we have two more. With regard to October 12th, '93, after -- the second line where you have ne continues sI- %~e xana Ditropan Should that be a period then after that? And is tne next sentence which -- I'm sorry. Can you strike that whole thing.

What I'm trying to figure out is should there have been a period after the word helps?
A Probably *so.*
Q I want to focus on the sentence that says while doing any physical activity, walking, exercise, he is totally incontinent. Again, that's what Dr. Kolta has reported to you, correct?
A Correct.
Q Do you know what Dr. Kolta meant when he said that he was totally incontinent? Did you have any discussion abour thac?
A Usually when I -- I can only interpret what I write, because -- usually when I state that somebody is totally incontinent, it means that they're losing

all their urine and they're not retaining any significant amount of urine Meaning somebody tells me they're walking and they are incontinent and then I'll usually ask them, well, do you urinate? And if they say yes to me, that's a partial incontinence, which means they were retaining some urine. If they told me they're totally incontinent meaning they don't urinate, all of the urine leaks out of the bladder, that's what I refer to as totally incontinent So by implication, thae's what I think I mean.

Q So it's your recollection chat you concluded Dr. Kolta was totally incontinent, or did Dr Kolta tell you that he was totally incontinent?

A No. This is all history. This is my talking to the patient.

? So in response to your question, do you urinate, Dr. Kolta would have told you that he was not urinating?

A Correct, Because all of the urine was leaking out. That's reading between the line, so to speak, of what is there

Q Okay. *So* ne would have had zero percent bladder control'?

A While up anti around walking, correct.

Q Was Dr. Kolta still wearing pads at this point?
A I believe so.
Q Do you know what Dr Kolta meant when he said that walking would cause nim to be totally incontinent?
A Well, it meant that when he was walking, the urine would Peak out
Q But what I want to focus on is did he indicate now much walking, or are we talking aboue merely walking around his house or taking a walk around the block, or do you have any idea?
A No. I don't know.
Q I'm trying to get an understanding of what Dr. Kolta would have discussed with you when he said that doing any physical activity rendered him totally incontinent. Do you know if he was unable to drive a car?
A I don't know, but my feeling would be it would be walking, doing jumping jacks or something *to* that effect. I don't think I was referring to driving a car. You know, we stated chat when he was sitting, he had fairly -- you know, he had reasonable control. It was mostly when he was walking, up, standing, activities such as that.
Q Do you know *if* he had problems when he was just walking from room to room in his house?

a The degree, I don't know
Q Sedentary or sitting activities, they are okay?
A They seemed to be okay. Correct.
Q Did Dr. Kolta say that he felt like he was house bound or couldn't get out and visit friends?
A Can't really remember.
Q Don't know. Okay. Do you have any recollection as to what type of activities Dr. Kolta could do without being totally incontinent?
A No.
Q So other char: sitting or engaging in some type or sedentary activity, you would expece, based on this office entry, that Dr. Kolta would have been totally incontinent doing anything else. Is that fair to say?
A Well, walking around, general movements, yes.
Q Your office note doesn't indicate that the time of day would have made any difference in the level of his incontinence?
A Not at this point. But I think previous notes seem to indicate chat ne seemed to do worse later in the day, We have already discussed --
Q Bus. by October of '93, was he totally incontinent throughout the day if ne was doing any physical activity?

A I can't -- you know I just can't comment, because it's no specifically traced, and I can't remember.

(Defendant's Exhibit D marked for identification.)

Q Again, with regard to this October 12th office note, based on what Dr Kolta told you then, would it be fair to say that he considered himself to be totally incontinent all day every day when he was engaged in any type of physical activity?

MR. BARRETT: Objection.

A That's my recollection, yes. I can't say -- when you say totally incontinent, that means that all urine is leaking out of the bladder and a patient is not urinating at all Whether that -- he did urinate, so he wasn't totally incontinent all day long. If he was sitting, he had some continence. And he would urinate so I think the degree of his incontinence was related to the degree of his physical activity. The more active, the greater the loss of urine. The more sedentary, the lesser the loss of urine, or maybe controlled while sitting, which is certainly applied to some of these notes.

Q If we remove sitting as a physical activity -- I'm looking at your office note, and this is basically what Dr. Kolta reported. What he reported is

basically doing any physical activity rendered him totally incontinent?

A That's what the note states. But to answer the question you asked before, meaning he lost urine if he walked five feet, I don't know that. I just don't know.

Q I'm handing you what has been marked as Defendant's Exhibit D, which is a letter from Dr. Marshall to Mr. Barrett dated October 6th, 1993. And this exhibit is about six days before you saw Dr. Kolta. Is that correct?

A Correct.

Q Now, you will agree with me, won't you, that Dr. Marshall did not mention that Dr. Koita was totally incontinent at that point, did he?

