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APPEARANCES:

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(Thereupon, Plaintiff's Exhibits 28
through 32 were mark'd for purposes of
identification.)

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TODD RICHARDS, P.A., 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 TODD RICHARDS, P.A.

BY MR. RUF:

Q. Could you please state your name and spell your
name.

A. Todd Richards, T-O-D-D, R-I-C-H-A-R-D-S.

Q. What is your address, Mr. Richards?

A. 34185 Maple Drive, Solon.

Q. Who is your employer?

A. Kaiser Permanente.

Q. How long have you been employed by Kaiser
Permanente?

A. Full time three years, part time nine months.

Q. When did you go part time?

A. I was part time to begin with and then I went to a
full-time staff physician August 1st of '96.

1 Q. August 1 of '96 you went full time?

2 A. Uh-huh.

3 Q. You need to give a verbal answer.

4 A. Yes.

5 MR. LEAK: That's for the Court
6 Reporter.

7 THE WITNESS: Okay.

8 Q. Are you a salaried employee?

9 A. Yes.

10 Q. Could you tell me about your educational
11 background?

12 A. I have a four-year Bachelor's Degree from the
13 University of Toledo, and I have a two-year
14 Associate of Science from Cuyahoga Community
15 College.

16 Q. What training did you receive to become a
17 Physician's Assistant?

18 A. We had two -- we had one year of didactics and --

19 Q. What does that mean?

20 A. That is an academic year of training and one year of
21 rotations through various specialties.

22 Q. Did the rotations include an orthopedic rotation?

23 A. Yes, they did.

24 Q. Have you studied any orthopedic textbooks?

25 A. Yes.

1 Q. What orthopedic textbooks?

2 A. I can't recall the exact book.

3 Q. You can't remember either the title or the author?

4 A. No.

5 MR. LEAK: Now, if you can remember
6 your law school books, I'll give you credit
7 then.

8 Q. Which Kaiser Permanente facility do you work at?

9 A. Cleveland Clinic.

10 Q. Are there any orthopedic textbooks available for
11 your use at the Kaiser facility at the Cleveland
12 Clinic?

13 A. Yes.

14 Q. What textbooks?

15 A. I can't recall the names

16 Q. Do you refer to any of those textbooks?

17 A. Occasionally.

18 Q. Do you know if they have Campbell's Operative
19 Orthopedics?

20 A. It doesn't sound familiar.

21 Q. Do you have any type of license in the State of
22 Ohio?

23 A' Yes.

24 Q. What type of license do you have?

25 A. State board, state medical board license, and I'm

1 nationally certified as a Physician's Assistant as
2 well.

3 Q. Who is your national certification with?

4 A. It's called the NCCPA.

5 Q. You're licensed in the State of Ohio?

6 A. Yes.

7 Q. And that's as a Physician's Assistant?

8 A. That's correct.

9 Q. Do you know what your license allows you to do as a
10 Physician's Assistant?

11 A. Absolutely.

12 Q. What does your license allow you to do?

13 A. You want me to -- it includes a whole lot of
14 different parameters.

15 Q. Well, under your license are you allowed to make
16 diagnoses for a patient?

17 A. In conjunction with the physician, yes.

18 Q. Well, do you help form the differential diagnosis
19 for a physician?

20 A. Yes.

21 Q. Are you allowed to make the definitive diagnosis for
22 a patient or does a physician have to do that?

23 A. A physician does that.

24 Q. Are you allowed to take a history from a patient?

25 A. Yes.

1 Q. Are you allowed to conduct a physical examination?

2 A. Yes.

3 Q. Are you allowed to order any tests for a patient?

4 A. Yes, in conjunction with the doctor.

5 Q. And what tests are you allowed to order in
6 conjunction with a doctor?

7 A. All blood tests pertinent to the clinical situation,
8 basic x-rays.

9 Q. Are you allowed to order x-rays of an extremity?

10 A. Yes.

11 Q. Can you actually make the order or does a doctor
12 have to sign off on the order?

13 A. There's no signature required for an order.

14 Q. At the Cleveland Clinic facility can you actually
15 order x-rays without the approval of a physician?

16 A. Yes.

17 Q. That's something you've done in the past?

18 A. Yes.

19 Q. Under your license are you allowed to decide what
20 the treatment should be for a patient?

21 A. In conjunction with the physician.

22 Q. What is your understanding of what the treatment is
23 for a fracture of a radial head?

24 A. Well, there's several ways you can stabilize, and
25 I'm talking from an emergency medicine point of

1 view. You can put a posterior splint in neutral
2 position, the upper extremities in the neutral
3 position, anything that stabilizes the joint above
4 and below the fracture, said fracture. Also
5 standard care for that type of injury is rest, ice,
6 compression and elevation.

7 Q. Any other potential treatments you can think of?

8 A. From the emergency room, no.

9 Q. As a Physician's Assistant in the emergency room do
10 you just help make the diagnosis?

11 A. Yes.

12 Q. And then stabilize the patient for treatment by
13 another physician?

14 A. Yes.

15 Q. What type of physician?

16 A. Depends on the situation. Are we talking -- what
17 kind of situation are we talking about?

18 Q. If a patient is diagnosed with a fracture of the
19 radial head --

20 A. Uh-huh.

21 Q. -- is the emergency room staff actually involved in
22 the treatment of that condition or do they just
23 stabilize the patient?

24 A. Just stabilize the patient, that's what the
25 emergency room is about, and we will send them to

1 the appropriate specialist. If there's a degree of
2 displacement that's grossly evident or the joint is
3 unstable, the Cleveland Clinic orthopedic resident
4 will be paged and they will come down and evaluate
5 the patient.

6 Q. For any type of fracture of either the right or left
7 upper extremity is an orthopedic resident paged to
8 actually decide on what treatment the patient is to
9 receive?

10 A. No.

11 Q. And what types of fractures would an orthopedic
12 resident be paged for?

13 A. A fracture that is involving the articular surface,
14 a fracture that is unstable, a fracture that is
15 grossly displaced, and a fracture that has
16 neurologic or neurovascular compromise or potential
17 of.

18 Q. When you're working in the emergency room, is an
19 orthopedic resident from the Clinic available 24
20 hours a day?

21 A. Yes.

22 Q. Do you always contact orthopedic residents or do you
23 also contact physicians that are on staff at the
24 Clinic, full-time physicians that have completed
25 their training?

1 A. Yes.

2 Q. Either one?

3 A. We will contact either one. At that time, at that
4 various time when this incident occurred on the 6th
5 of February of '98, our setup or protocol was to
6 page our orthopedic staff on call through Kaiser.

7 If there was any of the above that we just
8 talked about, any kind of instability, any kind of
9 articular surface involvement, neurovascular
10 compromise or potential of, we would call them or
11 page them, discuss the case with them. If they
12 could not come down in person or if they felt that
13 this needed further attention immediately, then we
14 would call the CCF resident on call.

