

1 IN THE COURT OF COMMON PLEAS

2 CUYAHOGA COUNTY, OHIO

3 \* \* \*

4 SALVATORE BELFIORE,

5 EXECUTOR OF THE E/O

6 ANNA BELFIORE, DECEASED,

7 Plaintiff,

8 vs.

CASE NO. 361599

9 RICH RD F. WEINBERGER, M.D.,

10 et al.,

11 Defendants.

12 \* \* \*

13 Deposition of ELISABETH L. RIGHTER, M.D.,

14 Witness herein, called by the Plaintiff for

15 cross-examination pursuant to the Rules of Civil-

16 Procedure, taken before me, Kathy S. Wysony, a

17 Notary Public in and for the State of Ohio, at the

18 offices of Indian Ripple Family Health Center,

19 4428 Indian Ripple Road, Beavercreek, Ohio, on

20 Monday, the 2nd day of August, 1999, at 2:34 o'clock

21 p.m.

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## 1 APPEARANCES:

2 On behalf of the Plaintiff:

3 Becker &amp; Mishkind

4 By: Howard D. Mishkind (Telephonically)  
Attorney at Law  
5 660 Skylight Office Tower  
1660 West Second Street  
6 Cleveland, Ohio 44113

7 On behalf of the Defendants Richard F.  
Weinberger, M.D. and Family Care Associates,  
8 Inc.:

9 Reminger &amp; Reminger

10 By: Richard J. Rymond  
Attorney at Law  
11 7th Floor  
The 113 St. Clair Building  
12 Cleveland, Ohio 44114-1273

13 On behalf of the Defendants Richard Dickman,  
M.D. and Robert Dickman, M.D.:

14 Mazanec, Raskin &amp; Ryder

15 By: Colleen Petrello (Telephonically)  
16 Attorney at Law  
100 Franklin's Row  
17 34305 Solon Road  
Cleveland, Ohio 44139  
18

19 \* \* \*

1 MR. MISHKIND: Let the record reflect  
2 that we are taking the discovery deposition of Dr.  
3 Righter and any formalities with regard to the  
4 presence of the court reporter and the presence of  
5 counsel are waived. Is that correct, Mr. Rymond?

6 MR. RYMOND: We didn't talk about that,  
7 but out of deference to you, Howard, I'd be happy to  
8 waive any of those formalities.

9 MR. MISHKIND: Flattery will get you  
10 everywhere.

11 Doctor, my name is Howard Mishkind.  
12 Are you able to understand me so far by way of the  
13 telephone line?

14 THE WITNESS: Yes.

15 MR. MISHKIND: All right. In light of  
16 the fact that apparently there may be some problems  
17 with a fade on the line, tell me if you do not  
18 understand my question or if any of my questions get  
19 cut off. Will you do that?

20 THE WITNESS: Yes.

21 MR. MISHKIND: Okay. And I would say  
22 the same thing for Kathy, if for any reason you need  
23 to interrupt, I'll try to go slow, but feel free to  
24 jump in. Okay?

25 MR. RYMOND: Okay if I do as well,

1 Howard?

2 MR. MISHKIND: Hey, absolutely.

3 ELISARETH L. RIGHTER, M.D.

4 of lawful age, Witness herein, having been first  
5 duly cautioned and sworn, as hereinafter certified,  
6 was examined and said as follows:

7 CROSS-EXAMINATION

8 BY MR. MISHKIND:

9 Q. Doctor, let's start out with a simple  
10 request, and that is for you to state your full name  
11 and your business address for the record.

12 A. My full name is Elisabeth, with an S,  
13 Lynn Righter, M.D. My address is 4428 Indian Ripple  
14 Road, Beavercreek, Ohio, 45440.

15 Q. What area of medicine do you practice  
16 in, Doctor?

17 A. Family medicine.

18 Q. Tell me where you went to medical  
19 school, please.

20 A. Wright State University School of  
21 Medicine.

22 Q. And what year did you graduate from  
23 Wright State, please?

24 A. 1989.

25 Q. Would you briefly tell me about your

1 training after graduating from medical school,  
2 please?

3 A. I did my internship and residency at  
4 Grant Medical Center.

5 Q. What years, please?

6 A. I graduated from residency in 1992.

7 Q. And where did your practice take you  
8 then after 1992?

9 A. I did urgent care and ER and then did  
10 locum tenens for nine months in Hawaii and then I  
11 came to Cleveland and joined Richard Weinberger,  
12 Inc. and then that became Family Care Associates.

13 Q. When did you join Richard Weinberger,  
14 Inc.?

15 A. When?

16 Q. Yes, ma'am.

17 A. Gosh, I didn't bring my CV. I think  
18 July of -- no. November of 1993.

19 Q. And then at some time Richard  
20 Weinberger, Inc. changed to Family Care Associates,  
21 Inc.?

22 A. Yes. I think that was approximately  
23 six months, but I don't know that for sure.

24 Q. Sometime in the spring of 1994?

25 A. I don't know for sure.

1           Q.       Early 1994, is that basically what  
2       you're telling me?

3           MR. RYMOND:   She's told you she's not  
4       sure of the date.

5           MR. MISHKIND:   But she said about six  
6       months after she joined.

7           MR. RYMOND:   She said she thought that  
8       it was about that but she wasn't sure.   Howard, I'd  
9       be happy to get you that information through Family  
10      Care Associates.

11          MR. MISHKIND:   That's fine.   And I'm  
12      not trying to trick her.   I'm just trying to get an  
13      idea if it's the spring of '94.   I'm not looking to  
14      have an argument over a simple question like this.

15          MR. RYMOND:   She said she's not sure.  
16      She doesn't know.

17          MR. MISHKIND:   Okay.

18      BY MR. MISHKIND:

19          Q.       Doctor, what's your date of birth?

20          A.       2-22-62.

21          Q.       Are you board certified?

22          A.       Yes.

23          Q.       By what board?

24          A.       The American Board of Family Practice.

25          Q.       In what year, Doctor?

1           A.       My initial date was 1992 and I  
2       recertified -- I took the recertification exam in  
3       July of 1999.

4           Q.       When did you leave Family Care  
5       Associates, Inc.?

6           A.       Summer of 1997.

7           Q.       Tell me the reason that you left Family  
8       Care Associates, please.

9                   MR. RYMOND:  Objection.  You may  
10       answer.

11                   THE WITNESS:  I wanted to change jobs.  
12       BY MR. MISHKIND:

13           Q.       Was it your decision to leave?

14           A.       Yes.

15           Q.       Was there something about the practice  
16       that caused you to want to change jobs?

17           A.       No.

18           Q.       Was there anything about the  
19       relationship with Dr. Weinberger that caused you to  
20       want to change jobs?

21                   MR. RYMOND:  Objection.  You may  
22       answer.

23                   THE WITNESS:  I wanted to change from  
24       being just in practice to an academic career.

25       BY MR. MISHKIND:



1           Q.       And were you not able to do that with  
2   Dr. Weinberger?

3           A.       Right. Yes, But that -- that was  
4   because it was just practice and I was interested in  
5   an academic position.

6           Q.       When you were affiliated with Family  
7   Care Associates, were you an officer of that  
8   corporation?

9           A.       No. I don't think. No.

10          Q.       Do you know who the officers were?

11          A.       I think I do.

12          Q.       Okay. Tell me who you think they  
13   were.

14          A.       Dr. Weinberger, Dr. Dickman,  
15   Dr. Hackett, and there was a fourth one and I can't  
16   remember who it is anymore.

17          Q.       Doctor, as I understand --

18          A.       Maybe just three.

19          Q.       -- you first became one of the  
20   physicians -- you first met Mrs. Belfiore in October  
21   of '96; is that correct?

22          A.       I need to check the medical records to  
23   know when my first visit was.

24          Q.       Go right ahead. I presume that you  
25   have a copy in front of you?

1           A \*       Yes, they gave me a copy to -- from the  
2 records I have -- or copies of the records that I  
3 have., my first visit with the patient was October 8,  
4 1996.

5           Q.       And as of that time, you were an  
6 employee of Family Care Associates, correct? You  
7 were employed by them., correct?

8           A.       I believe so.

9           Q.       And is it fair to say that at all times  
10 while you were treating Mrs. Belfiore up until you  
11 left in 1997, you were an employee of Family Care  
12 Associates, Incorporated?

13          A.       Yes.

14          Q.       Did you leave the practice in July of  
15 1997 and move to your current affiliation?

16          A.       I think I left the practice at the end  
17 of July, I think that was my last day, and I did not  
18 take my new position until fall of 1997. I stayed  
19 in Cleveland. I did some job interviewing and locum  
20 tenens there until I found my current position.

21          Q.       Doctor, I failed to ask you at the very  
22 beginniny so let me just back up for a moment. Have  
23 you had your deposition taken before?