MR. BARRETT: He's not reporting on the exam. He's summarizing the case. I want to make that clear.

A He states, quote, his principal problem has been stressing factors.

Q But in October of '93 when Dr. Marshall is reporting on Dr. Kolta's condition, he doesn't say chat he *is* totally incontinent, does he?

A No. He did not say that.

Q He says that the incontinence just worsens after

Dr. Kolta has worked longer hours or in the evening. Is that correct?

A Where are you reading that? I mean, I'm not doubting what you're telling me.

Q It's the end of that first paragraph that Dr. Marshall says that Dr. Kolta's incontinence really becomes a principal problem when he's working longer hours or in the evening?

A Yes. It says that it is more of a problem, that's correct.

Q And Dr. Marshall doesn't report that any physical activity causes Dr. Kolta to be totally incontinent. Is that correct?

MR. RARRETT: Objection. I don't know if that was even asked of Dr. Marshall.

Q I just want to know if Dr, Marshall is representing that in his letter of October 6th.

A No. He doesn't mention physical activity at all.

Q Doctor, I also wanted to ask you about paragraph three of Dr. Marshall's report where he attempts to give some insight into Dr. Kolta's problem. And he says what he thinks happens is that Dr. Kolta's external sphincter fatigues during the day, which would cause him to have an increasing level of stress incontinence at the end of the day? Could

you go back to your office note on October 12th of '93. And you said that you completed a digital rectal exam of Dr. Kolta. Is that correct?

A Correct.

Q And that exam showed good sphincter tone?

A I'm talking about the rectal sphincter.

Q So these two statements wouldn't have any --

A No relationship to each other.

Q If we can now look at your November 5, '93 office note -- first of all let me ask you, did you see Dr. Kolta on November 5th of '93?

MR. BARRETT: I think I could be of some help in explaining how that note got in there. May I?

MS. JOHNSON: Let me get Dr. Resnick's response first.

A I would presume that I may have spoken to him on the phone or -- the fact that there isn't a stamp on this yellow sheet implies that he probably was not seen in the office in a regular manner. Now, whether this was a phone conversation or whether this was a -- I saw him off hours. I just can't remember.

More recently, I tried to make a note chat I spoke with the patient on the phone, because this

has come up before. So I just don't know.

MR. BARRETT: I think I can help you both. Bill Ellis had a telephone conversation on November 5th with Dr Resnick. So your office contacted Dr. Resnick, with my permission, to discuss some issues. And chis was, apparently, an issue that was discussed.

MS. JOHNSON: Okay. Thank you.

Q Dr. Kolta told me in his deposition that he was -- that it was stressful for him to have to discontinue working. And that's also reflected in Dr. Marshall's records. Did Dr. Kolta tell you that he was disappointed or unhappy that he had to stop working?

A Yeah, He wanted to work. And though it's not noted here, he was upset, distressed, that he was not able to work.

Q Given Dr. Kolta's interest in working, is there any reason why you didn't suggest that he at least try the Texas catheter again?

A Well, I chink he's had a -- it was irritating to him, and we may have talked about it, though it may not have been recorded, to try these different things, but he felt, ana I think, looking at the comments on November 5th, that it wasn't a viable

solution to his problem.

Q And other than his one-time experience with the Texas catheter in.-- sometime in 1991, what would make it not a viable option to at least consider a couple years later when he's so upset about not being able to work?

A First of all, I don't know if it was a one-time occurrence, as I told you. I don't know if it was just 1991 or other times. But patient's telling me that he's tried it and doesn't want to try it again. That's not an abnormal experience. I mean, I've seen patients with similar situations that have had a bad experience on a medicaeion, and I'll say to them, why don't you try the medication.

No. I tried it three years ago. I'm not going to take it anymore. So I don't believe that's an abnormal response from a patient. He had a bad experience and doesn't want to have a second bad experience,

Q You didn't suggest, then, to Dr. Kolta that he at ieasr give it another try?

A I don't know. I tend to -- I recollect that there had been some discussions about the use of a Texas catheter, trying one. And I know he just didn't want to use one. But I cannot state how many times

he tried and when he tried.

Q But at least it's your understanding at this point ehae Dr. Kolta rejected that out of hand as a possible option?

A That is correct

Q Dr. Marshall, in a letter sometime -- I'm sorry. It's the October '93 letter, where he basically ran down a list of oprions for Dr. Kolta. If we could look at that. He identified the implantation of an artificial sphincter as a possibility, but not necessarily something to be considered for Dr. Kolta, because Dr. Kolta's level of incontinence is less than the level normally considered for a surgical patient for this sphincter implant. Do you have --

A I don't, do the sphincter work, but I think that's the subjective opinion, and I personally wouid think that a sphincter would be an option for Dr. Kolta, and that was discussed with him. He just didn't want to have another operation.