15 Q. Is all of the orthopedic staff that you would page
16 employed by the Clinic or are there orthopedic
17 people that are employed by Kaiser?

18 A. All the staff is Kaiser Permanente.

19 Q. By staff, what types of people do you mean?

20 A. These are the orthopedic department of Kaiser
21 Permanente who rotate on-call duty for the emergency
22 room.

23 Q. Are there orthopedic residents that are employed by
24 Kaiser Permanente?

25 A. No.

1 Q. The orthopedic residents are residents of the
2 Clinic?

3 A. That's correct.

4 Q. Do you have full-time staff that are orthopedic
5 physicians that you can contact at the Cleveland
6 Clinic facility?

7 A. Through the resident, yes. They have a staff above
8 them that they report to.

9 Q. To your knowledge are those physicians employed by
10 the Clinic or by Kaiser?

11 A. They're employed by the Clinic.

12 Q. When Rodney McClendon presented to the emergency
13 room on February 6th, 1998, was an orthopedic
14 consult obtained?

15 A. No.

16 Q. Why wasn't an orthopedic consult obtained?

17 A. Well, secondary to the clinical findings on exam and
18 secondary to the x-ray views available, there was no
19 reason to contact this individual.

20 Q. Did you make the decision not to have an orthopedic
21 consult or did Felix Martin make that decision?

22 A. I made that point with him, we discussed it, and
23 that is ultimately his decision.

24 Q. Did you make any recommendations as to whether an
25 orthopedic consult should be obtained?

1 A. No.

2 Q. You just discussed that with Dr. Martin and he made
3 the ultimate decision?

4 A. That's correct.

5 Q. Do you know how the definitive diagnosis is made for
6 a fracture of the radial head?

7 A. Clinically or radiologically?

8 Q. Either one.

9 A. Yes.

10 Q. And how is it done?

11 A. You usually have point tenderness, any broken bone
12 you can have pain with muscle strength testing with
13 flexion and extension, and you correlate that with
14 the radiologic views.

15 Q. Have you ever been involved in the treatment of a
16 patient that has been diagnosed with an upper
17 extremity fracture without that fracture being shown
18 on x-ray?

19 A. Never, not from the emergency room.

20 Q. If an elbow fracture is suspected, do you know what
21 views should be taken on x-ray?

22 A. Well, we -- standard views are AP and lateral of the
23 elbow. There's certain radiologic signs that most
24 ER providers look for grossly and any other
25 additional views are usually ordered by the

1 orthopedist or the radiologist.

2 Q. Do you know if an x-ray of the forearm will show a
3 fracture of the elbow?

4 A. It can.

5 Q. Do you agree that someone can have a fracture of the
6 elbow and it might not show up on an x-ray of the
7 forearm?

8 A. There's all different degrees of a fracture, and a
9 gross fracture will show up on the view if there's
10 any displacement, you know, and usually there's a
11 fat pad sign involved in that type of fracture.

12 Q. What type of fat pad sign?

13 A. Fat pad sign is a fluid accumulation in the
14 posterior elbow.

15 Q. Do you know if there are fractures that can occur of
16 the elbow that will not show up on a view of the
17 forearm?

18 A. Absolutely.

19 Q. How many times did you see Rodney McClendon as a
20 patient?

21 A. Once.

22 Q. What was the date that you saw him?

23 MR. LEAK: You can refer to your
24 records.

25 A. Let's see. February 6th, 1998.

1 Q. I'm handing you what's been marked as Plaintiff's
2 Exhibits 28, 29, 30, 31 and 32. Could you please
3 review those documents.

4 A. Okay, I've reviewed.

5 Q. To the best of your knowledge, do Plaintiff's
6 Exhibits 28 through 32 constitute all of the medical
7 documentation for Rodney McClendon's emergency room
8 visit of February 6th, 1998?

9 A. Yes.

10 Q. Do you have an independent recollection of Rodney
11 McClendon?

12 A. Yes.

13 Q. Could you tell me what he looks like?

14 A. He's Afro-American, I believe he's approximately
15 five nine, of medium build.

16 Q. Do you remember any discussions that you had with
17 Mr. McClendon?

18 A. Clinically, yes.

19 Q. What discussions did you have with him?

20 A. I discussed with him what kind of pain he had, what
21 quality of pain he had, what made it better, what
22 made it worse. I discussed the nature or the
23 mechanism of injury, I discussed with him the time
24 period between the injury and being seen. I
25 discussed what his job duties were, I discussed if

1 he was right or left hand dominant.

2 Q. Did you tell Mr. McClendon that you thought his
3 elbows were broken?

4 A. Did I tell him if his elbows were broken? No, I did
5 not.

6 Q. Before he went for x-ray did you tell him that it
7 was your impression that his elbows were broken?

8 A. I never saw the patient before x-ray.

9 Q. Do you know if someone did see him before x-ray?

10 A. By the triage notes I'm assuming that he was seen by
11 a triage nurse.

12 Q. So you did not take his history and did not perform
13 the physical exam?

14 A. Prior to x-ray?

15 Q. Yes.

16 A. That's correct.

17 Q. Did you take a history or perform a physical exam
18 after x-ray?

19 A. Yes.

20 Q. Is the history and physical exam that you took after
21 x-ray listed on Plaintiff's Exhibits 28 and 29?

22 A. Yes.

23 Q. So under HPI, that's the history that you took on
24 Plaintiff's Exhibit 28?

25 A. That's correct.

1 Q. And under PE, that's the physical examination that
2 you conducted?

3 A. Correct.

4 Q. Do you know if Dr. Martin conducted his own history
5 and physical examination?

6 A. Yes.

7 Q. Was that done prior to x-ray or after x-ray?

8 A. After x-ray.

9 Q. Do you know if anyone conducted a history and
10 physical exam before x-ray?

11 A. I'm assuming that the triage nurse did that per
12 their protocol.

13 Q. Do you agree that, according to the history you
14 took, Rodney McClendon came in splinting his right
15 upper extremity to his torso?

16 A. I agree.

17 Q. Based on the history that you took, how did he
18 injure his right and left upper extremities?

19 A. He states he was chasing an individual, jumped a
20 fence and landed on both extremities, upper
21 extremities.

22 Q. Do you know whether he landed on concrete or some
23 other kind of surface?

24 A. No, I don't.

25 a. Could you take a look at Plaintiff's Exhibit 30 at

the top. It states chief complaint, fell jumping over fence onto concrete?