24          A.       Have I ever had a deposition?

25          Q.       Yes.

1 A. No.

2 Q. Have you ever been named as a defendant  
3 in a medical malpractice case?

4 A. No.

5 Q. Have you ever served as an expert  
6 witness in a medical malpractice case?

7 A. No.

8 Q. Have you ever had your license to  
9 practice medicine suspended, revoked, or otherwise  
10 called into question?

11 MR. RYMOND: Objection as to the last  
12 part, I'm not sure what that means, but you may  
13 answer, Doctor.

14 THE WITNESS: No.

15 BY MR. MISHKIND:

16 Q. Have you ever had your hospital  
17 privileges suspended or revoked?

18 A. No.

19 Q. Have you ever applied for hospital  
20 privileges and been denied same?

21 A. No.

22 Q. You mentioned a moment ago when I was  
23 asking you about your background that you didn't  
24 have a CV with you. Let me just ask you, if you did  
25 have that CV with you, would it reflect that you've

1 done any writing in any medical journals or  
2 publications?

3 A. No.

4 Q. Have you submitted anything for  
5 publication at this point in your career?

6 A. Yes.

7 Q. What is it that you've submitted for  
8 publication?

9 A. I submitted and have had two  
10 publications, one on panic disorder and one on  
11 somatic preoccupation, but they aren't on my CV yet  
12 because I haven't put them there yet.

13 Q. Where are they published, ma'am?

14 A. It's doctor.

15 Q. Excuse me?

16 A. I'd prefer that you call me doctor  
17 instead of ma'am.

18 Q. Okay.

19 A. Thank you.

20 Q. Not a problem.

21 A. The first one was -- or the one on  
22 somatic preoccupation was in July of this year in  
23 Journal of Family Practice and the prior one -- I  
24 don't remember the name -- Journal of Women's  
25 Health, I think. I could get that information if

1     you need it but I don't -- I don't have it off the  
2     top of my head.

3             Q.        I take it you're doing some teaching  
4     now?

5             A.        Yes.

6             Q.        Where are you teaching at?

7             A.        I'm affiliated with Dayton Community  
8     Family Practice Residency Program.

9             Q.        And is that affiliated with a  
10    university?

11            A.        It's affiliated with Wright State  
12    University School of Medicine.

13            Q.        What is your title with Wright State  
14    University?

15            A.        I'm an assistant professor.

16            Q.        Doctor, in connection -- by the way,  
17    what courses do you teach -- or do you do actual --  
18    strike that. The court reporter was never going to  
19    get that down. Do you do any teaching to medical  
20    students at Wright State?

21            A.        No.

22            Q.        Have you done any teaching since you  
23    left --

24            A.        For medical students?

25            Q.        Yes, ma'am. Yes, Doctor.

1           A.       Oh, I'm sorry. I was incorrect. I'm  
2 involved in teaching medical students in their third  
3 year required clerkship in family medicine. So I  
4 misspoke before. I was thinking of -- I do a lot of  
5 clinical teaching, which means that the students are  
6 in the office with me when I'm seeing patients and  
7 the teaching takes place there.

8           Q.       But not actually in the classroom per  
9 se?

10          A.       Correct.

11          Q.       And the hesitation was only because I  
12 was writing things down. I can't write and talk at  
13 the same time.

14          A.       Okay-. No problem. It's just a little  
15 hard on the phone to tell what you're doing.

16          Q.       I understand. The same applies for us  
17 as well. Mrs. Belfiore's records are in front of  
18 you; is that correct?

19          A.       I have a copy of some records, yes.

20          Q.       Tell me what records you have in front  
21 of you just so that I can visualize what it is  
22 that's in front of you.

23          A.       I have some pages about a half an inch  
24 thick that appear to be from Family Care Associates  
25 and then another about a half an inch thick that

1 appear to be old records from Dr. Dickman's office.

2 MR. RYMOND: For what it's worth, I'd  
3 be surprised if the two together made up more than a  
4 half inch.

5 THE WITNESS: Okay. I don't have my  
6 ruler either.

7 BY MR. MISHKIND:

8 Q. Besides records that were Dr. Dickman's  
9 records and records that you were referring to from  
10 Family Care Associates, do you have any other  
11 records from, for example, University Hospital or  
12 Hillcrest Hospital?

13 A. No.

14 Q. Dr. Gottlieb?

15 A, I think there's a consult letter from  
16 Dr. Gottlieb in the Family Care Associates' records.

17 Q. But not actual copies of his entire  
18 records?

19 A. No.

20 MR. RYMOND: Howard, I just got those  
21 from you within the last couple of business days.

22 MR. MISHKIND: I'm not suggesting that  
23 you didn't. I'm just asking her what she has in  
24 front of her.

25 MR. RYMOND: She has the same records

1       that I sent to you from Family Care Associates.

2                   MR. MISHKIND:   Okay.   So she's -- to  
3       try to shortcut this, she doesn't have copies of  
4       records for the admissions to Meridia or the records  
5       for the admissions to University.

6                   MR. RYMOND:    The only records she has  
7       are the records that I had as of two weeks ago or  
8       two months ago or six months ago.   She doesn't have  
9       any of the records that you transmitted to me last  
10      week, and I don't have any records from the Family  
11      Care Associates' records other than the records that  
12      you transmitted to me.   I think I just got them like  
13      Friday, maybe Thursday of last week.   At least  
14      that's the first time I saw them.   She does not have  
15      any of those things.

16      BY MR. MISHKIND:

17                Q.       Did you review any literature or any  
18      articles in any books in preparation for today's  
19      deposition?

20                A.       No.

21                Q.       Where would you look if you wanted  
22      reliable information on the diagnosis and treatment  
23      of colon cancer?

24                   MR. RYMOND:   Objection.   You may answer  
25      if there is an identifiable source that you can



1 point out to Mr. Mishkind.

2 MR. MISHKIND: That's the only reason I  
3 asked the question.

4 THE WITNESS: There would be lots of  
5 different sources you could look at. If you were  
6 thinking about the diagnosis and treatment of colon  
7 cancer, you could use any of the general medical  
8 textbooks.

9 BY MR. MISHKIND:

10 Q. I'm going to ask you to be more  
11 specific with regard to what you, Dr. Righter, would  
12 look to if you wanted reliable information on the  
13 diagnosis and treatment of colon cancer. Where  
14 would be your primary -- what would be your primary  
15 direction?

16 A. If I were looking for information about  
17 the diagnosis and treatment of colon cancer, I would  
18 look at M.D. Consults, which is an on-line  
19 resource. I might use Info Retriever to give me the  
20 evidence based information. And then I would use  
21 one of the on-line journal sources or on-line  
22 textbooks.

23 Q. Do you consider the on-line textbooks  
24 that M.D. Consults has available to be authoritative  
25 text?

1           A.       Well, they're somewhat out of date  
2 because of all -- all printed word but I would  
3 consider them authoritative.

4           Q.       What about -- the same question,  
5 Doctor, with regard to the diagnosis and treatment  
6 of irritable bowel syndrome, would you also go to  
7 M.D. Consults to get literature or articles --

8           A.       Yes.

9           Q.       -- on that subject?

10          A.       Yes.

11          Q.       And the same would apply in terms of  
12 the authoritative nature of those various sources?

13          A.       Yes.

14          Q.       Doctor, have you talked to  
15 Dr. Weinberger about Mrs. Belfiore since you left  
16 the practice in July of 1997 and at any time prior  
17 to her death in 1998?

18                 MR. RYMOND:   You mean about Mrs.  
19 Belfiore?   I was only half listening.   You may have  
20 included this in your question.   Do you mean about  
21 Mrs. Belfiore?

22                 MR. MISHKIND:   I'm glad to see that  
23 you're at least half listening.

24                 MR. RYMOND:   Well, Howard, you're  
25 putting me to sleep again.

1                   MR. MISHKIND: And it's only fifteen  
2 minutes into the deposition. Just don't start  
3 snoring.

4                   MR. RYMOND: Are you about finished?

5                   MR. MISHKIND: Another five minutes.

6                   MR. RYMOND: Okay. Anyway, back to  
7 your question. You asked whether she spoke with  
8 Dr. Weinberger and I didn't hear whether you limited  
9 your question to about Mrs. Belfiore or about  
10 anything under the sun.

11                  MR. MISHKIND: No, I don't want to know  
12 about anything under the sun. I want to know about  
13 Mrs. Belfiore.

14                  THE WITNESS: No.

15 BY MR. MISHKIND:

16                Q.       What about since Mrs. Belfiore passed  
17 away, have you and Dr. Weinberger talked about any  
18 aspect of Mrs. Belfiore's care?

19                A.       No.

20                Q.       Since you left in July of 1997, have  
21 you had any professional communication with Dr.  
22 Weinberger?

23                  MR. RYMOND: Objection. If it doesn't  
24 relate to -- I object unless it relates to Mrs.  
25 Belfiore, but you may answer, Doctor.

1 THE WITNESS: No.

2 BY MR. MISHKIND:

3 Q. Did you leave under good terms with Dr.  
4 Weinberger?

5 MR. RYMOND: Objection. You may  
6 answer.

7 THE WITNESS: Yes.

8 BY MR. MISHKIND:

9 Q. When did you first learn about Mrs.  
10 Belfiore's death, Doctor?

11 A. When I got the letter that I was being  
12 deposed or was being -- that there was a suit.

13 Q. And since you received that letter, is  
14 it your testimony that you have not had any  
15 communication either by letter or in person or over  
16 the phone with Dr. Weinberger about Mrs. Belfiore?