Q So from your perspective, the implantation of the sphincter is certainly a viable option for Dr. Kolta?

A I think so.

Q And the point of that would be to help control his

incontinence to the point where he could resume active -- an active lifestyle?

A Yeah. That would be the end result, yes.

Q And an active iifestyie would include the ability to work?

A Correct.

Q Did you discuss with Dr. Kolta the collagen work that's been done and approved by the FDA?

A Yes.

Q Do you know wher you discussed that with Dr Kolta?

A hell, when collagen was being developed and it was on the horizon. However, I don't think collagen is useful in patients with incontinence via radical prostatectomy. Although it's been used in general experience and has failed. Although most people have stopped its use in that patient population, there are some that are continuing to use it. However, most of its utilization is in women with incontinence. And it really hasn't been that effective in most radical prostatectomies. So I'm nor: recommending tnat currently in patients as a form of treatment because of the very high failure rate.

Q And you're not recommending it for Dr. Kolta because of the basis for his incontinence?

a. Correce.

Q would you consider a change in Dr. Kolta's medications if new drugs were developed'?

A If sorneching came up sure, worth a try.

Q Dr. Marshall had mentioned to Dr. Kolta that he should be at Pease seen by a Dr. McGuire in Ann Arbor, Michigan. Are you familiar with Dr. McGuire in Ann Arbor?

A Yes. He's now in Houston, Texas. He's no longer in Ann Arbor. But I know him well.

Q He's moved to a warmer climate. Would Dr. McGuire's work be an option?

A McGuire is a pioneer in the use of collagen and still a proponent in ehe use of collagen in post radical prostatectomy patients. However, most physicians do not feel it's of value. So, again, that would be an option for him to see Dr. McGuire.

Q It wouldn't be a bad idea for him Lo avail himself of a one-time visit?

A That would be his choice, correct.

Q Doctor, if we could move to the first page of Exhibit A, I believe it is, and you will agree that that's a letter that you sent to Mr. Barrett on Ncvernber 5th?

A Right.

Q And you indicate that you're disclosing material that you discussed with Mr. Barrett. Is that correct?

A Correct.

Q What material was that?

A I assume the office records that I sent.

Q 30 you know how many times you have discussed Dr. Kolta's case with Mr Barrett?

A We discussed it this morning. We had a discussion last week, maybe another time. So I would say three times.

Q Doctor, when I went over your records, I didn't see any written opinion from you with regard to Dr. Kolta's ability to function as an anesthesiologist. Are you going to be rendering an opinion in that regard in this case?

A. Nobody's asked me *to,*

Q Is it your understanding that a doctor's role is eo -- when asked, to renaer an opinion with regard eo ehe impairment as opposed to disability?

MR. BARRETT: Do you understand that?

A I understand the question. I guess I really don't feel qualified to answer it, because I'm not familiar with the legal implications of that. We do very little work, or essentially no work, related to

disability and workman's compensation, in contrast to my orthopedic friends, who deal with it all the time. So I really have no experience in that whole area.

Q Do you feel qualified to render an opinion with regard to Dr. Kolta's ability to work or function as an anesthesiologist?

A Only from what he's told me; that's all.

Q And Dr. Kolta has told you that he can't work?

A That's correct.

Q Has Dr. Kolta given you a description of his work as an anesthesiologist?

A Not specifically. I mean, I have an idea what anesthesiologists do. But I can't say he's told me specifically whae be does. By implication, it's what my perception is as to whae an anesthesiologist does.

Q Did Dr. Kolta cell you what physical demands are placed on him as an anesthesiologist?

A No, other than my, again, understanding of what anesthesiologists do.

Q Did Dr. Kolta discuss any work schedules with you?

A No, not that I can remember.

Q Did he discuss with you any of the arrangements that he may slave had with his group practice?

A I know he was -- he had tried to work something out. But the specific, again, I can't remember, because he did want to work.

When you say that your recollection is that he tried to work something out, do you mean at the time that he was going in for his surgery'?

A No. I mean postoperatively, after he had his surgery

Q What did he tell you, or wnat do you recall of any conversations?

A It seems to me there was some question of could he have limited activity or have limited exposure to limited cases, that kind of thing. And I can't remember if it was working half a day or time limits that he wanted -- and this is all recollection, to see if he could tailor his activities to meet his problem, so to speak, related to urinary incontinence.

Q So Dr. Kolta's reported to you chat he has attempted to modify his work arrangements?

A As I remember But the details of which, I just can't tell you,

Q The reason why I want to be clear on this is because Cr. Kolta has told me that he never broached his group practice or the hospital with any modified

work arrangement because there wouldn't be any point in it

A I don't know I'm just saying what I recoliecc, that's all.