A. Uh-huh.

4 Q. Did you write that note?

5 A. No, I did not.

6 Q. Do you know who wrote that note?

7 A. The triage nurse.

8 Q. Did you review the triage nurse's notes on February
9 6th?

10 A. Yes, I did.

11 Q. Were you aware on February 6th that Rodney McClendon
12 had fallen onto concrete?

13 A. I don't recall.

14 Q. Do you agree that based on the history Rodney
15 McClendon was in a great deal of pain and he had a
16 great deal of pain in his right elbow which came in
17 waves?

18 A. I agree.

19 2. And he also stated that his pain was severe at
20 times?

21 A. That's right.

22 3. Do you agree that he complained of intermittent
23 tingling to the right forearm which started at the
24 elbow and radiates to his wrist? And if you need to
25 refer to the records, go ahead.

1 A. I agree that that's what he stated.

2 Q. Do you agree that when the physical examination was
3 performed Rodney McClendon had several episodes
4 during the examination where he winced with pain?

5 A. I agree.

6 Q. And did that occur when he had to move his right
7 elbow, his left elbow or both?

8 A. This was the right.

9 Q. Was he primarily complaining of pain in his right
10 elbow?

11 A. That's correct.

12 Q. Did he also complain of pain in the left elbow?

13 A. Minimal to none.

14 Q. Do you also agree that based on the physical exam he
15 had a great deal of tenderness to the posterior
16 elbow?

17 MS. VANCE: Left or right?

18 MR. RUF: Right elbow.

19 A. He had some soft tissue tenderness.

20 Q. And that was around his elbow?

21 A. That's correct.

22 Q. Where around his elbow did he have soft tissue
23 tenderness?

24 A. Posteriorly, and he also had some muscle soreness to
25 his biceps, brachialis and that's it.

1 Q. Did he have muscle soreness when he would try and
2 move his arm?

3 A. In what way?

4 Q. In any motion.

5 A. Yes, with extension.

6 Q. So as he would move his arm out away from his body
7 he would have pain; is that correct?

8 A. That's correct.

9 Q. When you're talking about the posterior elbow, if
10 your arm -- if your hand is facing up --

11 A. Uh-huh.

12 Q. -- it would be underneath your arm; is that
13 correct?

14 A. No, it's not correct. The posterior elbow is
15 considered here, so it would be described as the
16 distal triceps region.

17 Q. Were any of Rodney McClendon's reflexes abnormal?

18 A. No.

19 Q. It states in the emergency room record deep tendon
20 reflexes were plus two bilaterally. Is that
21 normal?

22 A. Uh-huh.

23 Q. You need to give verbal answers.

24 A. Yes.

25 MR. LEAK: It's easy to forget that.

1 Q. It's stated that muscle strength was plus three. Is
2 that normal?

3 A. That is slightly decreased and that was secondary to
4 discomfort only in the right upper extremity.

5 Q. Did you suspect that Rodney McClendon had a right
6 upper extremity fracture?

7 A. No, I did not.

8 Q. What was the differential diagnosis that you formed
9 for Mr. McClendon?

10 A. Differential diagnosis I formed would be tendinous
11 strain versus -- or occult fracture.

12 Q. What type of occult fracture?

13 A. Specifically it could be an occult fracture of the
14 proximal ulna, radius.

15 Q. You did not suspect a fracture of Rodney McClendon's
16 right elbow?

17 A. Clinically I did not at that time.

18 Q. Why not?

19 A. He had no clinical suspicion, such as point bony
20 tenderness. There was no significant swelling to
21 the area and he had no -- he had no loss of range of
22 motion, however the pain with extension usually
23 occurred at the latter 20 degrees of extension and
24 correlated with the available films. I used this to
25 report to Dr. Martin the results.

1 Q. Is there any note in the medical record about Rodney
2 McClendon's range of motion?

3 A. No, there's no written documentation of that.

4 Q. How many patients do you see in the emergency room
5 during a shift, approximately?

6 A. Average?

7 Q. Yes, average.

8 A. 25 on a shift.

9 Q. Could you please take a look at Plaintiff's Exhibit
10 30. Do you know who wrote in under triage nursing
11 action x-ray right and left forearm, elbow, wrist?

12 A. That would be the triage nurse at that time.

13 Q. Do you know if when Rodney McClendon left the
14 emergency room to go to radiology there was an order
15 for an x-ray of the right and left forearm, elbow
16 and wrist?

17 A. Do I know that? No.

18 Q. But you did have Plaintiff's Exhibit 30 available to
19 you and you said that you did review it on February
20 6th, correct?

21 A. This patient was sent to x-ray from triage directly,
22 so this chart does not get back to where the
23 provider's offices are or rooms until the patient
24 returns from x-ray.

25 **a.** When Rodney McClendon returned from x-ray, was the

1 nursing assessment available to you?

2 MR. LEAK: You mean was this form --

3 Q. Yes, was Plaintiff's Exhibit 30 available to you?

4 A. Yes, uh-huh.

5 Q. Do you know who ordered x-rays for Rodney
6 McClendon?

7 A. No, I don't.

8 Q. How is an order placed for x-rays from the Kaiser
9 Permanente emergency room at the Clinic?

10 A. It's entered into the computer from triage.
11 Occasionally it will also be ordered from the
12 patient's room if any other suspicions arise.

13 Q. Is that order put in a patient's permanent medical
14 record?

15 A. Is the x-ray report --

16 Q. I'm asking about the order for x-rays.

17 A. You know, it's available to me if I need to find it
18 through the computer. I'm not -- we never see
19 charts in the emergency room rarely.

20 Q. Is that something that's kept internally in the
21 computer or is a hard copy printed out and put in
22 the patient's chart?

23 A. It's internally in the computer. I cannot answer
24 that, whether it's put in a permanent copy in the
25 chart.

1 Q. Do you see the type of order that would be placed in
2 Plaintiff's Exhibits 28 through 32?

3 MR. LEAK: You mean if it was like
4 printed off?

5 MR. RUF: Yes.

6 A. Do I see the order for the x-ray? Yes, it's on
7 Plaintiff's Exhibit 30 of the triage nurse's note.

8 Q. Is the triage nurse's note sent down to radiology?

9 A. No.

10 Q. What is sent to radiology?

11 A. There's an x-ray requisition with a brief
12 description of the patient's injury and/or
13 symptoms. There's also an indication of what views
14 need to be taken and that requisition is in the
15 patient's hand when they are taken down to x-ray.

16 Q. Did you ever see the x-ray requisition for Rodney
17 McClendon?

18 A. No.

19 Q. Do you know what views were requested for Rodney
20 McClendon?

21 A. No.

22 Q. Could you take a look at Plaintiff's Exhibit 29
23 under x-ray. Do you agree it states the patient was
24 sent to x-ray from triage for a view of the right
25 and left forearm and elbow?

1 A. Yes.

2 Q. Did you put that into the medical record?

3 A. Did I dictate that?

4 Q. Yes.

5 A. Yes.

6 Q. Where did you gain the information that the patient
7 was sent from x-ray -- strike that. Let me start
8 over.

9 Where did you get the information that Rodney
10 McClendon was sent from triage to x-ray for a view
11 of the right and left forearm and elbow?