17 A. I got -- I have not had any contact  
18 with Dr. Weinberger about Mrs. Belfiore.

19 Q. And that would include any written  
20 correspondence as well as any verbal  
21 correspondence -- communication I should say; is  
22 that correct?

23 A. We did exchange holiday cards but it  
24 wasn't about Mrs. Belfiore.

25 Q. Okay. Tell me, if you would, please,

1     how is it that Dr. Dickman's patient became your  
2     patient as of October, 1996?

3                   MR. RYMOND:  Objection.  I'm not sure  
4     that it's established that Mrs. Belfiore became  
5     Dr. Righter's patient.  I think all you've  
6     established is that Dr. Righter saw the patient on  
7     that date.

8     BY MR. MISHKIND:

9                   Q.        Okay.  Well, can we agree, just to  
10    avoid the technicality, can we agree that as of  
11    October, 1996, a physician/patient relationship  
12    existed between you and Mrs. Belfiore?

13                  A.        On October 8th, 1996 I saw Mrs.  
14    Belfiore for the first time.

15                  Q.        And there was a physician/patient  
16    relationship between you and her on that date,  
17    correct?

18                  A.        Correct.

19                  Q.        And you had occasion to see her on  
20    subsequent dates as well, correct?

21                  A.        Correct.

22                  Q.        And there was a physician/patient  
23    relationship between you and her on subsequent dates  
24    as well, correct?

25                  A "       Correct.

1           Q.       Now let's go back to my original  
2       question. In October of 1996, my understanding from  
3       what you told me before is that's the first time  
4       that you saw her as a patient, correct?

5           A.       That's what the records look like,

6           Q.       You have no reason to believe that  
7       they're inaccurate, do you?

8           A.       No.

9           Q.       I have reason to believe that prior to  
10      October, 1996, that sometime Mrs. Belfiore had been  
11      a patient of Dr. Dickman's and the next treatment by  
12      a family physician was you, so I guess I'm trying to  
13      understand logistically, if you know, how it is that  
14      you happened to see her and establish a  
15      physician/patient relationship on October 8th,  
16      1996.

17                   MR. RYMOND: Objection, and I don't  
18      want to be nitpicking, you're just asking her why --  
19      why it is that Mrs. Belfiore saw Dr. Righter on  
20      October 8 as opposed to some other physician in the  
21      practice?

22                   MR. MISHKIND: Thank you.

23                   MR. RYMOND: Okay.

24                   THE WITNESS: I don't know why she saw  
25      me instead of one of the other physicians in the

1 practice.

2 BY MR. MISHKIND:

3 Q. Now, when I asked you about who were  
4 the shareholders of the group, you mentioned Dr.  
5 Dickman's name and you mentioned several other  
6 doctors, correct?

7 MR. RYMOND: Objection. You asked  
8 about officers before. I don't believe you asked  
9 about shareholders.

10 THE WITNESS: Officers, you're  
11 correct.

12 BY MR. MISHKIND:

13 Q. With that correction by my alerted  
14 defense counsel in the case, is that correct?

15 A. I don't know a lot of details about the  
16 way the corporate structure was.

17 Q. All right. Let me come back at it a  
18 different way. Did you ever work with Dr. Dickman?

19 A. No.

20 Q. Was Dr. Dickman -- did Dr. Dickman have  
21 an office located someplace other than where your  
22 office was located?

23 A. Yes.

24 Q. Where was your office located?

25 A. Well, when I worked for the

1 corporation, I worked at two offices, but the  
2 majority of my time was at an office in Beachwood,  
3 Ohio.

4 Q. And do you know where Dr. Dickman's  
5 office was located?

6 A, No. It was in Cleveland somewhere  
7 close to Mt. Sinai, I think, but I don't know where  
8 his office -- oh, my -- no, I don't know where -- I  
9 think he might have had an office further up, what  
10 was that, 271, but I'm not sure where his office  
11 was.

12 Q. I understand Dr. Dickman left the city  
13 of Cleveland to travel to Israel. Is that your  
14 understanding as well?

15 MR. RYMOND: If you know, Doctor.

16 THE WITNESS: I didn't know him very  
17 well. I knew that they -- he was involved when  
18 the -- we called it a group practice without walls,  
19 when they first decided to Join and become Family  
20 Care Associates, and I thought he had retired but I  
21 don't know. And I thought he went to Israel, that's  
22 true.

23 BY MR. MISHKIND:

24 Q. Thank you. Now, the records that I  
25 have from Dr. Dickman appear to end in approximately



1     October of 1995. There appears to be about a year's  
2     period between October of '95 and October of '96  
3     where there was no medical treatment. In October of  
4     1996 -- and I'm just trying to understand the  
5     mechanics, if you would, of how Mrs. Belfiore became  
6     a patient of Family Care Associates, Inc. after  
7     having been a patient of Dr. Dickman's a year  
8     before. Can you help me with that at all?

9             A.       My understanding was that at some  
10    period of time, I don't know exactly when,  
11    Dr. Dickman was retiring or retired and that his  
12    patients were encouraged to stay within the practice  
13    so we received several patients who had previously  
14    been patients of Dr. Dickman and became patients in  
15    our practice.

16            Q.       Now, was Dr. Lopez also a member of  
17    your group -

18            A.       Yeah.

19            Q.       -- Family Care Associates?

20            A.       Yes. He worked at the other office.

21            Q.       Which office did you say you spent most  
22    of your time in?

23            A.       The one in Beachwood.

24            Q.       That would be the Park East address?

25            A.       Yeah. Right.

1           Q.       Where was the other office located  
2 again? I'm sorry.

3           A.       It was at the Marymount Professional  
4 Building close to Marymount Hospital.

5           Q.       During your treatment of Mrs. Belfiore  
6 beginning in October and through the last time that  
7 you saw her, did you have occasion to meet any of  
8 the family members?

9           A.       I don't remember.

10          Q.       Do the records reflect, as you reviewed  
11 them, any interaction with Mr. Belfiore or any of  
12 the Belfiore children?

13          A.       I need to review the records for  
14 that.

15          Q.       Okay.

16          A.       I didn't document anything -- any  
17 contact with the family. I might have seen him as a  
18 patient but I don't know that without a chart.

19          Q.       As you sit here right now and try to  
20 recreate Mrs. Belfiore and any immediate family  
21 members, are you able to picture having any contact  
22 with Mr. Belfiore or with the children?

23          A "       I think I might have met Mr. Belfiore.

24          Q.       As a patient or just when he came with  
25 his wife?

1           A.       I don't remember him being there with  
2 his wife.

3           Q.       So your recollection, if you're  
4 accurate, would be having had him as a patient?

5           A.       Yes, if there was a medical chart that  
6 I could review that confirmed that. I don't  
7 specifically remember meeting him with her.

8           Q.       Do you remember Mrs. Belfiore?

9           A "      A little.

10          Q.       Can you paint a picture in words for me  
11 as to her general appearance in terms of -- other  
12 than the fact that she -- her weight and her height,  
13 describe her for me?

14                 MR. RYMOND: You're asking the doctor  
15 to, from memory, describe features that she recalls  
16 I take it?

17                 MR. MISHKIND: Correct.

18                 MR. RYMOND: Color of hair, length of  
19 hair, that sort of thing?

20                 MR. MISHKIND: Whatever she can recall.

21                 MR. RYMOND: Is there anything specific  
22 that you can recall, Doctor? Don't guess.

23                 THE WITNESS: No.

24 BY MR. MISHKIND:

25           Q.       What type of patient was Mrs. Belfiore?

1                   MR. RYMOND: Objection. What do you  
2 mean what type? You mean compliant, noncompliant,  
3 pleasant? I don't know what you mean.

4                   MR. MISHKIND: All of those things,  
5 Mr. Rymond.

6 BY MR. MISHKIND:

7               Q.        Doctor, did you understand my question?

8               A.        I don't have any negative remembrances  
9 of her. I think she was a sweet, older lady, kind  
10 of heavy.

11              Q.        Okay. Anything else that you can  
12 recall about her?

13              A.        I was looking at my October 8th, 1996  
14 office visit and I said that she seemed to be  
15 vital. She had a lot of vitality.

16              Q.        What do you mean by that?

17              A.        I mean that she had vitality, That she  
18 seemed healthy and energetic and got around a lot,  
19 that kind of thing.

20              Q.        In that October 8, 1996 office visit it  
21 says old chart from Dr. Dickman was reviewed. Now,  
22 since Dr. Dickman was, as you explained to me, part  
23 of this group prior to what you believe to be his  
24 retirement, was his chart immediately accessible to  
25 you and Dr. Weinberger and Dr. Lopez?

1           A.           It was available to Dr. Weinberger but  
2 not to myself because they were at the Beachwood  
3 office.

4           Q.           This wasn't a situation that when Mrs.  
5 Belfiore transferred her care to you or to Dr.  
6 Weinberger that office records -- or a release had  
7 to be signed and office records had to be  
8 transferred from one medical practice to another; is  
9 that correct?

