

IN THE COURT OF COMMON PLEAS

CUYAHOGA COUNTY, OHIO

DIANE M. CARRICK,  
EXECUTRIX, etc.,

Plaintiff,

-vs-

JUDGE JAMES KILCOYNE  
CASE NO. 185330

THE CLEVELAND CLINIC  
FOUNDATION, et al.,

Defendants.

Doc. 376

- - - -

Deposition of ROBERT P. RILEY, M.D., taken as  
if upon cross-examination before Susan M.  
Cebron, a Registered Professional Reporter and  
Notary Public within and for the State of Ohio,  
at the offices of Charles I. Kampinski Co.,  
L.P.A., 1530 Standard Building, Cleveland, Ohio,  
at 2:00 p.m. on Monday, June 18, 1990, pursuant  
to notice and/or stipulations of counsel, on  
behalf of the Plaintiff in this cause.

- - - -

MEHLER & HAGESTROM  
Court Reporters  
1750 Midland Building  
Cleveland, Ohio 44115  
216.621.4984  
FAX 621.0050  
800.822.0650

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1                   APPEARANCES:

2                   Charles I. Kampinski, Esq.  
3                   Christopher M. Mellino, Esq.  
4                   Charles I. Kampinski Co., L.P.A.  
5                   1530 Standard Building  
6                   Cleveland, Ohio 44113  
7                   (216) 781-4110,

8                                 On behalf of the Plaintiff;

9                   Leslie J. Spisak, Esq.  
10                   Reminger & Reminger  
11                   Seventh Floor - 113 St. Clair Building  
12                   Cleveland, Ohio 44114  
13                   (216) 687-1311,

14                                 On behalf of the Defendant  
15                   Robert P. Riley, M.D.;

16                   Douglas K. Fifner, Esq.  
17                   Reminger & Reminger  
18                   Seventh Floor - 113 St. Clair Building  
19                   Cleveland, Ohio 44114  
20                   (216) 687-1311,

21                                 On behalf of the Defendant  
22                   Nazih M. Zein, M.D.;

23                   Deirdre G. Henry, Esq.  
24                   Weston, Hurd, Fallon, Paisley & Howley  
25                   2500 Terminal Tower  
26                   Cleveland, Ohio 44113  
27                   (216) 241-6602,

28                                 On behalf of the Defendant  
29                   Lakewood Hospital Association;

30                   James A. Laurenson, Esq.  
31                   Arter & Hadden  
32                   1100 Huntington Building  
33                   Cleveland, Ohio 44115  
34                   (216) 696-1100,

35                                 On behalf of the Defendant  
36                   The Cleveland Clinic Foundation.

37                   ALSO PRESENT:

38                   Katie Fink

39

1                   ROBERT P. RILEY, M.D., of lawful age,  
2                   called by the Plaintiff for the purpose **of**  
3                   cross-examination, as provided by the Rules of  
4                   Civil Procedure, being by me first duly sworn,  
5                   as hereinafter certified, deposed and said as  
6                   follows:

7                   CROSS-EXAMINATION OF ROBERT P. RILEY, M.D.

8                   BY MR. KAMPINSKI:

9                   Q.    Would you state your full name, please?

10                  A.    Robert P. Riley, R I L E Y.

11                  Q.    And your address, sir?

12                  A.    Office?

13                  Q.    Home.

14                  A.    20795 Germantown Drive, that's in Fairview,  
15                        44126.

16                  Q.    Doctor, I'm going to ask you a number of  
17                        questions this afternoon.  If **you** don't  
18                        understand any of them please tell me.  I'll be  
19                        happy to rephrase any question you don't  
20                        understand.

21                        When you respond **to** my question do so  
22                        verbally.  She's going to take down everything  
23                        we say.  She can't take down a nod of your head,  
24                        okay?

25                  A.    Okay.

1 Q. What's your office address?

2 A. 1392 Warren Road, W A R R E N, Lakewood, Ohio,  
3 44107.

4 Q. Do you have a CV, sir?

5 A. I'm sorry?

6 Q. Do you have a CV?

7 MR. SPISAK: Curriculum vitae.

8 A. I do not. I mean I have one --

9 Q. You have one, you just don't have it here?

10 A. I have it up here, but not written.

11 Q. If you would, run me through your various  
12 education.

13 A. St. Ignatius, St. Louis University --

14 Q. When did you go to St. Ignatius?

15 A. I graduated in 1947,

16 Q. Okay.

17 A. St. Louis University, premed, 1951. St. Louis  
18 University, medicine, 1955. St. John's  
19 Hospital, internship, 1956, '7. United States  
20 Navy for two years, '59. General practice in  
21 Lakewood until '60 or '61. Resident in internal  
22 medicine at the Cleveland Clinic, '61 to '63.  
23 Private practice since at the same address.

24 Q. Okay. At the Warren Road address?

25 A. Yes.

1 O. And you've been practicing there in internal  
2 medicine since --

3 A. 1963.

4 Q. Okay. Are you board certified, sir?

5 A. Yes.

6 Q. In what?

7 A. Internal medicine.

8 Q. What was your undergraduate degree at St. Louis  
9 in?

10 A. Bachelor of science in chemistry.

11 Q. And did you specialize in any area within  
12 internal medicine when you did your residency at  
13 the Clinic?

14 A. No.

15 Q. All right.

16 A. As they had --

17 Q. I'm sorry?

18 A. They did not have training at that time in  
19 nephrology, which was the field I was most  
20 interested in. But there was none in the  
21 country.

22 Q. In 1963 there was none in the country?

23 A. That's correct. None that I was aware of.

24 Q. All right. Have you taken any specialized  
25 nephrology training since your residency?

- 1 A. You know, I'm a member of the American Society  
2 of Nephrology. I attended their meetings. The  
3 American College of Physicians, their meetings,  
4 particular reference to renal disease. Courses  
5 here in Cleveland, particularly at the Clinic an  
6 nephrology.
- 7 Q. When is the last one you attended?
- 8 A, 1989.
- 9 Q. And where was that?
- 10 A. Clinic.
- 11 Q. When?
- 12 A. The fall. I forget which months.
- 13 Q. And when was the one before that?
- 14 A. I can't -- probably '88 or '87.
- 15 Q. Where at?
- 16 A. Clinic, nephrology.
- 17 Q. When you say a course, are you talking about an  
18 afternoon seminar --
- 19 A. No. Three days, usually.
- 20 Q. Would you receive some type of diploma or  
21 credit?
- 22 A. Not that I'm aware of.
- 23 Q. What would the seminar be called? I mean, is it  
24 an annual thing?
- 25 A. Review of nephrology or current topics of

1 nephrology, that type of general --

2 Q. Is it an annual thing put on by the Clinic?

. A. Pretty much annually.