12 A. I got that information from Exhibit 30.

13 Q. Now, after Rodney McClendon came back from x-ray,
14 did you see him?

15 A. Yes, I did.

16 Q. Did you actually get a radiology report from the
17 Cleveland Clinic radiologist?

18 A. Yes, I did.

19 Q. Were you aware that an x-ray was only taken of h s
20 right and left forearm?

21 A. No.

22 Q. Were you aware that no x-rays had been taken of his
23 elbow?

24 A. No.

25 Q. Did you write into the record CCF radiologist read

1 both x-rays of the right and left forearm as no
2 fracture --

3 A. Yes, I did.

4 Q. -- of dislocation?

5 A. Or dislocation, yes.

6 Q. It actually says of, but that's a typographical
7 error.

8 MR. LEAK: Back one page. X-ray of
9 dislocation.

10 THE WITNESS: Oh, okay, yes.

11 MR. LEAK: That's just a typo?

12 THE WITNESS: Uh-huh.

13 Q. So you actually dictated in the record that a CCF
14 radiologist had read x-rays of the right and left
15 forearm, correct?

16 A. Correct.

17 Q. You did not dictate into the record that the CCF
18 radiologist read x-rays of the right and left elbow
19 as no fracture?

20 A. That's correct.

21 Q. Was it a concern to you that you had dictated into
22 the record that views of the right and left forearm
23 and elbow were requested but only an x-ray of the
24 right and left forearm was taken?

25 A. It was not a concern at that time because the

1 forearm consists of the elbow.

2 Q. However, you already acknowledged that some
3 fractures of the elbow will not show up on a view of
4 the forearm, correct?

5 A. That's not what I meant. Basically what I was
6 saying is that some fractures of the elbow or any
7 bone will not show up on any x-ray at the time of
8 injury and that's called an occult fracture.

9 Q. Are you aware of whether or not an x-ray of the
10 elbow may not show up on a forearm view?

11 A. Yes.

12 Q. Well, then was it a concern to you that an x-ray had
only been taken of the right and left forearm?

14 MR. LEAK: Objection. He already said
15 that he wasn't aware of exactly what was
16 taken. You've already asked him those
17 questions. Go ahead, if you can answer.

18 Q. Go ahead, if you can answer.

19 A. Well, you know, I did not think that that was
20 inappropriate secondary to my clinical exam and
21 being that the forearm does include the proximal
22 aspect of the ulna and radius, which includes the
23 elbow showing at that time, per CCF radiologists,
24 that there was no fracture or dislocation.

25 Q. You said you actually got the report back from

1 radiology, correct?

2 A I cross checked the report. I have access to that
3 report on dictation, which I always check on every
4 x-ray. I dial up a number, put the patient's
5 medical record number in, and the patient's x-rays
6 are dictated as they're read by the CCF
7 radiologist. I use that information in conjunction
8 with the x-ray requisition, which has the diagnosis
9 by the radiologist written on it.

10 - - - -

11 (Thereupon, Plaintiff's Exhibit 33 was
12 mark'd for purposes of identification.)

13 - - - -

14 Q. I'm handing you what's been marked as Plaintiff's
15 Exhibit 33. On February 6th did you ever see that
16 report either as a hard copy or on computer?

17 A. February 6th?

18 MR. LEAK: As it looks right here?

19 MR. RUF: Yes.

20 A. Negative.

21 MR. LEAK: Just so the record is clear,
22 I think this was -- it's got some dates of
23 February 10th on it, so I don't know if that's
24 any indication of when it was actually typed
25 up, on the second page of Exhibit 33.

1 MR. RUF: Let's go off the record one
2 minute.

3 - - - -

4 (Thereupon, a discussion was had off
5 the record.)

6 - - - -

7 MR. RUF: Let's go back on the record.

8 Q. What did you mean when you said you received a
9 report from the Cleveland Clinic radiologists?

10 A. The requisition accompanying the x-rays, which were
11 eventually brought back to the area where the
12 patient is seen.

13 Q. So you actually saw the requisition form, correct?

14 A. That's correct. And in conjunction with that I
15 called the radiology dictation line and got a verbal
16 recording.

17 Q. Are you able to pick up what the radiologist
18 dictates into the record?

19 A. Yes.

20 **a.** So were you aware that views had only been taken of
21 the right and left forearm on February 6th?

22 A. No.

23 2. Well, that would have been on the dictation that you
24 were able to listen to, correct?

25 4. It should have been.

1 Q. Is that why you wrote in the ER report CCF
2 radiologist read both x-rays of the right and left
3 forearm as no fracture?

4 A. That's correct, but again, I must tell you that an
5 x-ray of the forearm includes the elbow but they are
6 not specific elbow views.

7 Q. You were aware though that no specific elbow views
8 were taken, correct?

9 A. That's correct.

10 Q. Was there any concern either by you or Dr. Martin
11 that no specific view of the elbows was taken?

12 MR. LEAK: Objection. At what time are
13 we talking about now, at the time he received
14 the report or now?

15 MR. RUF: At the time Mr. McClendon
16 came back from radiology.

17 A. Okay. Would you restate the question?

18 Q. Sure. Was there any concern by either you or Dr.
19 Martin that no specific view of the elbow was
20 taken?

21 A. Not at that time.

22 Q. Did you compare the oral dictation that you listened
23 to on the telephone with either the requisition
24 form, the note by the triage nurse, or any other
25 documentation to make sure that all of the views

1 that were requested were actually taken?

2 A. No, I did not.

3 Q. Was there a request for the x-rays to be reread?

4 A. Yes, there was.

5 Q. Who made the request for the x-rays to be reread?

6 A. I did.

7 Q. Why did you request for the x-rays to be reread?

8 A. I asked for the x-rays to be reread because Mr.
9 McClendon continued to show symptoms of pain with
10 extension of the right upper extremity. Despite any
11 clinical evidence of fracture, I felt that it
12 warranted a little deeper investigation, so I
13 contacted Dr. Martin, told him of the case, and he
14 stepped in the room, examined the patient, and we
15 both concurred upon my suggestion to have the x-rays
16 reread by the Cleveland Clinic radiologists.

17 Q. So you suspected that he might have a fracture even
18 though the initial dictation was that he did not
19 have a fracture?

20 A. I did not suspect a fracture. I wanted to have them
21 reread per chance that there may be some abnormal
22 swelling there or some other bony abnormality.

23 Q. Were you concerned that something might have been
24 missed by the radiologist?

25 A. There's always that concern, yes.

1 Q. So given his clinical findings, you thought that a
2 reread was warranted?

3 A. Yes.

4 Q. Did you ever consider asking the radiologist to take
5 any other views of the right upper extremity?

6 A. That's not in my parameters. He is the specialist
7 and I presented the case to him. I hand carried
8 those x-rays down to the dictation room or the
9 reading room and asked his advice.