10          A.           Yes.

11          Q.           That first visit -- strike that. Do  
12 you recall anything about any of the visits other  
13 than what is reflected in your office notes?

14          A.           No.

15          Q.           The first visit is October 3, 1996 and  
16 apparently you reviewed Dr. Dickman's records. And  
17 I take it the reason you did that was because this  
18 is the first time that you were seeing a patient  
19 that was treated by another doctor for many years;  
20 is that correct?

21          A.           Yes.

22          Q.           She complained of abdominal pain at  
23 that time, correct?

24          A.           It says she complained of gas pains.

25          Q.           She had given a history of gas pain all

1 through her stomach for a number of years, correct?

2 A. Yes.

3 Q. What was your diagnosis based upon the  
4 history and your exam on October 8, 1996?

5 A. I said the diagnosis was abdominal pain  
6 consistent with irritable bowel syndrome and  
7 umbilical hernia.

8 Q. How did you arrive at the diagnosis of  
9 irritable bowel syndrome, please?

10 A. I based that on her history, including  
11 her old records.

12 Q. Is irritable bowel syndrome a diagnosis  
13 of exclusion?

14 A. Yes.

15 Q. Isn't it rather unusual in a woman in  
16 her mid sixties to have irritable bowel syndrome?

17 A. No.

18 Q. Wouldn't you agree that the predominant  
19 age for irritable bowel syndrome is in the late  
20 twenties?

21 A. No. That's when it could be diagnosed  
22 but somebody could have it their whole life.

23 Q. If a patient has irritable bowel  
24 syndrome and it's diagnosed over the age of forty  
25 for the first time, wouldn't you agree that other

1 diseases are more likely to be the cause of the  
2 symptoms?

3 A. No.

4 Q. How do you differentiate irritable  
5 bowel syndrome, Doctor, from other pathologies?

6 A. Well, depending on the history, the age  
7 of the patient, physical exam findings, then I might  
8 do -- order diagnostic tests to exclude other  
9 diagnoses.

10 Q. What tests would you perform -- strike  
11 that. What tests would you perform that would lead  
12 to the diagnosis of irritable bowel syndrome?

13 A. I wouldn't do a test to diagnose  
14 irritable bowel syndrome.

15 Q. Are there diagnostic procedures that  
16 are commonly used in assisting one at arriving at a  
17 definitive diagnosis where there are -- where  
18 there's a differential which includes irritable  
19 bowel syndrome?

20 A. Yes.

21 Q. And what are the diagnostic procedures  
22 that are commonly used?

23 A. To diagnose what?

24 Q. Irritable bowel syndrome.

25 A. I'm confused by what question you're

1 asking. I don't understand -- I don't understand  
2 what -- I need your question to be more clear.

3 Q. Okay. I'll try to. What I was trying  
4 to get at, and I think what you said before was that  
5 a patient can have various symptoms, including  
6 abdominal pain or gaseous pain and the various  
7 symptoms that Mrs. Belfiore had, and one of the  
8 potential diagnoses or one of the differential  
9 diagnoses is irritable bowel syndrome, correct?

10 A. Yes.

11 Q. And my question to you is, if one wants  
12 to determine and rule out other pathologies to  
13 determine that, in fact, the patient's symptoms are  
14 caused by irritable bowel syndrome, what diagnostic  
15 studies are routinely used to accomplish that?

16 A. At what age of the patient?

17 Q. At what age?

18 A. Right.

19 Q. Well, a patient that is in the mid  
20 fifties to mid sixties?

21 MR. RYMOND: Are you referring to  
22 somebody who has a history of a diagnosis of  
23 irritable bowel syndrome or a new patient without  
24 any known history?

25 BY MR. MISHKIND:



1           Q.       Are you -- in terms of arriving at the  
2       diagnosis of irritable bowel syndrome, were you  
3       accepting Dr. Dickman's diagnosis?

4           A.       When I accepted the diagnosis of  
5       irritable bowel syndrome in Mrs. Belfiore, I  
6       reviewed her records to make sure that she had a  
7       diagnostic evaluation to exclude colon cancer. I  
8       reviewed her records. It had a barium enema and a  
9       flexible sigmoidoscopy, which would be adequate  
10      diagnostic evaluations to exclude colon cancer.  
11      Because she had already had the diagnosis of colon  
12      cancer excluded and she had a prior diagnosis of  
13      irritable bowel syndrome, I accepted the diagnosis  
14      of irritable bowel syndrome.

15          Q.       When had she had the barium enema?

16          A.       I need to review the records for that.  
17      She had a double contrast barium enema on March  
18      22nd, 1993.

19          Q.       And the sigmoidoscopy, when was that  
20      last performed?

21          A.       I need to review the records to find  
22      that too. The last flexible sigmoidoscopy was  
23      February 3rd, 1995.

24          Q.       And is it your testimony that those two  
25      results constituted an adequate colon screen to rule

1 out other pathology?

2 A. Yes.

3 Q. Wouldn't you agree that when one does  
4 colon screen, if you're going to rely on a  
5 sigmoidoscopy, that the sigmoidoscopy should be  
6 performed to sixty centimeters every five years?

7 A. Could you repeat the question?

8 Q. Sure. I'm talking about a colon scree:  
9 to rule out other pathology, including colon  
10 cancer.

11 A. So that wouldn't be a screen, that  
12 would be diagnostic tests?

13 Q. Part of the screening pathways that are  
14 commonly used to rule out colon cancer include  
15 sigmoidoscopy every five years, correct?

16 A, Flexible sigmoidoscopy could be used  
17 for colon cancer screening.

18 Q. And when one uses a flexible  
19 sigmoidoscopy, there's a certain depth, if you  
20 would, that the study should be done in order to  
21 provide adequate screening of colon cancer, correct?

22 A. Ideally, yes,

23 Q. And, ideally, that's sixty centimeters,  
24 is it not?

25 A. I think so.

1           Q.       Can we agree that the sigmoidoscopy  
2       that was performed by Dr. Dickman was to forty  
3       centimeters?

4           A.       That's what the records say.

5           Q.       Do you have any explanation for why Dr.  
6       Dickman did not perform a sixty centimeter  
7       sigmoidoscopy but rather a forty centimeter  
8       sigmoidoscopy?

9                   MS. PETRELLO:   Objection.

10                  THE WITNESS:   I do not. have an  
11       explanation.

12       BY MR. MISHKIND:

13           Q.       When you perform a sigmoidoscopy as  
14       part of screening pathways to rule out colon cancer,  
15       do you request a sixty centimeter sigmoidoscopy?

16           A.       Not always.

17           Q.       Ideally?

18           A.       Yes.

19           Q.       Do you see any circumstances that would  
20       have prevented a sixty centimeter sigmoidoscopy to  
21       have been performed on Mrs. Belfiore?

22                   MS. PETRELLO:   Objection.   When?   In  
23       1995?

24                   MR. MISHKIND:   Right.

25                   THE WITNESS:   Can you repeat the

1 question?

2 BY MR. MISHKIND:

3 Q. Do you see any circumstances that would  
4 have prevented a sixty centimeter sigmoidoscopy from  
5 having been performed in 1995?

6 MS. PETRELLO: Objection.

7 THE WITNESS: No.

8 BY MR. MISHKIND:

9 Q. Are there diagnostic studies or  
10 diagnostic tests that you custom -- that you  
11 commonly rely on to arrive at a diagnosis of  
12 irritable bowel syndrome?

13 A. Yes.

14 Q. And what are those, Doctor?

15 A. Either a double contrast barium enema  
16 and flexible sigmoidoscopy or colonoscopy.

17 Q. Is there any evidence that before  
18 October, 1996, that Mrs. Belfiore ever underwent a  
19 colonoscopy?

20 A. I'd have to review the records to find  
21 that.

22 (Pause in proceedings.)

23 THE WITNESS: I'm still looking.

24 BY MR. MISHKIND:

25 Q. Okay.

1 (Pause in proceedings.)

2 THE WITNESS: I can't find anything in  
3 the records of a colonoscopy.

4 BY MR. MISHKIND:

5 Q. If one is going to use the  
6 sigmoidoscopy as well as the double contrast barium  
7 enema as a colon screen for colon cancer, how  
8 frequently is the double contrast barium enema  
9 recommended to be performed in a patient over sixty  
10 years of age?

11 A. You wouldn't -- you wouldn't use the  
12 barium enema and the flexible sigmoidoscopy together  
13 for colon cancer screening. That's not -- that  
14 would be for diagnostic testing but not for  
15 screening.

16 Q. What would you use for colon screening?

17 A. For colon screening you could use the  
18 flexible sigmoidoscopy every three to five years or  
19 you could use a guaiac card.

20 Q. Okay, But either of those are  
21 acceptable for a colon screen?

22 A. For screening, yes.

23 Q. Okay. I understand that we're talking  
24 screening as opposed to actual --

25 A. Diagnostic evaluation.

1           Q.       Right. For her abdominal pain that she  
2           had in 1996 when you saw her, that wasn't caused by  
3           the umbilical hernia, was it?