4 Q. By their nephrology department?

5 A. Yes.

6 Q. You have to sign up for it?

7 A. Yes.

8 Q. Okay. Did you go annually?

9 A. No. I missed, and then other times we would go  
10 away, the American College courses.

11 Q. Well, were those annual meetings for the  
12 American College?

13 A. Yes.

14 Q. When is the last one you went to that had a  
15 course on nephrology?

16 A. I'm guessing, '85, '86.

17 Q. Where was that?

18 A. I don't remember. I'm sorry.

19 Q. Is there a board certification for nephrology?

20 A. There is now, yes,

21 Q. And when did that come into being?

22 A. I don't know the exact year. I'm estimating  
23 five or six years after I finished. That would  
24 be '69, something like that.

25 Q. You are not boarded in nephrology?

1 A. I am not.

2 Q. Nor did you go through any residency in  
3 nephrology?

4 A. There was none available.

5 Q. I mean since it has been available?

6 A. Did I leave practice and go back? I did not.

7 Q. Internal medicine would be defined by you as  
8 being what, sir?

9 A. Diagnosis and treatment of medical diseases in  
10 adults.

11 Q. Have you been sued before?

12 A. Once.

13 Q. When was that?

14 A. I think about eight years ago.

15 Q. And what was the name of the case?

16 A. The name --

17 Q. Of the case, the name of the plaintiff,  
18 patient.

19 A. Judge Brennan.

20 MR. SPISAK: Do you recall the  
21 patient's name?

22 A. I'm sorry, That's the patient.

23 Q. The judge was the patient?

24 A. Yes.

25 Q. Okay. What was his first name, Hugh or John?

- 1 A. John.
- 2 Q. And what were the allegations?
- 3 A. I was slow in making a diagnosis of subacute  
4 bacterioendocarditis.
- 5 Q. And what was the result of the alleged failure  
6 to make the diagnosis? Did he pass away or --
- 7 A. Oh, no.
- 8 Q. What was the injury complained of?
- 9 A. The --
- 10 Q. Pain and suffering for the delay in diagnosing?  
11 I mean, did he suffer some acute episode as a  
12 result of a failure to diagnose?
- 13 A. Pain and suffering. He went on later for heart  
14 surgery to have the valve fixed.
- 15 Q. Where was that suit brought? Was it here in  
16 Cuyahoga County?
- 17 A. Yes.
- 18 Q. And what was the result of the lawsuit?
- 19 A. It was settled out of court.
- 20 Q. Any other --
- 21 A. Before going.
- 22 Q. I'm sorry?
- 23 A. It was settled before trial.
- 24 Q. Any other suits?
- 25 A. **No.**

1 Q. What is the name of your practice, doctor?

2 A. Robert P. Riley, M.D., Incorporated.

3 Q. And when were you incorporated?

4 A. I think 1971.

5 Q. And has that been the name of your corporation  
6 since that time?

7 A. Yes, it has.

8 Q. Do you have any other practitioners with you as  
9 shareholders or employees of the corporation?

10 A. **No**, I do not.

11 Q. So you're a sole practitioner then?

12 A. Right.

13 Q. Has that been true since your incorporation?

14 A. Yes.

15 Q. Would your only employees then be nonmedical  
16 employees?

17 A. Non M.D., yes.

18 Q. All right. Do you have nurses that work for  
19 you?

20 A. Right.

21 Q. How many?

22 A. One.

23 Q. And any secretarial staff?

24 A. One. Well, excuse me. Two secretaries. Each  
25 work part-time.

1 Q. Do you limit your practice to any particular  
2 area within internal medicine?

3 A. Yes and no. I think like most of us I handle  
4 the diseases which I feel competent, but will  
5 consult other internists if I find it's a field  
6 that they would be more competent.

7 Is that fair?

8 Q. You tell me.

9 A. Did I explain that?

10 MR. SPISAK: I think you answered  
11 it, and if Mr. Kampinski needs more he can ask  
12 you.

13 Q. Well, have you ever referred anybody to a  
14 nephrologist?

15 A. Yes.

16 Q. Under what circumstances?

17 A. Second opinion for renal biopsy.

18 Q. What nephrologists have you referred people to?

19 A. Mainly the Clinic.

20 Q. Any other reasons that you have referred anybody  
21 to a nephrologist?

22 A. Chronic dialysis. Transplant,

23 Q. Okay. Any other reasons?

24 A. None that I can think of,

25 Oh, hyperparathyroidism,

Q. I take it -- well, before I ask that. Any other conditions?

A. Patients who I see and send, that pretty well covers it. Some that I will receive phone calls about I will send them without seeing them.

Q. Your reasons for referring these people to nephrologists would be what?

A. If I feel they need, oh, team type decisions, special tissue microscopy, biopsy, for instance. Occasionally for their expertise and experience in subjects which they've had more experience with than many of us.

Excuse me. Hypertension occasionally.

Q. Under what circumstances would you refer somebody for treatment of hypertension?

A. If the patient looks like a candidate for renal artery repair, be they either very young or very old, I will usually send them over there.

Q. What hospitals do you have privileges at?

A. Lakewood and Fairview.

Q. Do you hold any positions within the hospital, either one of them?

A. At Lakewood I'm -- I don't know the exact title, head of hypertension/nephrology.

Q. Do they have a board certified nephrologist at

1 Lakewood?

2 A. Yes. I invited him to come join the staff and  
3 ask that they make him head of the hemodialysis  
4 unit.

5 Q. When was that?

6 A. Three or four years ago, two or three.

7 Q. And who was that?

8 A. Clemente, C L E M E N T E, first name -- I  
9 don't, It is Javier or Jarvitz -- I can get it.

10 Q. Where did you invite him from?

11 A. He came into practice on the west side mainly at  
12 Fairview, and I got to know him, learned of his  
13 background.

14 Q. And I'm sorry, his function at Lakewood is what?

15 A. I asked that they make him head of hemodialysis.

16 Q. Is that something that you were doing before  
17 that?

18 A. Yes.

19 Q. And why is it that you asked them to make him  
20 head of hemodialysis?

21 A. He's younger, and in doing that I created two  
22 spots, hypertension/nephrology, hemodialysis.  
23 This would allow me to step out, have him step  
24 in and bring in some new guy in the future. It  
25 was to create a department, which I thought

1 would be good for the hospital.