10 Q. Did you actually speak with the radiologist?

11 A. Yes, I did.

12 Q. What did you ask the radiologist to do?

13 A. I asked him to hear me present the case and I asked
14 him to take a look at the x-rays once more.

15 Q. Why don't you tell me exactly what you remember
16 about the conversation with the radiologist.

17 A. What I remember about the conversation of this
18 radiologist is that I told him that Mr. McClendon is
19 a 42-year-old male who is having pain in his right
20 upper extremity upon, you know, greater than or the
21 latter ten degree extension and the pain is
22 nonspecific.

23 And I told him that despite the x-rays being
24 negative he has no point tenderness or any kind of
25 sign of a specific or localized swelling over the

2 bony prominences, so I asked him to reread the
3 x-ray, and that's where it was left.

4 Q. And what was the radiologist's response?

5 A. He said sure and he put the x-rays up on the view
6 box.

7 Q. Who was the radiologist?

8 A. I don't recall.

9 Q. Do you know if it was Peter King?

10 A. Yeah, I know it wasn't him.

11 Q. Why do you know it was not him?

12 A. Because Peter King is my supervisor for the
13 emergency room.

14 Q. Do you know if it was Peter Donovan?

15 A. I do not recall.

16 Q. So you told the radiologist your concern based on
17 the clinical findings and then you left it up to his
18 discretion what to do at that point?

19 A. Absolutely.

20 Q. Did Dr. Martin tell you to relate anything to the
21 radiologist?

22 A. No. His findings were the same as mine on clinical
23 examination.

24 Q. Did you ask the radiologist to go over the
25 requisition form again or the nursing assessment?

26 A. No.

1 Q. Did you do anything with the radiologist to make
2 sure that all the views that had been requested were
3 actually taken?

4 A. No.

5 Q. Was it a concern to you that the radiologist had not
6 taken all of the views that were requested?

7 A. No.

8 MR. LEAK: I was going to say
9 objection. He's already testified he wasn't
10 aware that all the views weren't taken back in
11 1998.

12 Q. Did the radiologist reread the x-rays while you were
13 present?

14 A. Yes.

15 Q. And what did he tell you?

16 A. He verbally told me that there was no other findings
17 here.

18 Q. Did you express any further concern to him at that
19 point?

20 A. No, I did not.

21 Q. At that point were you convinced that Rodney
22 McClendon did not have a fracture?

23 A. Beyond a reasonable doubt, yeah. I mean, I think
24 that I had cleared him clinically and got a second
25 opinion on the x-ray and I felt that there was a

1 very low suspicion of fracture, but to completely
2 rule it out is impossible at that point.

3 Q. Did you do anything further to rule it out?

4 A. No.

5 Q. Based on your experience with the Cleveland Clinic
6 radiology --

7 - - - -

8 (Pager interruption.)

9 - - - -

10 MR. LEAK: Do you need to answer that?

11 THE WITNESS: Yeah.

12 MR. LEAK: Do you want to make a call?

13 THE WITNESS: Yeah.

14 - - - -

15 (Thereupon, a discussion was had off
16 the record.)

17 - - - -

18 Q. Based on your experience in dealing with the
19 Cleveland Clinic radiologist or radiology, do the
20 Clinic radiologists ever take x-rays or views that
21 are not requested?

22 A. Absolutely.

23 Q. Does that happen on a regular basis?

24 A. Yes, it does.

25 Q. Do you know why that happens?

1 A. Yes. It's a system of checks and balances. They
2 many times will call us back and say they don't
3 recommend the view that was taken and that they
4 recommend to do another one. That happens very
5 often during the day. And many times the
6 radiologist will even talk to the patient or examine
7 the patient in the room as they're being x-rayed.

8 Q. If the emergency room doctor decides that he wants
9 an x-ray or a view taken and the Cleveland Clinic
10 radiologist recommends something else, do you know
11 who makes the ultimate decision as to whether or not
12 a specific view or x-ray is going to be taken?

13 A. If there's a discrepancy?

14 Q. Yes.

15 A. No, I don't know that for sure.

16 Q. Did Rodney McClendon express a concern to you that
17 he thought his elbows were fractured?

18 A. No.

19 Q. Did he ever say he thought he had any type of
20 fracture of either the right or left upper
21 extremity?

22 A. No.

23 Q. However, a fracture of the right upper extremity was
24 part of the differential diagnosis, correct?

25 A. Correct.

1 Q. And you felt that a fracture of the right upper
2 extremity had been ruled out based upon your
3 interaction with the radiologist?

4 A. Partially.

5 Q. And partially based on what?

6 A. Clinical suspicion.

7 Q. Did you speak to the triage nurse on 2-6-98?

8 A. No, I did not.

9 Q. Was the triage nurse, Nurse Moore?

10 A. I do not recall.

11 Q. Can you tell me based on your review of Exhibit 30
12 who the triage nurse was?

13 A. This, I believe, is the nurse that saw the patient
14 or discharged the patient. This would be the
15 signature of the nurse that triaged.

16 Q. Well, could you tell me, based on a review of that
17 document, who the triage nurse was?

18 A. No.

19 Q. You can't read the writing?

20 A. That's correct.

21 Q. Do you know the triage nurses?

22 A. Currently, yes.

23 Q. Do you know if there was anyone in '98 that had a
24 last name beginning with R?

25 A. I don't recall.

1 Q. Do you know who decided to tell Rodney McClendon to
2 follow up if the pain to the elbow did not resolve
3 within five days?

4 A. It's a collaboration between myself and the
5 physician.

6 Q. Do you know why that instruction was given to Rodney
7 McClendon?

8 A. Yes. There's always an instruction based on your
9 clinical findings that if something doesn't feel
10 better or if there's increased symptoms that medical
11 care needs to be sought.