4                   MR. RYMOND: Objection. Do you mean  
5           based upon the information available then or in  
6           hindsight or --

7           BY MR. MISHKIND:

8           Q.       During the course of your examination  
9           of her and then ultimately your referral of her for  
10          surgical consult, did you feel that her abdominal  
11          pain was caused only by the umbilical hernia?

12          A.       No.

13          Q.       In fact, you knew -- or you felt, did  
14          you not, that the hernia surgery, that it was likely  
15          that she would still continue to have abdominal  
16          pain; is that correct?

17          A.       I thought it would -- might help her  
18          abdominal pain some.

19          Q.       But not totally, correct?

20          A.       Correct.

21          Q.       And, in fact, that was borne out by the  
22          letter that Dr. -- that the surgeon wrote back to  
23          you?

24          A.       I need to review the record to know the  
25          answer to that.

1 (Pause in proceedings.)

2 THE WITNESS: In the letter from  
3 November 22nd, 1996, the surgeon said that he did  
4 not expect all of her abdominal pains to be cured by  
5 this surgery.

6 BY MR. MISHKIND:

7 Q. On October 24th of '96 -- hello. I'm  
8 sorry, did you miss that question?

9 MR. RYMOND: Oh, yeah, we lost it  
10 altogether. We didn't know there was a question,  
11 Howard. We got on October 24, 1996.

12 MR. MISHKIND: Just give me a yes or no  
13 and I'll tell you what the question was.

14 MR. RYMOND: Yes or no.

15 BY MR. MISHKIND:

16 Q. Did you see Mrs. Belfiore on October  
17 24, 1996?

18 A. That's what my records say, yes.

19 Q. And on that day she was weighed,  
20 correct? Her weight was taken?

21 A. It looks like her weight was taken.

22 Q. And if I'm reading your -- or the  
23 notes, it looks like she weighed a hundred and  
24 ninety?

25 A. Yes.

1           Q.       There's handwritten notes and there's  
2 dictated notes. Can you explain the difference  
3 between the two?

4           A.       The handwriting is what the medical  
5 assistant or myself writes during the office visit  
6 and the dictation is what I dictated after the  
7 office visit to further document my evaluation and  
8 management.

9           Q.       Can you tell me on October 24, 1996 who  
10 the medical assistant was?

11          A.       It would be Kelly. I forget Kelly's  
12 last name. Kelly. KC.

13          Q.       What type of training does these -- do  
14 these medical assistants or this Kelly have?

15                   MR. RYMOND: If you know, Doctor.

16                   THE WITNESS: I understood that she had  
17 a medical assistant certification.

18 BY MR. MISHKIND:

19          Q.       Going back to the irritable bowel  
20 syndrome diagnosis, you then based your diagnosis --  
21 or your continuing diagnosis of irritable bowel  
22 based upon the symptoms that Mrs. Belfiore presented  
23 to you, coupled with the diagnostic evaluation and  
24 symptoms that were demonstrated in Dr. Dickman's  
25 records, is that a fair statement?



1           A,           I based my diagnosis mostly on her  
2 years of symptoms, by her report, and by the old  
3 records and by the fact that she had a diagnostic  
4 evaluation to exclude colon cancer.

5           Q.           Part of your differential diagnosis  
6 then when you first saw her in October of 1996 would  
7 have included rule out colon cancer?

8           A.           Yes, that's why I reviewed her old  
9 record, to make sure that she had been diagnosed  
10 correctly in the past.

11          Q.           What other pathology would you consider  
12 during your initial evaluation or her symptoms in  
13 addition to irritable bowel syndrome and colon  
14 cancer?

15          A.           In her or any patient?

16          Q.           In her, being her age and history.

17          A.           Well, her diverticulosis would be part  
18 of that. That could cause her pain.

19          Q.           What other pathology?

20          A,           If she had upper abdominal pain, it  
21 might make me think more about a peptic ulcer  
22 disease or gastroesophageal reflux disease or  
23 gallbladder. In somebody who has abdominal pain, I  
24 would want to make sure it wasn't kidney or female  
25 organs. She had had her -- I have to review but I

1 think -- I would think about in a woman if she had  
2 either ovarian cysts or an ovarian mass or that kind  
3 of thing.

4 Q. Doctor, when I look at the next office  
5 visit after the 24th of October, it appears that  
6 that visit is dated November 7, '96. Am I correct?

7 A. Yes.

8 Q. And on that day -- that date, her  
9 weight was down to a hundred and seventy-seven  
10 pounds?

11 A. Yes.

12 Q. If my calculations are correct, that's  
13 about a thirteen pound weight loss in about a two  
14 week period. Does that seem to be accurate?

15 A. Yes.

16 Q. Would you agree that a thirteen pound  
17 weight loss for a woman is a significant clinical  
18 finding?

19 A. Maybe.

20 Q. Were you concerned about the weight  
21 loss?

22 A. I didn't see the patient that day.

23 Q. You didn't see her at all?

24 A. That's correct,

25 Q. Who saw her?

1           A,       The signature -- I don't remember the  
2       name of the person. It says NP student. But I  
3       wasn't supervising her.

4           Q.       All right. I think NP student stands  
5       for nurse practitioner student. Does that sound  
6       right?

7           A.       Yes.

8           Q.       On November 7 a nurse practitioner  
9       obtained all of this information that's handwritten  
10      for the November 7, 1996 visit.; is that correct?

11          A.       Yes. I think.

12          Q.       Was this nurse practitioner being  
13      supervised by a physician on that date?

14          A.       Yes.

15          Q.       Is there a signature on that November  
16      visit that would reflect the fact that a physician  
17      countersigned, if you will, the entries by the nurse  
18      practitioner student?

19          A.       I believe she was supervised by Kathy  
20      Komp, who was the nurse practitioner, and then by  
21      Dr. Weinberger, who is the supervising physician,  
22      and I think both of those signatures are present.

23          Q.       Okay.

24          A.       Actually it looks like two of Dr.  
25      Weinberger's squiggles.

1           Q.       What significance is -- what  
2       significance can a thirteen pound weight loss be in  
3       a patient that has the symptoms that Mrs. Belfiore  
4       had been complaining of?

5           A.       I don't think I would have believed  
6       it. On November 7th it says in the records that she  
7       had diarrhea last week.

8           Q.       You would have been concerned that that  
9       weight loss was not accurate?

10          A.       Yeah.

11          Q.       Would you have then wanted to  
12       reschedule the patient or perhaps retake the weight?

13          A.       I would have considered doing that.

14          Q.       Is there any indication that she was  
15       scheduled for a follow-up visit after November 7,  
16       '96?

17          A.       No.

18          Q.       Now, nurse practitioners, were they  
19       allowed to make recommendations to the physician  
20       about certain tests that they felt should be  
21       performed on the patient?

22          A.       I didn't work directly with the nurse  
23       practitioners.

24          Q.       Well, as to what occurred on that day  
25       or perhaps what recommendations the students made

1 about follow-up studies, that's not something that  
2 you can comment on; is that correct?

3 A. I can comment that the nurse  
4 practitioner student asked me about the umbilical  
5 hernia, but we did not discuss her complete  
6 evaluation.

7 Q. Under the assessment and plan it does  
8 indicate someone spoke to you about the umbilical  
9 hernia. Would that have been in the presence of  
10 Mrs. Belfiore?

11 A. No.

12 Q. How do you know that?

13 A. Because I remember.

14 Q. You remember this visit on November 7,  
15 '96?

16 A. No, I don't remember this visit, but I  
17 remember the nurse practitioner student because we  
18 didn't have very many of them and I remember she  
19 asked me that she saw my patient and that she had an  
20 umbilical hernia and was she supposed to have  
21 surgery and I said yes.

22 Q. And do you remember the nurse  
23 practitioner student's name?

24 A. No.

25 Q. The fact that you remember her asking

1     you about the patient, what is it that causes you to  
2     say that she asked you about your patient outside of  
3     the examining room?

4             A.       Well, because I had already referred  
5     her and it was written in my note that I had  
6     referred her to get her umbilical hernia repaired so  
7     I was puzzled why she would ask me if I still wanted  
8     her to get her umbilical hernia repaired.

9             Q.       And is it your testimony, Doctor, that  
10    you did not come back in to the examining room and  
11    talk with Mrs. Belfiore or whoever else might have  
12    been in the examining room with her on that visit?

13            A.       I don't remember doing that, no.

14            Q.       Are you saying that you didn't do that  
15    or you just don't remember one way or another?

16            A.       I don't remember one way or the other.  
17    It's possible I did.

18            Q.       Do you remember anything else about  
19    that office visit on November 7, 1996 other than  
20    this conversation with the nurse practitioner  
21    student about your patient other than what you've  
22    already told me?

23            A.       No.

24            Q.       If the nurse practitioner student had  
25    brought to your attention that there was a thirteen

1     pound weight loss between two office visits  
2     separated by two weeks, what, if anything, would you  
3     have done?

4             A.       I would have rechecked her weight.

5             Q.       And if it was truly an accurate  
6     measurement, what, if anything, would you have done?

7             A.       I would have had her come back in a  
8     month to recheck her weight.

9             Q.       And if the weight had stayed at or  
10    around that level or gone down, what,, if anything,  
11    would you have done?