Q And at this point, you don't -- is it fair eo say that you don't have an opinion with regard to Dr. Kolta's ability to function as an anesthesiologist?

A No, because I -- I'm not an anesthesiologist.

Q And is that the only reason that you wouldn't feel --

A Yeah I mean -- that s right.

Q Okay. And if that's the basis for your neutralicy on, this position, that is because you're not an anesthesiologist is it fair to say that you won't be rendering an opinion in this case, because I don't expect thac you're ever going to become an anesthesiologise. Is that correct?

A That's correct. I hope not.

Q You're finished schooling. Is that correct?

A My wife would kill me.

MS. JOHNSON: I think I'm finished, Doctor, if you would just give me a moment.

That's all I have. Thank you.

MR. BARRETT: I'm going to -- I don't do this very often Sue in view of the subject that

came up, I want the record to show that I'm asking Dr. Resnick, who is a neutral person in this case, some questions on the subject that was brought up.

By Mr. Barrett;

Q And just to clarify your answers, so that I might -- and that's the subject of the availability of an areificial sphincter as an option here, I understand, Dr. Resnick, you personally do not ac the sphincter work do you?

A Correct.

Q Could you go into upsides and downsides, if there are any, of --

A The upside --

MS. JOHNSON: Prior to your answering, are you asking in general the upsides and downsides, what the medical literature indicates, or with Dr. Kolta specifically?

Q Well, would there be any difference?

A I'm not sure there would be,

Q So whatever the literature indicates, would be equally applicable to Dr. Kolta, as any other patient?

A I would think so. Upside is it could take, have a patient who is incontinent become continent. Downside is an operation. It's an artificial device

that can fail. I guess varying figures in the literature on the failure rate, Meaning after it's implanted, it's a mechanical device, so they wear out. And then there's complications with the operation and infection, erosion into the urethra, and it's undergoing an operation.

Q Doctor, in connection with the failure, if, in fact, the person has an artificial sphincter, what does thae entail? Does thae entail removal of the natural sphincter?

A No. It's the placement of a plastic cuff, so to speak, around the urethra. That's inflated and deflated. When it's inflated, the urethra is compressed, The patient has control, When it's deflated, the urethra opens and the patient is able to urinate.

Q And in the event of failure, what's involved?

A The cuff can break so that the fluid that is used to inflate it may leak out. The reservoir that holds the fluid car, leak. The tubing that is used can kink. There's a valve mechanism that allows the Inflow and outflow from the sphincter; that can fail. And as I mentioned, it can get infected or it can erode, because you have a euff around the urethra. It can erode into the urethra.

Q In your opinion, does Dr. Kolta have legitimate concerns in rejecting an artificial sphincter as a possible -- as the operative procedure in this case?

a Yeah. It's a concern, because it's an operation with complications, and he found it distasteful, as I remember, to have an artificial device pur; in him like that. There's a mechanism thac sits in the scrotum. He found that distasteful and did not; want to undergo anotner operative procedure

MR. BARRETT: Thank you, Doctor. Thank you. That's all I have.

MS. JOHNSON: Doctor, just one follow-up question. I just want to be clear on your testimony from before.

By Ms. Johnson:

Q From a medical standpoint, you consider the sphincter device a viable option for Dr. Kolta?

a Yes, I do,

Q And the complications ehae you discussed, isn't it fair to say that there are complications and a risk of failure with just about any surgery?

A Unfortunately, yes.

Q In terms of risk, in terms of fatality, where would you rank this particular procedure?

A Fatality, you know, more probably related to the

anesthesia that would be required than the operation itself. Complication rate, I'm not totally up on the literature, but, seemingly, in ehe 10 percent range, something like tnat, meaning infection, erosion, something like that, that we've talked about, malfunction.

Q So the rate of failure, of complication, with this particular surgery is about 10 percent?

A I think it's 10 percent, maybe a little higher, but noe much higher. I think that's a fair figure.

MS. JOHNSON: Thank you.

MR. BARRETT: I have nothing further. Thank you.

(Signature was waived.)

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

I, Barbara J. Strahler, Notary Public in and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within named witness, Martin Resnick, M.D., was by me first duly sworn to testify the truth, the whole truth, and nothing but rhe truth in the cause aforesaid, that the testimony then given by him was by me reduced to stenotype/computer in the presence of said witness, afterward transcribed, and that the foregoing is a true and correct transcript of the testimony so given by him as aforesaid.

I do further certify that this deposition was taken at the time and place in the foregoing caption specified, and was completed without adjournment.

I do further certify that I am not a relative, counsel, or attorney of either party, or otherwise interested in the event of this action

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Cleveland, Ohio, on this 24th day of July, 1995.

Barbara J. Strahler
Notary Public in and for the State of Ohio.
My commission expires October 31, 1993.