12 Q. Do you know who told Rodney McClendon to be off work
13 from February 6th through February 11th?

14 A. That was myself.

15 Q. Why did you make that recommendation?

16 A. To rest the upper extremity and to prevent any
17 further injury to the right upper extremity.

18 Q. Was Rodney McClendon given a splint in the emergency
19 room?

20 A. A sling, yes.

21 Q. Was he given a sling of both the right and left arm
22 or only one?

23 A. Only right upper extremity.

24 Q. And he was instructed to return to the emergency
25 room if he had right upper extremity paresthesia?

1 A. That's correct.

2 Q. Did you discuss with Dr. Martin all of the
3 information listed in Plaintiff's Exhibits 28 and
4 29?

5 A. Everything pertinent to his right upper extremity on
6 my clinical evaluation was discussed with Dr.
7 Martin.

8 Q. Did you ever discuss with Dr. Martin the nursing
9 assessment?

10 A. No.

11 Q. Could you tell me the specific conversations that
12 you had with Dr. Martin?

13 A. Specifically, no. I can tell you generally I
14 presented the case as I normally do, and I would
15 have started by telling him this is a 42-year-old
16 black male who had a mechanism of injury where he
17 fell over a fence and onto his right and left upper
18 extremity injuring both elbows,

19 I then would proceed to tell him what my
20 clinical findings were, specifically pertinent to
21 the area where he's complaining about. I would not
22 go into detail in other parts of the exam if they
23 were inconclusive. I did tell him there was no
24 point tenderness to the right upper extremity. He
25 had no neurologic deficits, other than lack of

1 muscle strength secondary to pain upon extension,
2 and this was secondary to pain only, Dr. Martin then
3 evaluated the patient himself.

4 Q. Did Dr. Martin ever tell you that it was his
5 impression that Rodney McClendon had fractures of
6 the elbows?

7 A. No.

8 Q. Were you present with Rodney McClendon each time Dr.
9 Martin saw him?

10 A. I don't recall.

11 Q. Did Dr. Martin ever tell Rodney McClendon in your
12 presence that he thought the elbows were broken?

13 A. No.

14 Q. Do you know if any other physician saw Rodney
15 McClendon in the Kaiser emergency room?

16 A. On that date?

17 Q. Yes.

18 A. The 6th of February, no, no other physician saw
19 Rodney McClendon.

20 Q. I want to make sure that I've got the sequence
21 clear.

22 A. Okay.

23 Q. Rodney McClendon came into the emergency room and he
24 was seen by a triage nurse, correct?

25 A. Correct, yes.

1 Q. And based on that she filled out Plaintiff's Exhibit
2 30, she or he, whoever the triage nurse is, correct?

3 A. That's correct.

4 Q. And then Rodney McClendon was sent down to x-ray at
5 the Cleveland Clinic?

6 A. Correct.

7 Q. And then he returned back to the emergency room?

8 A. Yes.

9 Q. When he returned back to the emergency room, that's
10 the first time that you saw him?

11 A. That's correct.

12 Q. How much time did you spend with him to that point
13 until the time he was discharged?

14 A. I don't recall. I mean, there's no indication when
15 the patient came back. Let's see. Wait, yeah,
16 okay, I would see him at 5:10 and I believe his
17 discharge instructions were explained 18:45, so
18 between 5:10 and 18:45. That's a rough estimate.

19 Q. Did you only conduct one physical exam or did you
20 conduct more than one?

21 A. I conducted more than one.

22 Q. Why did you do that?

23 A. Because the patient was having pain despite negative
24 findings on the x-ray.

25 Q. So you wanted to double check your physical exam to

1 make sure you had not missed anything?

2 A. That's correct.

3 Q. Did you re-check your physical exam a third time?

4 A. No, I did not because the patient had been evaluated
5 basically three times, once --

6 Q. Who evaluated him three times?

7 A. I evaluated him twice and Dr. Martin evaluated him
8 once.

9 Q. And just so I'm clear, when Rodney McClendon
10 returned from Cleveland Clinic radiology, what would
11 have been sent with him?

12 A. Nothing.

13 Q. What information would be available at that point?

14 A. The chart sitting on the counter.

15 Q. What specific documents would be available; could
16 you tell me the exhibit numbers?

17 A. Exhibit 31, Exhibit 30, and there would also be a
18 past medical history, activity summary on this
19 patient.

20 Q. There would not be a hard copy of a radiologist's
21 report, correct?

22 A. Correct.

23 Q. Would there be a hard copy of a requisition slip?

24 A. What do you mean by hard copy? I'm not
25 understanding that.

1 Q. Well, is the requisition slip a hard paper copy or
2 is it on computer?

3 A. It's on paper.

4 Q. Would there be a paper requisition slip returned
5 with Rodney McClendon from radiology?

6 A. No.

7 Q. Where does that requisition slip go?

8 A. It goes inside -- or outside the x-ray jacket in a
9 plastic see-through pocket.

10 Q. And where is the x-ray jacket kept?

11 A. After it is read it is put in a box outside of the
12 radiologist's room and eventually a nurse, a doctor
13 or a patient care tech will make a round and pick up
14 the x-rays anywhere between five minutes after it's
15 been read to 25 minutes after it's been read.

16 Q. Is the x-ray jacket sent back to the emergency room
17 with the patient?

18 A. NO.

19 Q. Is the x-ray jacket sent back to the emergency room
20 at all?

21 A. Eventually, but it does not accompany the patient.

22 Q. Did you have conversations with anyone that you
23 remember that we have not yet discussed about Rodney
24 McClendon or with Rodney McClendon?

25 A. No.

1 Q. Factually, do you remember anything about his
2 emergency room visit that we have not yet
3 discussed?

4 A. No.

5 MR. RUF: That's all I have at this
6 time. Thanks.

7 MR. LEAK: Todd, we may have some
8 questions over here.

9 THE WITNESS: Okay.

10 MS. VANCE: Can you find that portion,
11 Laura, and read that back.

12 - - - -

13 (Thereupon, page 30 line 3 to page 32
14 line 2 was read by the Notary.)

15 - - - -

16 CROSS-EXAMINATION OF TODD RICHARDS, P.A.

17 BY MS. VANCE:

18 Q. Mr. Richards, you dictated the two-page typewritten
19 summary that we have, is that right, what's marked
20 as 28 and 29?

21 A. Correct.

22 Q. You dictated it that day?

23 A. Yes.

24 Q. The day of 2-6-98?

25 A. Yes.

1 Q. Is that right?

2 A. Yes.

3 Q. When you saw the patient for the first time after he
4 returned from x-ray, you had available to you
5 Exhibit 30?

6 A. That's correct.

7 Q. To the extent that the entry -- or let me rephrase
8 this.

9 On Exhibit 30 towards the middle of the page
10 under the heading of triage nursing action --

11 A. Uh-huh.

12 Q. -- is written the words x-ray right and left
13 forearm, slash, elbow, slash, wrist; is that right?

14 A. Correct.

15 Q. Did you see that entry when you saw the patient on
16 2-6-98?

17 A. Yes, I did.

18 Q. Did you interpret that handwritten notation to be an
19 order for x-rays?

20 A. That itself an order?

21 Q. Yes.

22 A. I interpreted this to be documentation of the
23 nursing action. I did not interpret this itself to
24 be the order.

25 Q. Okay. What did you interpret to be the x-ray

1 order?

2 A. I interpreted that what the nurse had written down
3 there was what action had been taken, so I would
4 assume that that's an elbow, wrist and forearm x-ray
5 of both the right and left upper extremity was
6 taken.