12            A.       I don't know.

13            Q.       What significance clinically can a  
14    thirteen pound weight loss in such a short period of  
15    time signify?

16            A.       Different things.

17            Q.       Tell me based upon Mrs. Belfiore's age  
18    and her symptoms on that date, as well as the  
19    symptoms that you were aware of, what concerns would  
20    you have, if any, based upon such a precipitous drop  
21    in weight?

22                   MR. RYMOND: Do you want her also to  
23    consider the patient's history in terms of her  
24    weight?

25                   MR. MISHKIND: Sure.

1 BY MR. MISHKIND:

2 Q. In other words, she had had --  
3 according to the records, she had had a fairly  
4 stable weight up until that period of time and then  
5 we have a thirteen pound weight loss in a two week  
6 period, Taking into account --

7 MR. RYMOND: Well, I'll note an  
8 objection to your statement that she had a fairly  
9 stable weight up until that point in time. I'm not  
10 sure that the old records reflect that her weight  
11 had been in the one ninety range. I think you  
12 should give Dr. Righter an opportunity to review all  
13 the records that are available concerning this  
14 patient's weight.

15 BY MR. MISHKIND:

16 Q. Go ahead. Take as much time as you  
17 need, Doctor.

18 (Pause in proceedings.)

19 THE WITNESS: She's actually had a lot  
20 of different weights. She was two hundred and one  
21 in 1987. I saw a one seventy-seven in here. One  
22 seventy-seven in December of '92. One seventy-nine  
23 in March of '93.

24 BY MR. MISHKIND:

25 Q. Doctor, as you're looking at that, let



1 me rephrase --

2 MR. RYMOND: I'm sorry, you were both  
3 talking at the same time. What is it you were  
4 wanting to ask?

5 BY MR. MISHKIND:

6 Q. I said while she's looking at the  
7 records, let me perhaps add this qualifier. I'm not  
8 suggesting that her weight was always one ninety.  
9 When I talk about stable, what I mean is there  
10 doesn't appear from my review of the records to be  
11 any weight change of this magnitude in such a short  
12 period of time during the time that she was treating  
13 with Dr. Dickman. There was fluctuations in weight  
14 but those fluctuations spread out over a much longer  
15 period of time. I guess with that in mind, my  
16 original question to you is, with this patient's  
17 history and with a thirteen pound weight loss in a  
18 two week period, of what significance would that be  
19 if, in fact, that one seventy-seven was a true  
20 weight on November 7, 1996?

21 MS. PETRELLO: Object.

22 MR. RYMOND: Objection. I think she's  
23 already said that there are several possibilities.

24 BY MR. MISHKIND:

25 Q. What I want to know is what would be in

1 your differential at that point?

2 A. Well, I talked about whether the scale  
3 was accurate. If there's more than one scale in the  
4 office and the patient is measured on different  
5 scales, that would be something to consider. If she  
6 was -- if she had something like diarrhea or nausea  
7 or vomiting, which on November 7th it said she had  
8 diarrhea, that could be a reason for weight loss.  
9 If she had some kind of mal-absorption, that meant  
10 that she wasn't absorbing. If she had an eating  
11 disorder. Cancer would be in the differential.

12 Q. Anything else, Doctor, of significance?

13 A. I'm sure there are others. I didn't  
14 know I would need to worry about my differential for  
15 a weight loss. Depression would be another one.  
16 Hyperthyroidism. That's enough to get started.

17 Q. Okay.

18 A. Infection maybe.

19 Q. A couple more questions on this  
20 November 7th, '96 visit. I understand that your  
21 recollection is that the nurse practitioner student  
22 talked to you outside of the presence of Mrs.  
23 Belfiore about your patient. Did -- was Mrs.  
24 Belfiore still in the office, to your knowledge,  
25 when this conversation took place?

1           A.           I don't remember.

2           Q.           When a nurse practitioner student such  
3 as this one sees a patient in the office, was it the  
4 custom and practice for a physician to come in at  
5 the conclusion of the exam and talk with the  
6 patient?

7           A.           I don't know what Dr. Weinberger's  
8 custom and practice was when he supervised nurse  
9 practitioners.

10          Q.           You were supervising -- I'm sorry. Did  
11 you supervise nurse practitioners?

12          A.           I asked not to supervise nurse  
13 practitioners.

14          Q.           Why is that?

15          A.           Because I didn't feel comfortable  
16 supervising nurse practitioners.

17          Q.           Did you have a problem with nurse  
18 practitioners in general?

19                       MR. RYMOND: Objection. Go ahead and  
20 answer, Doctor.

21                       THE WITNESS: I did not have a problem  
22 with nurse practitioners in general.

23 BY MR. MISHKIND:

24          Q.           Can you tell me why it is that you  
25 asked not to supervise nurse practitioners?

1                   MR. RYMQND:   Objection.   You may  
2   answer.

3                   THE WITNESS:   Because I felt that I was  
4   too busy to be able to supervise the nurse  
5   practitioner sufficiently.

6   BY MR. MISHKIND:

7               Q.       Mrs. Belfiore was complaining of pain  
8   in her left upper quadrant, I believe, on November  
9   7, 1996?

10           A.       I don't see that.   Where is that?

11           Q.       Bear with me for a second.   I'm looking  
12   at the notes.   In the objective portion it says  
13   tender to palpation over, it looks like, mid upper  
14   and left upper quadrant.

15           A.       That's not -- patient complaint would  
16   be subjective and that's in the objective.

17           Q.       I'm sorry.   I stand corrected.   You are  
18   absolutely -- when I talked about pain, on  
19   objective -- during the examination on palpation  
20   there was tenderness in the left upper quadrant,  
21   correct?

22           A.       That's what's documented.

23           Q.       Is it common when you have inflammatory  
24   bowel -- or inflammatory bowels --

25           A.       You mean irritable bowel?

1           Q.        -- irritable bowel syndrome to be  
2       localized in one area of the abdomen?

3           A.        No.

4           Q.        Do you have any explanation for the  
5       tenderness on palpation in the left upper quadrant  
6       on November 7, 1996?

7                   MR. RYMOND:  Objection.  You mean in  
8       hindsight or, you know, based upon an exam that  
9       wasn't performed by Dr. Righter?  Do you want to  
10      know what she thinks today what the cause of that  
11      pain was then?

12                   MR. MISHKIND:  Yes.  I'm now learning  
13      at least from her testimony that she didn't see the  
14      patient on that date.  Up until now my assumption  
15      was that she did see the patient.

16      BY MR. MISHKIND:

17           Q.        But I'm asking if a patient complains  
18      of pain in the left upper quadrant and if you were  
19      seeing this patient, how would you explain the pain  
20      in the left -- or the tenderness in the left upper  
21      quadrant?

22                   MR. RYMOND:  Objection.

23                   THE WITNESS:  Answer or don't answer?

24                   MR. RYMOND:  Go ahead and answer,  
25      Doctor, if you have an answer to that.

1                   THE WITNESS:   Okay.   If -- are you  
2   saying if I saw the patient?

3   BY MR. MISHKIND:

4           Q.       And on examination --

5           A.       If I had -- if I had a nurse  
6   practitioner student that examined the patient and  
7   saw those findings, I wouldn't -- I would repeat  
8   that exam myself to decide if that was true or not.

9           Q.       Doctor, could you repeat your answer.  
10   Unfortunately you cut off on us this time.

11          A.       If I had a patient -- if I had a  
12   patient who was seen by a nurse practitioner student  
13   who documented this physical exam finding, the first  
14   thing I would do would be repeat the exam to see if  
15   it was significant -- clinically significant or not.

16          Q.       And what concerns would you have based  
17   upon the nurse practitioner's examination?

18          A.       I wouldn't be concerned because I  
19   probably wouldn't believe it until I did it myself.

20          Q.       And if you did it yourself and the same  
21   findings were demonstrated, what concerns would you  
22   then have?

23                   MR. RYMOND:   Well, objection.   She  
24   already told you she'd do it herself if she found  
25   out it was significant.

1 MR. MISHKIND: Well, hypothetically.

2 MR. RYMOND: Wait a minute. Do you  
3 want her to assume it's significant or  
4 insignificant?

5 BY MR. MISHKIND:

6 Q. I want you to assume hypothetically  
7 that you did the examination and you found -- took  
8 the history again and the same subjective complaints  
9 were registered and objectively the same findings  
10 were made in terms of the tenderness in the various  
11 areas. Of what significance would your findings, if  
12 they were identical to those that are documented by  
13 the nurse practitioner, be?

14 MR. RYMOND: Note the same objection.

15 MR. MISHKIND: Okay.

16 MR. RYMOND: She said that. she would do  
17 it again to determine if the symptoms were  
18 significant or if the patient's pain was significant  
19 and she'd go on from there. The nurse  
20 practitioner's note doesn't tell us in detail what  
21 the findings were, that's why I presumed Dr. Righter  
22 would want to do it again.