2 Q. How about at -- is that the only position that  
3 you hold at Lakewood?

4 A. Yes.

5 Q. Have you held any positions in the past?

6 A. Head of hemodialysis.

7 Q. How about at Fairview?

8 A. No, no positions.

9 Q. What societies do you belong to?

10 A. American College of Physicians, I'm a fellow,  
11 American Society of Nephrology, AMA, Ohio State,  
12 Cleveland Academy.

13 Q. What publications do you subscribe to?

14 A. Which ones do I subscribe to or which ones do I  
15 read, subscribe to?

16 Q. Well, let's start subscribe to.

17 A. Annals of Internal Medicine, Archives of  
18 Internal Medicine, AMA Journal, American Society  
19 of Nephrology, American Society of  
20 Hypertension.

21 Those are the ones I subscribe to,

22 Q. Which do you read?

23 A. Most of them, all of them.

24 Q. Well, then why did you ask me about which I was  
25 asking?

1 A. Well, I read others.

2 Q. I see. Which others?

3 A. New England Journal of Medicine. I don't  
4 subscribe to it, but I try to read it,

5 Q. Where, at the hospital?

6 A. Library.

7 Q. Okay. Which others do you read?

8 A. The American Journal of Medicine, Dialysis and  
9 Transplant.

10 Q. Is that it?

11 A. Pretty much.

12 Q. Okay. You started seeing Mr. Carrick when?

13 First of all, do you have your office  
14 record here, your original record? Let me take  
15 a look at it for just a second, please.

16 MR. SPISAK: I have taken out some  
17 correspondence from the --

18 MR. KAMPINSKI: From you?

19 MR. SPISAK: From me to the  
20 doctor, yes, from the insurance company. The  
21 rest is intact.

22 MR. KAMPINSKI: Before I even get  
23 into the file, a certified letter from Ed  
24 Cupsel, what's that?

25 MR. SPISAK: That's Med Pro.

1 That's the carrier.

2 MR. KAMPINSKI: In other words,  
3 the file was sent to them and then returned?

4 A. We asked for a return receipt. Is that what  
5 this is?

6 Q. For what?

7 A. And we sent him the chart, a copy of the chart.

8 Q. Copy of the chart or your original chart?

9 A. I didn't send the original to anyone.

10 Q. That has been in your possession the entire  
11 time?

12 A. Yes.

13 Q. Other than the correspondence referred to by Mr.  
14 Spisak, has anything else been removed from this  
15 file?

16 A. No.

17 Q. I take it you reviewed this before coming here  
18 today, doctor?

19 A. Not today. I reviewed it several months ago.

20 Q. Any other times?

21 A. No.

22 Q. In going through here, you have this form which  
23 on the front says Health History Questionnaire?

24 A. Yes.

25 Q. This is a form type of thing that you use for

- 1           what, annual physicals?
- 2   A.   Correct.
- 3   Q.   And each year you have the patient fill it out?
- 4   A.   If they wish. We mail it to them. They fill it  
5       out at home and bring it in with them.
- 6   Q.   And then the clinical sheets would be your  
7       office records as prepared by you or your office  
8       staff?
- 9   A.   Yes, that's right,
- 10  Q.   All right, I take it not all the writing on any  
11       given sheet would be yours?
- 12  A.   No, that's true. The nurse writes blood  
13       pressure and medications, weight and height. I  
14       will put in my notes. If she would ever see a  
15       patient without my seeing him, my writing  
16       wouldn't be on there.
- 17  Q.   Just so I know what your writing is and what  
18       her's is, would you --
- 19  A.   Her's is very legible.
- 20  Q.   All right. I wasn't going to say that.
- 21  A.   This type is mine, This would be her's.
- 22  Q.   We are looking at the June 14, 1984 entry, for  
23       example?
- 24  A.   All right.
- 25  Q.   The blue writing there --

1 A. Yes.

2 Q. -- weight, blood pressure, medications, that's  
3 the nurse's?

4 A. Uh-huh.

5 Q. There's black pen, that same entry, that's  
6 yours?

7 A. Yes.

8 Q. What does that say? There's an arrow and then  
9 what does that say next to it?

10 A. Up to 40. I upped his Lasix to 40 milligrams.

11 Q. And below what does it say?

12 A. Review of systems, or S, means I run him through  
13 a review **of** his systems. He occasionally felt  
14 faint, stomach was okay.

15 Q. Where **do** you see faint?

16 A. F A I N T .

17 Q. Oh, I see.

18 A. I believe.

19 Q. Okay. Stomach okay?

20 A. That's what it looks like to me.

21 These would indicate blood tests that were  
22 ordered, but I gave him a slip and the nurse  
23 wrote it in to keep a record **of** it.

24 Q. So, for example, the only writing on this sheet,  
25 at least the front of it, when I say this sheet,

1           it starts with May 16, '83, would be what you  
2           just read, correct?

3   A.   That's correct.

4   Q.   Everything else would be a nurse's handwriting?

5   A.   Well, he called in for refill of medication.  I  
6           don't normally write on that.

7   Q.   Okay.

8   A.   He is asking for change of medication.

9   Q.   When you said refill on medication you were  
10           referring to the February 6, 1984 entry?

11   A.   That's what it says.

12   Q.   And he wanted to jog on that occasion and you  
13           said no, but it was okay to walk?

14   A.   Right.

15   Q.   What medication did he refill, or did he call in  
16           for a refill?

17   A.   The best I could say from that it looks like  
18           Indocin.

19   Q.   What kind of medication is that?

20   A.   That's an antiinflammatory medication.

21   Q.   And what are the contraindications for giving  
22           Indocin?

23   A.   You mean people you would never give it to?

24   Q.   Yes.

25   A.   I don't know any, unless they are allergic to

1 Indocin.

2 Q. Is it a contraindication for giving Indocin  
3 someone having kidney problems?

4 A, **No.** It would certainly be -- you would have to  
5 watch carefully, but if the patient had kidney  
6 problems, has gout, and the gout hurts, you are  
7 going to have to use one or the other  
8 antiinflammatory drugs, and they all have side  
9 effects.

10 Q. Does it matter if it is primary gout or  
11 secondary gout?

12 A. What matters is if it hurts.

13 Q. So you treat the hurt, right?

14 A. I think most of us do, yes,

15 Q. And when you say you have to watch carefully, I  
16 mean, what is it that you're watching?

17 A. You want to give the least amount of medication  
18 that will achieve the result you're after, which  
19 is relief of pain.

20 Q. Okay.

21 A. Further, you want to be careful that you do not  
22 worsen the kidney condition.

23 Q. Well, how do you determine if the kidney  
24 condition worsens? I mean, what tests do you do  
25 to check that out?