7 Q. But you didn't interpret this notation to be an
8 order itself?

9 A. Itself, no.

10 Q. Was there any documentation available to you on
11 2-6-98 that would have been a radiology order?

12 A. The requisition, yeah.

13 Q. So the document known as the requisition is what, in
14 your mind, constituted the x-ray order?

15 A. Right.

16 Q. And you had that requisition form available to you
17 on 2-6-98 as well, didn't you?

18 A. Eventually, yes.

19 Q. You eventually had it when the x-rays were returned
20 to the emergency department from radiology?

21 A. Yes.

22 Q. And when the original x-rays came back to radiology
23 the requisition is usually placed in the jacket in
24 that clear slip?

25 A. Correct.

1 Q. The patient was still in the emergency room when
2 those x-rays came back, right?

3 A. That's correct.

4 Q. And you reviewed those x-rays with Dr. Martin?

5 A. Reviewed the x-rays with Dr. Martin?

6 Q. Right.

7 A. No, I did not.

8 Q. Did Dr. Martin ever ask to see the x-rays?

9 A. He didn't ask me to see them, but they were on the
10 counter with the chart.

11 Q. Did you ever bring the chart back in to the
12 patient's exam room when the patient returned from
13 radiology?

14 A. Ever bring the chart -- I don't recall.

15 Q. Well, when the patient comes back from radiology
16 where are they placed, into a room?

17 A. Yes.

18 Q. Or a curtained area or something?

19 A. Yes.

20 Q. And when you went to see the patient in the room or
21 curtained area, do you have the chart with you?

22 A. Usually I do, yeah.

23 Q. And when you become aware that the x-rays have been
24 returned from radiology, are you notified that the
25 x-rays are back?

1 A. Yes, sometimes.

2 Q. And if you're not specifically notified, you know to
3 be expecting those x-rays to be returned?

4 A. Correct.

5 Q. So you know that the x-rays are available to you if
6 you wanted to take a look at them?

7 A. Yes.

8 Q. And you know that those x-rays are also available to
9 you if you wanted to specifically show them to Dr.
10 Martin?

11 A. That's correct.

12 Q. And you would expect that Dr. Martin also knows that
13 those x-rays are available to him for review if he
14 wanted to see them?

15 A. Correct.

15 Q. There are view boxes in the patient exam areas?

17 A. Yes.

18 Q. The requisition form that would have come back with
19 the x-rays would actually show what specific x-ray
20 views were ordered on the patient?

21 A. Yes.

22 Q. And you also indicated that under your certification
23 or license as a PA you can enter an order for
24 patients; can you not?

25 A. With an -- in conjunction with the doctor, yes.

1 Q. Do you have the ability to check on the orders that
2 have been entered for a patient by accessing the
3 computer?

4 A. No, I don't.

5 Q. Do you know where that computer is located?

6 A. Yes.

7 Q. And do you know how to utilize the computer in order
8 to enter or to call up the patient's orders and see
9 what has been placed into the ordering system?

10 A. No.

11 Q. You don't know how to do that?

12 A. It's not that I don't know how to do it, but I don't
13 have a code to get into that particular program.
14 It's not my job description to order x-rays and to
15 enter them in, data entry.

16 Q. So you've never had -- you've never entered orders
17 using the computer mechanism in the ED?

18 A. That's correct.

19 Q. If you wish to write orders for a patient --

20 A. Uh-huh.

21 Q. -- in conjunction with a physician giving you the
22 okay, how do you do that?

23 A. I write it on Exhibit 31.

24 MR. LEAK: Those are his handwritten
25 notes.

1 Q. You've indicated that you knew on 2-6-98 that a
2 specific elbow view had not been taken of Mr.
3 McClendon; is that right?

4 A. I was not aware of what views had been taken at that
5 time.

6 Q. I thought you testified earlier that you were aware
7 that no specific elbow view had been taken.

8 A. No specific, okay. I misunderstood your question.

9 Q. So you were aware on 2-6-98 that no specific elbow
10 view was taken?

11 A. Right, that was -- I was assuming that per the
12 triage nursing action written on Exhibit 30 that a
13 right and left forearm, elbow and wrist x-ray had
14 been taken.

15 Q. And based on your reading of that nursing action and
16 your knowledge of ordering and how orders can be
17 placed, did you understand that on this patient
18 x-rays were ordered for both his right and his left
19 forearm; is that true?

20 A. Correct.

21 Q. And that x-rays were ordered for both his right and
22 his left elbow; is that true?

23 A. That's what I understand from the nursing action.

24 Q. And that x-rays were ordered for both the right and
25 the left wrist; is that true?

1 A. Correct.

2 Q. And have you ever had occasion to, in handwriting,
3 order x-rays on a patient's bilateral forearms?

4 A. Have I ever done this?

5 Q. Yeah.

6 A. Yes.

7 Q. Have you ever ordered x-rays for bilateral elbow
8 views?

9 A. Yes, I have.

10 Q. And have you ever ordered x-rays for bilateral wrist
11 views?

12 A. I don't recall that.

13 Q. Based on what you read of the triage nursing action
14 as it's written on Exhibit 30, you were at least
15 under the impression that x-rays had been ordered
16 for both right and left forearms and right and left
17 elbows and right and left wrists for this patient?

18 A. Correct.

19 Q. And you knew and were aware that no specific elbow
20 views were in fact taken from Mr. McClendon; is that
21 right?

22 A. That's correct, as far as it's written in the
23 nursing action.

24 Q. Well, if you look at exhibit -- is it 31?

25 A. Uh-huh.

1 Q. The writing on Exhibit 31 is your handwriting?

2 A. That's correct.

3 Q. And who wrote under the order section at the top per
4 CCF radiology, negative fracture or dislocation
5 right forearm, negative fracture or dislocation left
6 forearm?

7 A. I did.

8 Q. And you did not make any handwritten notation as to
9 whether there was fracture or dislocation or any
10 result for the elbow views; is that right?

11 A. My -- to correct or actually to clarify your
12 question, the forearm includes the elbow, proximal
13 aspect of the ulna and radius, and my intention on
14 documentation here was including the elbow and the
15 forearm.

16 Q. There's nothing written here on Exhibit 31 about the
17 wrist, is there?

18 A. No.

19 Q. So even though you were under the impression that
20 there were bilateral x-rays to be ordered and taken
21 for Mr. McClendon's forearms, elbows and wrists --

22 A. Uh-huh.

23 Q. -- you only wrote on Exhibit 31 the result of the
24 forearm views; isn't that right?

25 A. That's correct.

1 Q. You stated that you actually hand carried the films
2 back down to radiology?

3 A. Right.

4 Q. And before doing that though you presented the case
5 to Dr. Martin?

6 A. Correct.

7 Q. And in presenting the case to Dr. Martin, you gave
8 the recitation of what this patient's condition and
9 situation was?