23 MR. MISHKIND: Well, are you suggesting  
24 to me that the nurse practitioner's notes as you  
25 read. them are inadequate?

1 MR. RYMOND: Am I?

2 MR. MISHKIND: I'd like to stop hearing  
3 your testimony and hear the doctor's. I'm asking  
4 her whether she feels the nurse practitioner's notes  
5 are inadequate.

6 MR. MISHKIND: Well, note an objection  
7 as long as you're going to ask her hypothetical  
8 questions, what she would have done if she were  
9 there. I think you need to lay a complete framework  
10 and I'll do what I need to do to protect the  
11 record. Either you lay a complete framework or --

12 MR. MISHKIND: I'm not suggesting that  
13 you don't do your job, Mr. Rymond. I'd just like to  
14 get the doctor to answer. If we could move on now.  
15 BY MR. MISHKIND:

16 Q. Doctor, are you with me?

17 A. What's the question?

18 Q. God only knows. If you came back in  
19 and did -- my first question to you is, do you feel  
20 that the nurse's -- the nurse practitioner's notes  
21 were inadequate in terms of determining what was  
22 going on with Mrs. Belfiore on that date?

23 MR. RYMOND: Objection. You may  
24 answer.

25 THE WITNESS: I need to read it --



1     that's kind of a big judgment to make -- to say this  
2     was an inadequate note so let me read it through  
3     here to decide.

4                     (Pause in proceedings.)

5                     THE WITNESS: I think the note is less  
6     than ideal.

7     BY MR. MISHKIND:

8             Q.       What additional information would you  
9     like to have seen from a nurse practitioner in order  
10    to make this note ideal?

11                    MR. RYMOND: Objection. Go ahead,  
12    Doctor.

13                    THE WITNESS: Well, I would have  
14    considered the differential diagnosis for the left  
15    upper quadrant pain found on physical examination,  
16    which I don't think is from the umbilical hernia.

17    BY MR. MISHKIND:

18             Q.       What else would you like to have seen  
19    in order to make this note a better note?

20                    MR. RYMOND: Objection.

21                    THE WITNESS: Well, we already talked  
22    about attention to the weight loss, whether it was  
23    real or -- so follow-up of the weight loss -- or  
24    evaluation, management, and follow-up of the weight  
25    loss.

1 BY MR. MISHKIND:

2 Q. Can we agree, Doctor, that at least  
3 based upon this note from November 7, 1996, it's  
4 impossible for you to say what the explanation was  
5 for her left upper quadrant tenderness?

6 A. Impossible is too strong. I mean, it's  
7 possible the left upper quadrant pain was from her  
8 umbilical hernia, but if I -- she had tenderness in  
9 her left upper quadrant in my exam, I would have  
10 considered other diagnoses besides the umbilical  
11 hernia.

12 Q. Including what, Doctor?

13 A. For the differential of left upper  
14 quadrant pain, I would have thought about  
15 gastroesophageal reflux disease, peptic ulcer  
16 disease, gastritis, and esophagitis.

17 Q. Would your differential include cancer?

18 A. No.

19 Q. Why is that?

20 A. Because left upper quadrant pain isn't  
21 a common complaint -- or common presents-tion of  
22 cancer.

23 Q. After October 24, 1996, when did you  
24 next see Mrs. Belfiore?

25 A. It looks like June 3rd, 1997.

1 Q. And was that the last time that you saw  
2 her?

3 A. I believe so.

4 Q. Did you find her weight was down  
5 another eleven and a half pounds from her last  
6 office visit on November 7, 1996?

7 A. Yes.

8 Q. What was your diagnosis -- or what was  
9 within your differential on June 3, 1997 after you  
10 took the history and did your examination on her?

11 A. I don't know.

12 Q. Why is that?

13 A. Because the dictation is missing.

14 Q. If you were to dictate a differential  
15 based upon the notes, can you tell me or' would you  
16 be able to recreate for me what likely would have  
17 been your dictation?

18 A. I didn't notice her weight loss.

19 Q. Should you have?

20 A. What?

21 Q. Should you have?

22 MR. RYMOND: To make it a question, are  
23 you asking should she have noticed the weight loss?

24 MR. MISHKIND: Yes, sir.

25 MR. RYMOND: Part of it is you're

1 getting cut off.

2 THE WITNESS: Yes.

3 BY MR. MISHKIND:

4 Q. Of what significance would the weight  
5 loss have played in your mind as of June, 1997?

6 A. If I had noticed it?

7 Q. Yes, Doctor.

8 A. Well, I would have considered the  
9 differential I mentioned before.

10 Q. Which would have included cancer?

11 A. That's correct.

12 Q. Do you have any explanation for  
13 where -- I'm sorry. Strike that. Was it your  
14 custom and practice to dictate?

15 A. Yes.

16 Q. And do you have any reason to believe  
17 that you didn't dictate something on June 3, 1997?

18 A. I have reason to believe that I did  
19 dictate because my D I C T is in the margin.

20 Q. You just have not been provided with a  
21 copy of that from Mr. Rymond or from anyone at this  
22 point, correct?

23 A. Correct.

24 Q. Has any explanation been given to you  
25 as to whether your dictation exists?

1                   MR. RYMOND: Well, objection. You're  
2 asking her what I may have told her because her  
3 communications have been limited to communications  
4 with me, and it was just brought to my attention  
5 this morning in Dayton having come down last night  
6 that there ought to be a dictated note for that.

7                   MR. MISHKIND: I take it being the  
8 thorough guy that you are, you are going to check  
9 into that and share with us whatever you discover.

10                  MR. RYMOND: Well, I'm definitely going  
11 to check into it.

12                  MR. MISHKIND: As an officer of the  
13 court and as a search for truth, you're going to  
14 share with all of us whatever you come up with,  
15 correct?

16                  MR. RYMOND: Well, the overwhelming  
17 probability is -- of course I'll share it with you,  
18 Howard.

19 BY MR. MISHKIND:

20                  Q. Before Mrs. Belfiore had her surgery in  
21 January of 1997 by Dr. Malgieri, he had preoperative  
22 blood work done, correct?

23                  A. Maybe. I don't know the answer to  
24 that.

25                  Q. In the Family Care Associates, records

1 I have a lab report from November of 1996. Do you  
2 have a copy of that lab report available to you?

3 A. Let me look. I have some lab from  
4 November 7th, 1996.

5 Q. Your office would have received back a  
6 copy of that lab report, correct?

7 A. Yes.

8 Q. It has Dr. Weinberger's name, and would  
9 that be because Dr. Weinberger is the one that saw  
10 Mrs. Belfiore on that date?

11 A. I think so.

12 Q. Or might it be that Dr. Weinberger's  
13 name was just picked up because he's first on the  
14 letterhead?

15 A. No. They were pretty good about  
16 keeping -- like if I saw the patient, it would be my  
17 name or if he saw the patient, it would be his name;  
18 but they don't -- they didn't put the nurse  
19 practitioner's name on there so it would be his name  
20 because he was supervising that patient that day.

21 Q. In looking at the labs, would there be  
22 any reason to be concerned about her borderline low  
23 iron count?

24 A. No.

25 Q. Would there be any reason to be

1 concerned about her low iron saturation?

2 A. Well, when I look for anemia, I look at  
3 the hemoglobin and the MCV first, and both of those  
4 are normal.

5 Q. But is it your testimony based upon the  
6 hemoglobin that -- and the MCV's that her Low iron  
7 saturation would not be clinically significant with  
8 regard to potential for anemia?

9 A. That's correct.

10 Q. Can we agree that anemia is a red flag  
11 for colon cancer?

12 A. What?

13 Q. Can we agree that anemia is a red flag  
14 for colon cancer?

15 A. In what patient?

16 Q. In a patient such as Miss Belfiore with  
17 the history that she had.

18 A. Well, the reason she was at risk for  
19 colon cancer was because of her age. Her history  
20 would make the diagnosis harder to make but not  
21 necessarily because -- anyway, if I saw iron  
22 deficiency anemia in an old woman, then I would be  
23 concerned about colon cancer.

24 Q. Doctor, could you just repeat your  
25 answer? You cut off on us this time.

1           A.       I said that if I saw iron deficiency  
2 anemia in a sixty-nine year old female, I would be  
3 concerned about colon cancer.

4           Q.       What's the gold standard that's used in  
5 working up a patient when the differential includes  
6 colon cancer?

7           A.       There are two acceptable gold  
8 standards. Double contrast barium enema plus  
9 flexible sigmoidoscopy or colonoscopy.

10          Q.       Are there circumstances that dictate  
11 the use of a colonoscopy is more appropriate or  
12 efficacious than a flexible sigmoidoscopy?

13          A.       If a person had -- no.

14          Q.       So it's a matter of judgment in terms  
15 of which is used?

16          A.       No. My understanding is they are both  
17 acceptable -- equally acceptable so it would be  
18 related to availability, patient preference, cost,  
19 that kind of thing.

20          Q.       Did you ever consider referring Mrs.  
21 Belfiore to a gastroenterologist to address her  
22 abdominal pain?

23          A.       Of the three office visits that I saw  
24 her for, I don't see any evidence of that. I don't  
25 know what I -- I don't know what I thought on June



1 3rd, 1997.