1 A. Well, mainly your blood tests.  
2 Q. And what are you looking for in the blood tests?  
3 A. Rise of creatinine or BUN.  
4 Q. And did his creatinine/BUN rise throughout the  
5 years, doctor?  
6 A. Yes, but not because of Indocin.  
7 Q. Why did it raise?  
8 A. I believe he had progressive renal failure.  
9 Q. How were you treating him for that?  
10 A. Trying to control the blood pressure.  
11 Q. How did you do?  
12 A. Not too good.  
13 Q. Well, I mean, what is it you were doing to try  
14 to control the blood pressure?  
15 A. Well, when you are using antihypertensive blood  
16 pressure medicines --  
17 Q. Such as?  
18 A. Apresoline.  
19 Q. I'm sorry?  
20 A. Apresoline.  
21 Q. Apresoline?  
22 A. Lasix.  
23 Q. I see.  
24 A. And others. I don't remember if I used any of  
25 the others.

1 | Q. Doctor, in going through your records I have  
2 | come to two sheets here, one is dated November  
3 | of '84 and one December of '87, and they appear  
4 | to be copies.

5 | A. These are copies.

6 | Q. Do you know if the originals are in here?

7 | A. I don't know. I would have to look.

8 | Q. All right. I'll let you do that in one second.

9 |           And then, again, looking at or coming to a  
10 | record dated March of '88, it appears to be on  
11 | plain stationery. Could you tell me why that  
12 | is, sir?

13 | A. I can conjecture we ran out of paper and used  
14 | what we had available.

15 | Q. If you could tell me whether or not the  
16 | originals for the other two sheets are in here,  
17 | because I didn't see them.

18 | A. Here is one.

19 | Q. Okay. This is the back of it then?

20 | A, Is that it?

21 | Q. Yes. All right.

22 |                   MR. SPISAK: That's the front?

23 |                   MR. KAMPINSKI: Yes, yes. These  
24 | two that are copies --

25 | A. I'm sorry. They got mixed somehow.

1 MR. SPISAK: Why don't we just  
2 agree to take those out of there?

3 MR. KAMPINSKI: Well, leave them  
4 in.

5 MR. SPISAK: I guess it doesn't  
6 matter.

7 Q. Referring to the sheet where you believe that  
8 your stationery might have been missing or run  
9 out or the front of the sheet has March 10th,  
10 1986 and March 16th -- I'm sorry -- '89, right?

11 A. Right.

12 Q. Why does the back of the sheet have an entry  
13 before that, January?

14 A, I don't know.

15 Q. Whose writing is on that sheet, sir?

16 A. The nurse, mine,

17 Q. What nurse, what's her name?

18 A. Rhonda Zak, Z A K.

19 Q. Does she still work for you?

20 A. Yes.

21 Q. How long has she worked for you?

22 A. Now, I am assuming this is her handwriting.

23 Q. Well, I mean, I don't know.

24 A. I mean, I don't know.

25 Q. You don't know?

1 A. I don't know whose handwriting that is. It  
2 isn't mine. She would be the usual one. I am  
3 assuming.

4 Q. Fine.

5 A. But Deb, the secretary, will occasionally do  
6 this, but she will usually not write in  
7 medication.

8 So I am 99 percent sure that is Rhonda Zak.

9 Q. How long has she been with you?

10 A. 10 years,

11 Q. All right, Anybody else's writing on that?

12 A. Same thing on this sheet.

13 Q. When you say "this sheet" you're referring to --  
14 the back of the sheet that's the January 5, 1989  
15 entry?

16 A. That's correct. The nurse's handwriting and my  
17 handwriting.

18 Q. All right. You prescribed some more Indocin on  
19 all three of those visits, did you?

20 A. No. I didn't prescribe it.

21 Q. I'm sorry. Refilled it?

22 A. No. This just lists medication the patient has,  
23 but can I --

24 Q. Yes, please explain it.

25 A. Indocin p.r.n. on this sheet means he takes it

1 if he needs it. Minipress, one milligram,  
2 t.i.d. means he takes that three times everyday.

3 Q. I see. So she was just listing the medications  
4 that he was taking?

5 A. That he has, correct.

6 Q. Did you give him a new prescription for Indocin,  
7 doctor, a refill prescription on March 17, 1989,  
8 sir?

9 A. I don't know.

10 Q. Well, why don't you take a look? Will your  
11 records tell you that?

12 A. It might.

13 MR. FIFNER: What date are we on?

14 MR. KAMPINSKI: March 17, 1989.

15 A. According to this sheet, March 17, 1989, I  
16 phoned him Naprosyn, 250 milligram, twice a  
17 day. According to this I did not refill  
18 Indocin.

19 Q. Okay. Would it have been appropriate for you to  
20 refill Indocin at that time?

21 A. If I remember, he was not responding -- was this  
22 the period -- let me look through.

23 Q. Sure.

24 A. March of '89, he went in the hospital in April?  
25 Right. He was in the midst of I believe to be

1 severe acute **gout** and was not responding to  
2 Indocin. So we tried Naprosyn. We tried  
3 Colchicine. None of the usual agents that  
4 worked were working,

5 Q. My question is whether or not it would have been  
6 appropriate to prescribe more Indocin for him at  
7 that time.

8 A. It wouldn't have been inappropriate. It would  
9 have been -- from my notes I would have told him  
10 to take Naprosyn and not to take Indocin. But  
11 if he wanted a refill of Indocin for the future  
12 I could well have refilled it.

13 Q. Do you know what the PDR says about Indocin,  
14 doctor?

15 A. Yes.

16 Q. What does it say?

17 A. Well, I don't know it -- I shouldn't say yes. I  
18 have read it.

19 Q. Did you read it before you prescribed it for Mr.  
20 Carrick?

21 A. Yes.

22 Q. How is it that you know that it was progressive  
23 renal failure and not the Indocin that caused a  
24 worsening of Mr. Carrick's kidney functions?

25 A. I think because of the total picture of the case

1 from the beginning, because of the fact he tells  
2 me he was not taking Indocin daily, he was not  
3 advised to and should not have been, for those  
4 reasons.

5 Q. How many years did you prescribe Indocin for  
6 this man?

7 A. He didn't take it all the time. He took it only  
8 when he hurt. At least that's when he was  
9 instructed to take it.

10 Q. Well, how long did he hurt?

11 A. As far as I knew, three or four times a year.

12 Q. Well, how often did you refill prescriptions for  
13 him, doctor? Pick any year you want. Just go  
14 ahead and pick a year and take a look.

15 A. I have 1988. On the front sheet there is no  
16 refills.

17 Q. I beg your pardon?

18 A. On this sheet --

19 Q. Which sheet?

20 A. 1988, there is no evidence of refill there, but  
21 I will look back in here.

22 Q. Try June 3rd, August 13th, October 29th and  
23 December 21st.

24 A. I must have missed it.

25 Would you tell me those dates again,

1 please?