10 A. Right.

11 Q. And discussed the fact that this patient still
12 seemed to be complaining of some pain?

13 A. Uh-huh.

14 Q. Is that right?

15 A. Yes.

16 Q. Was it in that discussion with Dr. Martin that Dr.
17 Martin examined the patient?

18 A. Yes.

19 Q. And did Dr. Martin at that point look at the x-ray
20 films?

21 A. I cannot answer that. I'm not sure.

22 Q. Do you know if Dr. Martin ever looked at the x-ray
23 films in the ED?

24 A. I cannot answer that.

25 Q. Do you know if Dr. Martin looked at the x-ray films

1 with you before concurring with your suggestion that
2 you go down and have them reread by radiology?

3 A. He did not look at them at that time when we
4 concurred that I would go down to radiology.

5 Q. Has it ever been your experience that when you have
6 a patient in the emergency department after x-rays
7 have been taken that a situation may arise where the
8 decision is made in conjunction with a physician
9 that additional x-ray views need to be obtained?

10 A. Yes.

11 Q. And patients are known to be sent back to
12 radiology --

13 A. Uh-huh.

14 Q. -- from the emergency department a second time to
15 get more views?

16 A. Right.

17 Q. And you're indicating that under your license you
18 could order x-rays or additional views of x-rays?

19 A. Uh-huh.

20 Q. But only after consultation with a physician?

21 A. That's correct.

22 Q. You don't have the ability to go ahead and send a
23 patient back to radiology for x-rays unless you
24 first discuss it with a physician?

25 A. I have the ability but I am set by parameters. My

1 actions are set by parameters that I need a
2 physician to okay it.

3 Q. And the physician okay has to take place before the
4 patient goes to radiology or after they return?

5 A. Before.

6 Q. So if you think x-rays are warranted, you can't just
7 send the patient to radiology, you have to -- is
8 that right?

9 A. Before -- will you rephrase the question again?

10 Q. Sure. If you're under the impression that you think
11 x-rays need to be taken --

12 A. Right.

13 Q. -- let's say the patient came through triage and the
14 triage nurse didn't get x-rays, but now that you've
15 got this patient you're thinking this patient needs
16 x-rays.

17 A. Yes.

18 Q. Can you send the patient to x-ray?

19 A. Yes, after discussing with the physician.

20 Q. But you can't send the patient to x-ray without
21 discussing it with the physician first?

22 A. I don't.

23 Q. But could you?

24 A. I'm not aware of that.

25 Q. You told us that when you went down and talked to

1 the radiologist that you did not ask the radiologist
2 at that point to take any more views of this
3 patient; is that right?

4 A. That's correct.

5 Q. And at the point in time when you're down talking to
6 the radiologist, where is the patient?

7 A. In his room.

8 Q. Back in the ED?

9 A. Uh-huh.

10 MR. RUF: You need to give a verbal
11 answer.

12 A. Yes.

13 Q. Do you recall suggesting any additional views be
14 taken when you spoke with the radiologist?

15 A. I recall that I did not.

16 Q. Do you remember having any discussion with Dr.
17 Martin as to whether additional views needed to be
18 taken?

19 A. I remember that there was no discussion of that.

20 Q. You said that you do not recall the name of the
21 radiologist with whom you spoke?

22 A. That's correct.

23 Q. Do you know if the radiologist with whom you spoke
24 was the same radiologist who did the original
25 interpretation of the films?

1 A. No, I don't know that.

2 Q. Was it your impression that the person with whom you
3 were speaking was the same one who read the films
4 originally?

5 A. That's my impression.

6 Q. Do you remember anything distinctive about that
7 individual?

8 A. No.

9 Q. Male or female?

10 A. No.

11 Q. I believe you testified that after you spoke with
12 the radiologist the radiologist put the films back
13 up on the view box --

14 A. Uh-huh.

15 Q. -- is that right?

16 A. Yes.

17 Q. And you were with him when he did that, him or her?

18 A. Yes.

19 Q. And do you remember any conversation with the
20 radiologist at that point as the radiologist was
21 re-examining the films?

22 A. As he was reading the films, no, I do not.

23 Q. You were not standing right with him?

24 A. Not right with him, no.

25 Q. Where were you?

1 A. I was at the doorway. Usually the radiologist sits
2 at a desk with a view box in front of him and the
3 room is a little larger than this room and you hand
4 them the x-ray, discuss the case, he rolls up to the
5 view box and takes a look at it. I was standing at
6 the door.

7 Q. So he wasn't pointing things out to you or looking
8 at things with you?

9 A. No.

10 Q. I believe you testified that you left it up to the
11 radiologist as to what to do at that point. What
12 did you mean by that?

13 A. What I meant by that is that I was relying on the
14 radiologist's interpretation for a second time on
15 this film to, you know, to, you know, have any
16 suspicion, further suspicion for any kind of occult
17 fracture or any fracture at all. So I do not leave
18 it up to the radiologist as to the treatment or any
19 further actions, other than just to reread the
20 films.

21 Q. So you were leaving it up to the radiologist just to
22 read the films and tell you again --

23 A. Uh-huh.

24 Q. -- what he or she thought about these films?

25 A. Right.

1 Q. You weren't expecting the radiologist to give
2 treatment orders or treatment decisions for the
3 patient?

4 A. Correct.

5 Q. You told us that you accessed the original dictation
6 by telephone?

7 A. Correct.

8 Q. And when you do that you actually hear the
9 radiologist's dictation, don't you?

10 A. Yes.

11 Q. Does the radiologist describe the view that is being
12 interpreted before rendering the interpretation?

13 A. Yes.

14 Q. And you heard him say over the phone, he or she, the
15 findings of the right forearm view?

16 A. Yes.

17 Q. Followed by his description of the left forearm
18 view?

19 A. Yes

20 Q. And you didn't hear him give a verbal interpretation
21 of the right elbow, did you?

22 A. Right now I don't recall

23 Q. Or the left elbow?

24 A. Right now I don't recall.

25 Q. Or the right wrist or the left wrist?

1 A. I don't recall.

2 MS. VANCE: Nothing further.

3 MR. RUF: I'd just like to put on the
4 record that I believe my request for production
5 encompassed the requisition form, and so I
6 would ask for production of the requisition
7 form, whether it's retained by the Cleveland
8 Clinic or Kaiser, either on hard copy or
9 electronically.

10 MR. LEAK: I guess we'll have to look
11 for it. I mean, if we have it we'll get it to
12 you We'll look into that. In terms of
13 signature, I'm going to recommend that you read
14 this. You have a right to reread it, to go
15 over and make sure everything was taken down
16 accurately.

17 THE WITNESS: Okay.

18

19

TODD RICHARDS, P.A.

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C E R T I F I C A T E

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, TODD RICHARDS, P.A., 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 12th day of July, 1999.



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