2 Q. Perhaps that note, if it does surface,  
3 would reflect the plan you had contemplated for her;  
4 is that correct?

5 A. I really don't know that. I -- it  
6 looks like I gave her medication on June 3rd on the  
7 medical sheet that goes along with that visit that  
8 wouldn't necessary -- I mean, it looks to me like I  
9 gave her a drug trial for either -- for reflux for  
10 her left side pain and the acid taste into her chest  
11 and burning.

12 Q. In a woman over sixty-five years of age  
13 back in 1996, how frequently were you performing  
14 colon cancer screening?

15 A. In 1996 there wasn't an agreement that  
16 people should be screened for colon cancer.

17 Q. Were there certain guidelines that were  
18 available to you through any organization relative  
19 to preventive services for women over the age of  
20 sixty-five that would include the frequency of  
21 performing colon cancer screening?

22 A. There were several guidelines  
23 available.

24 Q. And did you follow any of those?

25 A. I used the U.S. Preventive Task Force

1 Guideline.

2 Q. And that indicated how frequently to  
3 perform colon cancer screening in women over  
4 sixty-five?

5 A. It indicated that there was not  
6 sufficient evidence to recommend for or against  
7 colon cancer screening.

8 Q. What's the other guideline -- or the  
9 other publishing entity?

10 A. I'm sorry?

11 Q. Other --

12 A. I didn't understand the question.

13 Q. There was another organization that  
14 established preventive services for women over the  
15 age of sixty-five which included performing colon  
16 cancer screening; is that correct?

17 A. Yes.

18 Q. And what organization was that?

19 A. There are prevention guidelines from  
20 the American Academy of Family Physicians. There  
21 are prevention guidelines from the Canadian Task  
22 Force. There are guidelines from the American  
23 College of Obstetricians and Gynecologists. And  
24 there are guidelines from the American Cancer  
25 Society.

1           Q.       In your practice, do you adopt any one  
2 or more of the guidelines?

3           MR. RYMOND:   Objection.   You mean in  
4 June, 1997?

5           THE WITNESS:   June of 1996?

6           MR. RYMOND:   June of 1996?

7           MR. MISHKIND:   I'm sorry, in 1996.

8           THE WITNESS:   We had a meeting where we  
9 talked about guidelines and I don't remember -- I  
10 don't remember what we adopted.

11 BY MR. MISHKIND:

12          Q.       But there was something that was  
13 adopted by your office?

14          A.       I'm not sure when it was that that was  
15 done.

16          Q.       Does diverticulosis increase the risk  
17 for colon cancer?

18          A.       No.

19          Q.       You obtained a surgical consult because  
20 of the umbilical hernia, correct?

21          A.       In October of '96?

22          Q.       Yes, Doctor.

23          A.       Yes.

24          Q.       Was there any consideration on your  
25 part that her symptoms might be related to

1 inflammatory bowel disease or cancer?

2 A. Could you ask me that again?

3 Q. Sure. Was there ever any consideration  
4 on your part that her symptoms might be related to  
5 inflammatory bowel disease or cancer?

6 A. I did not consider inflammatory bowel  
7 disease but I did consider cancer, which is why when  
8 I reviewed her old records, I looked to see that she  
9 had a flexible sigmoidoscopy and a double contrast  
10 barium enema or a colonoscopy.

11 Q. You've had a chance to look at the  
12 records describing the cancer that was ultimately  
13 diagnosed in Mrs. Belfiore; is that correct?

14 MR. RYMOND: She has the records that  
15 were part of the Family Care Associates' records. I  
16 think we've already made clear, I don't think she's  
17 seen any of the subsequent records.

18 MR. MISHKIND: Right.

19 BY MR. MISHKIND:

20 Q. Do you have any records that reflect  
21 the diagnosis of cancer?

22 A. I have some records that reflect the  
23 diagnosis of colon cancer.

24 Q. Including the colonoscopy?

25 A. Let me look in the records.

1 (Pause in proceedings.)

2 THE WITNESS: I have a letter from Dr.  
3 Gottlieb mentioning the colonoscopy. Let me see if  
4 I have anything -- I have the report of the  
5 procedure done August 29th, 1997.

6 BY MR. MISHKIND:

7 Q. Is there any other information relative  
8 to the extent of the cancer at the time that the  
9 resection was done?

10 A. I have the operative report. Let's see  
11 here. One second. I have a report of an operation  
12 on September 19th, 1997.

13 Q. You also have the surgical pathology  
14 from that?

15 A. I'm looking. I have a pathology report  
16 from August 29th, 1997.

17 Q. I've got a couple more questions for  
18 you. One of them -- if you don't have an opinion,  
19 tell me that you don't. I want to ask you the  
20 following, and that is, if the colonoscopy had been  
21 performed in 1996 sometime after you first saw her  
22 but before the end of the year, do you have an  
23 opinion, a probability as to whether a colonoscopy  
24 would have detected her colon cancer given what you  
25 have and what you know about the ultimate diagnosis

1 in 1997?

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

3 Q. Do you hold an opinion to a reasonable  
4 degree of medical probability as to how long Mrs.  
5 Belfiore most likely had colon cancer before it was  
6 diagnosed in August of 1997?

7 A. No, I don't.

8 Q. There aren't any other office visits  
9 that you participated in other than the ones that we  
10 have talked about; is that correct?

11 A. We've talked about more office visits  
12 than I was directly involved in, but I'm not aware  
13 of any involvement in additional office visits.

14 Q. And while Mrs. Belfiore was treating  
15 with either you or Dr. Weinberger, do you recall any  
16 discussion between you and Mr. Weinberger as to what  
17 type of treatment or tests were indicated or needed  
18 for Mrs. Belfiore other than what is reflected in  
19 the records?

20 A. No, I don't remember anything like  
21 that.

22 MR. MISHKIND: Doctor, I thank you. I  
23 have no further questions. Colleen may have some  
24 questions for you, however.

25 MS. PETRELLO: Doctor, I just want to

1 clarify one thing.

2 CROSS-EXAMINATION

3 BY MS. PETRELLO:

4 Q. I believe you said that Dr. Dickman  
5 practiced out of a different office than you did; is  
6 that correct?

7 A. Correct.

8 Q. But I was a little confused as to how  
9 it was that you had access to his records. Did you  
10 just call his -- the other office and request those  
11 records so that you were able to review them?

12 A. My understanding was that he had closed  
13 his office because he had retired and we kept his  
14 records in our office.

15 Q. Oh, I see.

16 MS. PETRELLO: Okay. That's it. Thank  
17 you, Doctor.

18 MR. MISHKIND: No further questions.  
19 Rick, I presume you want the doctor to read the  
20 transcript?

21 MR. RYMOND: Yes.

22 (Thereupon, the deposition was  
23 concluded at 4:19 o'clock p.m.)  
24  
25

1 STATE OF OHIO )

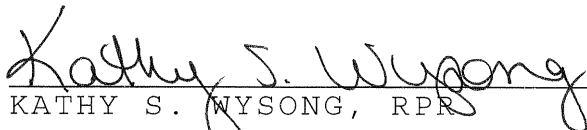
2 COUNTY OF MONTGOMERY ) SS: CERTIFICATE

3 I, Kathy S. Wysong, a Notary Public within  
4 and for the State of Ohio, duly commissioned and  
5 qualified,

6 DO HEREBY CERTIFY that the above-named  
7 ELISARETH L. RIGHTER, M.D., was by me first duly  
8 sworn to testify the truth, the whole truth and  
9 nothing but the truth; that said testimony was  
10 reduced to writing by me stenographically in the  
11 presence of the witness and thereafter reduced to  
12 typewriting.

13 I FURTHER CERTIFY that I am not a relative or  
14 Attorney of either party nor in any manner  
15 interested in the event of this action.

16 IN WITNESS WHEREOF, I have hereunto set my  
17 hand and seal of office at Dayton, Ohio, on this  
18 13th day of August, 1999.

19  
20   
21 KATHY S. WYSONG, RPR  
22 NOTARY PUBLIC, STATE OF OHIO  
23 My commission expires 12-2-03  
24  
25



PLEASE NOTE ANY STENOGRAPHIC OR TYPOGRAPHICAL ERRORS BELOW, FIRST IDENTIFYING THE PAGE AND LINE NUMBERS, AND THEN THE PROPOSED CORRECTION.

PAGE	LINE	CORRECTION TO TEXT
5	17	Family Medicine capital "M"
12	23	<del>Journal of Family Practice</del> Should be American Family Physician
12	22	<del>July</del> should be June
17	18	M.D. Consult <del>(delete s)</del>
17	24	"
18	7	"
25	18	"Yeah" should be "yes"
25	25	" "
25	5	"was" should be "were"
37	19	a gvaige cards (delete "a", add "s")
41	12	"or" should be "of"
41	21	<del>a</del> (delete)
54	14	be "to" repeat (insert "to")
56	6	\$ should be MR. RYMOND (not MISHKIND)
65	7	"medical" should be "medication"
70	16	"Mr." should be "Dr."