2 Q. June 3rd, August 13th --

3 A, '88?

4 Q. Yes. October 29th, December 21st.

5 A, Here is October 18, '88. There is nothing here  
6 about a refill.

7 Q. When you say here, you are talking about your  
8 clinical sheets?

9 A. In my chart,

10 Q. Well, would somebody be able to call in and ask  
11 for a refill without there being an entry in  
12 your record?

13 A. It shouldn't be.

14 Q. How often was he taking Indocin in 1987, doctor?

15 A. Could I ask to explain the question in that I  
16 don't know how often people take medication. I  
17 know how often I tell them to take it.

18 Q. Well,, if your records are good with respect to  
19 how often you refill it, right, and you know how  
20 many are in a refill, you can get a pretty good  
21 idea as to how often they are taking it, can't  
22 you?

23 A. Yes. Unless they lose them or give them to  
24 friends.

25 so I --

1 Q. Well, how often did you refill it in '87?

2 A. I can't find any record for refills in '87.

3 They may be here. I didn't see them.

4 Q. How would a refill occur? Would your office  
5 call the drug store or how would that happen?

6 A. Oh, no. When I write a prescription I usually  
7 circle a number of refills the patient can have  
8 on their own, depending on how often they use  
9 it, When those number of refills have been used  
10 up and the patient wants another refill, the  
11 pharmacist calls my office and says can he  
12 refill it.

13 Q. I see. And would your records reflect such a  
14 phone call from the pharmacist?

15 A. Usually they do, and it's possible that we  
16 didn't -- we try to keep records of refills. As  
17 you see, there are some here.

18 Q. Well, in what form would you write down the  
19 number of refills that a person could get? I  
20 mean, would this be a little prescription pad  
21 that you would give to the patient?

22 A. That's correct.

23 Q. And he would then take that to the pharmacist?

24 A. That's correct.

25 Q. And if it had more than one refill on the

- 1 prescription pad he could keep that and then go  
2 back when he had to refill it again?
- 3 A. I have never seen this end of the business, but  
4 I write on one sheet of paper and it goes to the  
5 pharmacist.
- 6 Q. Okay.
- 7 A. I believe he puts in his own records how many  
8 refills, and then writes usually on the front of  
9 the pill jar how many.
- 10 Q. I got you. Do you know how many prescriptions  
11 you were giving Mr. Carrick on each refill?
- 12 MR. SPISAK: How many times he  
13 could refill a prescription?
- 14 Q. Yes. Maybe I phrased that inartfully.
- 15 A. On Indocin?
- 16 Q. Yes.
- 17 A. Usually three we have it.
- 18 Q. And how many would be in each prescription?
- 19 A. 40 to 60, as a rule.
- 20 Q. And what dosage?
- 21 A. Two to three a day --
- 22 Q. I'm talking about how many milligram.
- 23 A. 25 milligram.
- 24 Q. I'm sorry. Two to three a day you were saying?
- 25 A. For pain.

1 Q. So, in other words, if he was in pain, it was  
2 all right with you for him to take two to three  
3 a day?

4 A. Not really. He was instructed from the very  
5 beginning, Mike knew that if it went on for more  
6 than two **or** three days he was to call.

7 Q. Where is that in your record?

8 A. It probably isn't. That's kind of standard and  
9 usual in treating gout.

10 Q. And how is it that you can give someone three  
11 refills if, in fact, you don't want him to take  
12 them more than two or three days in a row?

13 A. Excuse me. Can I explain what I meant?

14 Q. Oh, sure.

15 A. **If** two or three days of Indocin doesn't relieve  
16 gout than something could be wrong, either it  
17 isn't gout or it is something else. You want to  
18 hear from that patient. This is standard.

19 **If** you have gout -- I shouldn't --

20 Q. Go ahead. **If** you have gout, what?

21 A. I think most of us know that in three or four  
22 days if you don't get relief call in.

23 Q. And not to take any more medication?

24 A. Right, and to call.

25 Q. What's gout?

1 A. It's an inborn error of metabolism or you are  
2 born with it. The body has trouble handling the  
3 breakdown of certain chemicals, mainly purine,  
4 P U R I N E, which allows an overaccumulation of  
5 uric acid, U R I C, in the system. Uric acid  
6 can crystallize and cause pain and other  
7 diseases, including kidney disease,

8 Q. That would be primarily gout, correct?

9 A. Correct.

10 Q. Secondary gout would be what, sir?

11 A. Well, there is some discussion on that among the  
12 experts. Secondary gout is often described as a  
13 high uric acid due to other problems, like  
14 lymphoma, renal failure. Some medications can  
15 raise the uric acid.

16 The question comes in if I have a high uric  
17 acid and I don't have pain have I really got  
18 gout. So they use the word primary and  
19 secondary to try and cover our confusion on that  
20 subject.

21 Q. When you say high uric acid, what level, what  
22 measurement level would be high?

23 A. It depends. I mean you find different people I  
24 think accept different levels. Nine is a good  
25 round figure.

1 O. Nine is a good round figure of being high?

2 A. Yes

3 Q. Would eight to 10 normally result in renal  
4 failure, if a person's level were between eight  
5 to 10?

6 A. I don't know. I don't think so.

7 Q. How about 10 to 14?

8 A. Can I -- I don't like -- I need some help. I  
9 don't think I can get into this, would this  
10 level would cause renal failure, because I don't  
11 think anyone knows.

12 Q. Well, would you expect to see increasing kidney  
13 disease with uric acid elevations in the 10 to  
14 14 range?

15 A. I think progressive kidney disease in gouty  
16 patients has a lot to do with the fact that they  
17 have genetic gout. It has something to do with  
18 the high uric acid.

19 MR. KAMPINSKI: Could you read  
20 back **my** question.

21 - - - -

22 (Thereupon, the requested portion of  
23 the record was read by the Notary.)

24 - - -

25 A. It would depend; but I can't just say yes or no

1 to that.

2 Q. So, in other words, just being in the 10 to 14  
3 range wouldn't necessarily mean to you as a  
4 doctor that this person is going to have  
5 associated kidney failure?

6 A. That's correct.

7 Q. Okay. How **do** you determine whether there is  
8 chronic kidney failure? I mean, what  
9 measurement do you look at to try to help you as  
10 a doctor determine that?

11 A. In any patient?

12 Q. Yes.

13 A. Urine analysis, blood tests.

14 Q. Creatinine?

15 A. Creatinine, BUN.

16 Q. All right.

17 A. Other things, but those are the major ones.

18 Q. Sure.

19 A. X-ray of the kidney.

20 Q. IVP?

21 A. Or ultrasound,

22 Q. And what would be an elevated creatinine, sir?

23 A. Again, that would depend a bit on several  
24 factors, but as a rule of thumb, one would be an  
25 acceptable norm.

1 Q. How about in excess of two, would that be good?

2 A. That would be elevated.

3 Q. That would be elevated. How about BUN, what  
4 would be elevated?

5 A. Again, that sometimes varies from lab to lab,  
6 person to person, but a range, 25 to 30 would be  
7 beginning to worry you.

8 Q. And when you say worry you, worry you in terms  
9 of kidney failure, correct?

10 A. That's correct.

11 Q. And am I correct, doctor, if you have a patient  
12 who has evidence of kidney failure you don't  
13 give them Indocin?

14 A. I'm afraid you are incorrect.

15 Q. I see. Why is that, sir?

16 A. Well, if the patient has acute gout, you have to  
17 treat it with something. The pain of acute gout  
18 is severe.

19 Q. Would you agree --

20 A. Any medicine that you name that is used to treat  
21 gout can hurt the kidneys or hurt other organs.  
22 So that the choice is to give him nothing and  
23 let him hurt, or give him something that might  
24 hurt him to relieve his pain.

25 Q. And you opted to give him something to relieve

1 his pain with the chance that it might hurt him?

2 A. Yes. Just as I might give you aspirin for a  
3 headache and you may have a GI bleed from it.

4 It would be --

5 Q. The same thing?

6 A. Well, damn if you do and damn if you don't.

7 Q. And I assume you were watching his BUN levels to  
8 see if, in fact, there was any effect on him by  
9 giving him Indocin, right?

10 A, Sure. I assumed, though, because he wasn't  
11 taking that much, that he should not have that  
12 much damage from it. But I was checking, yes.

13 Q. What do you mean you assumed? I mean, did you  
14 sit down and talk to him and say --

15 A. I knew Mike for 17 years.

16 Q. Excuse me. Let me finish my question.

17 A. I'm sorry.

18 Q. Did you say to him, you know, Mr. Carrick, how  
19 many did you take between last year and this  
20 year, how many are you taking per day? I mean,  
21 did you write that down anywhere, anywhere in  
22 your chart?

23 A. No. But I had that conversation with Mike  
24 frequently.

25 Q. I see. So based upon your belief as to the

1 amount that he was taking you didn't attribute  
2 the Indocin to the increasing BUN throughout the  
3 1980's, is that your testimony, sir?

4 A. Say that again, please.

5 MR. KAMPINSKI: Read it back.

6 - - - -

7 (Thereupon, the requested portion of  
8 the record was read by the Notary.)

9 - - - -

10 A. The Indocin may have played a role. I believe  
11 it to be a small role. ---

12 Q. Well, what was his BUN in 1979?

13 A. Can I --

14 Q. Absolutely. Any time you need to look at it!  
15 feel free.

16 A. It was 25.

17 Q. What was it --

18 A. Excuse me. Can I -- it was 27 in 1976.

19 Q. When did you put him on Indocin, by the way?

20 A, I believe the very first time I had seen the  
21 man, whenever he had his first attack of gout,  
22 and he may have had that before I saw him.

23 Q. How do you diagnose gout?

24 A. Several ways. One is put a needle in a joint  
25 and aspirate fluid, and if you see uric acid

1 crystals in the fluid that establishes gout.

2 Q. Is that how you did it with Mike?

3 A. No.

4 Q. How did you do it with him?

5 A. Number two, you can do it with elevated blood  
6 tests. If the uric acid is elevated enough you  
7 can be suspicious of gout.

8 Three, the response to treatment, if the  
9 patient has severe pain and gets quick relief  
10 from one of the antiinflammatory drugs, that's  
11 suspicious of gout.

12 The last, the radiologist can occasionally  
13 look at an x-ray of a joint and say that's gout,  
14 but that's rare. Usually they can't.

15 Q. How did you diagnose it in Mike?

16 A. Elevated uric acid, response to treatment.

17 Q. You can have I think you said earlier elevated  
18 uric acid as a result of increasing renal  
19 failure?

20 A. That's right.

21 Q. So that wouldn't necessarily tell you that it  
22 was gout, right, in and of itself?

23 A. Well, I have two comments. First, if the uric  
24 acid were above 11, I think in any patient  
25 probably they have gout no matter what the

1 kidney function is.

2 Q. So it could be associated with renal failure?

3 A. But you got to hear two. People with severe  
4 gout can have normal blood uric acid. So the  
5 uric acid is an index.

6 Q. But I think you just told me, though, that the  
7 uric acid doesn't necessarily indicate to you  
8 that it is gout in and of itself because that  
9 can be indicative of another problem, which is a  
10 kidney problem?

11 A. Depending on its level. For instance, if you  
12 show me a patient with a BUN of 30 and a uric  
13 acid of 12 or 13 he has probably gout. I am  
14 saying uric acid is out of proportion.

15 Q. Well, in '79 the BUN was 25. What was the uric  
16 acid?

17 A. I'm sorry. What year?

18 Q. '79.

19 A. In '79 his BUN, I have here 24, and his uric  
20 acid was 10.2,

21 Q. Okay. How about his blood pressure, do you  
22 know?

23 A. 10/79?

24 Q. I will suggest to you that it was 130 over 90.

25 A. Okay.

1 Q. What role does that play, doctor, in determining  
2 whether a person has renal failure or renal  
3 dysfunction, I should say?

4 A. What role does the blood pressure --

5 Q. Yes. I mean what does it tell you as a doctor  
6 when you've got an elevated blood pressure?

7 A. And those numbers again, please?

8 Q. It was 130 over 90 in '79.

9 A. I don't understand. Is your question does that  
10 level of blood pressure tell me anything about a  
11 patient's kidneys?

12 Q. No. No. Let me withdraw that.

13 Does an elevated blood pressure tell you  
14 anything about a person's kidney function?

15 A. No.

16 Q. All right, What does it tell you?

17 A. An elevated blood pressure tells me that the  
18 patient's blood pressure is elevated, that's  
19 all.

20 Q. What was the BUN in 1980?

21 A. 1980?

22 Q. Yes, **sir**,

23 A. I have 36.

24 Q. And I'm sorry, you said in '79 it was 25, 24?

25 MR. SPISAK: 24 I think he said.

1 Q. 241

2 A. 24.

3 Q. And what's the uric acid in 1980?

4 A. 10.8.

5 Q. And the blood pressure, do you know?

6 A. 1980?

7 Q. Yes.

8 I'll suggest to you it was 150 over 108,  
9 doctor.

10 A. Okay.

11 Q. would that help?

12 MR. SPISAK: Excuse me. Is that  
13 the only reading in that year?

14 MR. KAMPINSKI: That's what I  
15 have.

16 Q. Is that elevated, sir?

17 A. 150 over 108 is elevated.

18 Q. And the BUN had gone up and the uric acid had  
19 gone up, correct?

20 MR. SPISAK: '79 to '80 is the  
21 question. Those were the BUNs. Uric acid '80,  
22 '79.

23 Q. All right. So what did you do about that?

24 A. Continued to try to improve his blood pressure  
25 control.

1 Q. Well, I mean, did you change his medication or  
2 what did you do?

3 A. I'm sorry, I would have to find the note in  
4 which you're reading from. I am not trying to  
5 be difficult.

6 You would, in general, what I am looking  
7 for, you would discuss with that patient reasons  
8 why his pressure might be elevated, emotional  
9 tension pressure, too much intake of salt, not  
10 taking medications.

11 MR. SPISAK: What was the BP  
12 then?

13 MR. KAMPINSKI: Well, I had 150  
14 over 108. But I see one here for apparently --  
15 well, that's what I have.

16 MR. SPISAK: 150 over 108 is on  
17 the cover of that health questionnaire, is that  
18 right?

19 MR. KAMPINSKI: Is that where it  
20 was?

21 MR. SPISAK: I think that is  
22 written on it, yes,

23 A, Can I use yours?

24 MR. SPISAK: Sure. I think that's  
25 what Mr. Kampinski is referring to.

1 A. I'm sorry.

2 MR. SPISAK: This is the health  
3 history taken presumably in November of '80.

4 A. Are you asking what I did about the blood  
5 pressure?

6 Q. Yes. Well, what I want to know is what you did  
7 about the blood pressure, I want to know what  
8 you did about the increase in the BUN. I want  
9 to know what you did about the increase in the  
10 uric acid. I want to know what you did for this  
11 man as his condition got worse.

12 A. On this day?

13 Q. Yes, sure. That's fine. That's a good day.  
14 What did you do then?

15 A. We increased his Esidrix or added Esidrix --  
16 Lasix -- excuse me -- to 20 milligrams, Monday,  
17 Wednesday and Friday.

18 This is 19807

19 Q. Yes.

20 MR. SPISAK: Should you also have  
21 a chart note as such?

22 A. I might.

23 MR. KAMPINSKI: I didn't see it,

24 MR. SPISAK: Okay. I didn't know  
25 if there is or not.

1 A. The things -- the only things I knew and know  
2 how to do is to discuss the things he could do  
3 at home to help control his blood pressure,  
4 modify his diet, take his medication, and --

5 Q. What was the reason for the increase in the BUN,  
6 doctor?

7 A. I believe progressive renal failure due to  
8 interstitial kidney disease.

9 Q. And how do you treat that?

10 A. You can't. At least I can't.

11 Q. What is --

12 A. Other than treat the blood pressure and all  
13 that.

14 Q. When you say you can't, is there somebody who  
15 can?

16 A. I don't think anyone can treat the kidney  
17 disease direct.

18 Q. No?

19 What's Allopurinol?

20 A. That's a medication that causes the body to  
21 excrete uric acid in the urine in a form that  
22 doesn't precipitate a stone, and it's used to  
23 try to prevent acute gout.

24 Q. Did you prescribe it at some point in time?

25 A. I think we tried it, but I discussed with Mike

1           one of the side effects is interstitial  
2           nephritis, which was the disease we were trying  
3           to treat. I think --

4 Q. So you stopped using it?

5 A\* -- his BUN I think went up, but I have to review  
6           this.

7 Q. Sure.

8 A. I have been leery of Allopurinol. I had a  
9           couple of bad effects. I have a note on the  
10          inside of his chart not dated, when he tried  
11          Allopurinol his blood did go up. So let me look  
12          back.

13                   Here is Zyloprim. That is Allopurinol.

14 Q. Is that 1981?

15 A. 1977.

16 Q. '77 you prescribed Allopurinol?

17 A. September of '77.

18 Q. And how long did you give it to him for?

19 A. I know it was for a short period of time.

20 Q. Well, in 1981 the Health History Questionnaire  
21          you got Zyloprim being given, sir.

22 A. 19 --

23 Q. '81.

24 A. We may have tried it again.

25 Q. Well, looking at your office record, clinical

1 sheets, the first time I see mention of it,  
2 doctor, is 1981. You are saying you gave it in  
3 '77?

4 A. I am sorry. My handwriting, it looks like we  
5 tried it.

6 Q. In '77?

7 A. In '77, but my notes would indicate that he had  
8 a flare-up. This is a health history front  
9 sheet.

10 Q. Yes, I see.

11 A. When you start Allopurinol or Zyloprim you can  
12 often cause gout to flare up, and you would stop  
13 it **if** that would happen or you would increase  
14 your use of Indocin on top of it.

15 Q. Is that what you did?

16 A. No, We stopped it.

17 Q. Well, did you increase the use of Indocin?

18 A, **No.**

19 Q. So you decided to use it again or try it again  
20 in 1981?

21 A. Evidently, yes,

22 Q. How long did you give it to him for?

23 A. I'll have to look.

24 Okay. 14 December, 1981, I discontinued  
25 Allopurinol, according to my note here, because

1 he had a rash. ~~His BUN went up.~~

2 Q. Doctor, let's go slow. The BUN on November 15th  
3 of 1980, I got them sitting here if you want to  
4 look at them rather than going through all of  
5 your records, is what? Can you see it?

6 A. 36.

7 Q. And the uric acid is what?

8 A. 10.8.

9 Q. And you prescribed apparently Zylprim on March  
10 26, 1981, according to your record, right, or is  
11 that a refill?

12 A. No. But let me please look at the complete that  
13 was done on 11 to see if he was taking it there.

14 Q. Complete done --

15 A. The complete physical done on the 11/80.

16 MR. SPISAK: Is that this  
17 questionnaire thing?

18 A. Right, Is that the '80?

19 MR. SPISAK: Yes.

20 A. So on this date he was not taking it.

21 Q. I understand.

22 A. I am reviewing my notes here.

23 Q. Sure.

24 A. It looks like we would have started it by  
25 telephone before that date.

- 1 Q. Okay. So we know that when he came in for his  
2 physical in November of 1980 he had an increased  
3 BUN, he had an increased uric acid, correct?
- 4 A. That's correct.
- 5 Q. All right. And at some point in 1981 you  
6 prescribed Zyloprim, right?
- 7 A. That's correct.
- 8 Q. All right. And then the next --
- 9 A. It looks like.
- 10 Q. Then the next physical he was in, October of  
11 1981, and could you please tell me what the BUN  
12 and the uric acid was at that time?
- 13 A. On this sheet?
- 14 Q. Yes.
- 15 A. BUN was 46.
- 16 Q. Okay. So it was up?
- 17 A. Uric acid was 8.
- 18 Q. Pardon me?
- 19 A. 8.
- 20 Q. And it had been 10, almost 11?
- 21 A. Uh-huh.
- 22 Q. So it had decreased?
- 23 A. That's correct.
- 24 Q. And is that what Allopurinol is supposed to do?
- 25 A. Yes. But that can also happen without

1           Allopurinol.

2   Q.   So you took him off the Allopurinol, right, and  
3           then again he was in for his physical apparently  
4           September of 1983. What happened to his uric  
5           acid, sir?

6   A.   It went back up.

7   Q.   To what? Off the chart?

8   A.   Over 12.

9   Q.   Over 12. Why did that happen?

10  A.   Because he has gout.

11  Q.   Well, I thought you told me that what you try to  
12           do is to decrease the uric acid.

13  A.   No, I told you that that's what Allopurinol is  
14           supposed to do.

15  Q.   Well, that's why you gave it to him, to try to  
16           do that, isn't it?

17  A.   Allopurinol caused a rash, according to this,  
18           and Allopurinol raised the BUN.

19  Q.   Well, if you raise the uric acid, what does that  
20           do for kidney function? Does that help it?

21  A.   It doesn't help it. It doesn't hurt it.

22  Q.   Well, can it hurt it?

23  A.   People live for years with elevated uric acid  
24           and have normal kidney function.

25  Q.   Can it hurt it?

1 A. It can **be** associated with. worsening kidney  
2 function, yes.

3 Q. **And what continued** to happen to the uric acid  
4 throughout the 1980's, go up, go down, where did  
5 it go?

6 A. Both directions, as I remember.

7 Q. Well, refresh your recollection.

8 It was routinely 12 throughout 1982 through  
9 1988, wasn't it?

10 A. I can't answer that without shuffling. I am --  
11 you asked me first what was the uric acid during  
12 the Eighties?

13 MR. SPISAK: Yes, that was the  
14 question.

15 A, The best I can tell, these are all the  
16 Eighties. Can I spill over onto your --

17 Q. You sure can.

18 A. As best I can tell, these are all the lab work  
19 that I could find in the chart from the  
20 Eighties.

21 MR. SPISAK: And I think the  
22 question is what happened to the uric acid  
23 levels during those years.

24 Q. Start with '82 and just read them out.

25 A. In 1988 it was 11, 10.8. 3/81 it was 5.5.

1 10/81 8.10.

2 Q. Both of those occasions, by the way, he was on  
3 the Allopurinol, right?

4 A. I'll have to look,

5 Q. Go ahead. There it is. 3/81.

6 A. He was on it in March of '81.

7 Q. Go ahead. And I think you told me earlier you  
8 discontinued it in December of '81?

9 A. That's what this note would indicate. We may  
10 have discontinued it. We may have started it  
11 again. That's what the note said.

12 Q. Fine.

13 A. Where were we?

14 Q. You had given '81 and '82, I believe.

15 MR. SPISAK: Yes, and he had done  
16 that earlier, but not as we were standing here.

17 A. 12/81 is the last one I read you?

18 Q. Go ahead and read it again.

19 A. 8.8.

20 MR. SPISAK: And then earlier in  
21 '81 you had a 5.5, right?

22 A. That's correct.

23 '83.

24 MR. SPISAK: What is that?

25 A. 11.7.

- 1 Q. '84?
- 2 A. 12 plus.
- 3 Q. As a matter of fact, it's off the chart.
- 4 A. Well, 12 is the top of the chart.
- 5 Q. Right. Here is another '84, I think.
- 6 A. Thank you. I skipped this one by accident.
- 7 9/83 it was 12 plus. 11/84, 12 plus. '86,
- 8 2/86, it was 11.4. 2/87, 13.
- 9 What's the date on that? 11/88, 12.
- 10 As best I can tell, that's all the Eighties
- 11 that I could find.
- 12 Q. Would you agree, doctor, that Mr. Carrick
- 13 throughout the 1980's presented with the
- 14 syndrome of progressive renal failure, gouty
- 15 attacks, and uric acid levels of 12 to 14?
- 16 A. That's fair.
- 17 Q. All right. And that's a fairly well described
- 18 entity in the journals, is it not?
- 19 A. Yes.
- 20 Q. And the treatment for that entity is dietary
- 21 protein restriction, Allopurinol to reduce uric
- 22 acid to normal range, discontinuation of all
- 23 potential toxins, and strict control of blood
- 24 pressure, would you agree with that?
- 25 A. Not completely.

1 Q. All right. What do you disagree with?

2 A. It doesn't tell you what to do if the patient  
3 gets sick with Allopurinol. It doesn't tell you  
4 what to do if the gout begins to hurt even  
5 though they are on Allopurinol.

6 Q. All right. So what you did is -- I'm sorry. I  
7 didn't mean to interrupt.

8 A. I think that's --

9 Q. So what you did is when he had a rash you took  
10 him off the Allopurinol?

11 A. As best, yes.

12 Q. And when I said discontinuation of all potential  
13 toxins, a toxin is Indocin, correct?

14 A. And so is Allopurinol.

15 Q. All right.

16 A. If you've read the PDR on Allopurinol, it is bad  
17 for the kidneys. So those who say that's the  
18 way to treat it, I don't know if everyone would  
19 agree with that.

20 Q. What's the -- well, you obviously didn't, right?

21 A. That's correct.

22 Q. And I assume your journals will support your --

23 A. Well, I have articles that will show you the  
24 toxicity with Allopurinol with renal failure,  
25 yes, articles I will show you.

- 1 Q. How about toxicity with Indocin?
- 2 A, Yes. I can show you articles for any  
3 antiinflammatory drug that will help the pain of  
4 Indocin.
- 5 Q. I'm sorry, help the pain of --
- 6 A. I'm sorry. Gout. Gouty pain is severe.
- 7 Q. Sure. Can you give Indocin with someone having  
8 a creatinine in excess of two, sir?
- 9 A. Can you?
- 10 Q. Sure.
- 11 A. Yes.
- 12 Q. Can you give it appropriately?
- 13 A. What do you mean?
- 14 Q. Well, is it appropriate to give Indocin with  
15 someone having a creatinine in excess of two?
- 16 A. If they have a good reason for the Indocin, yes.
- 17 Q. And once again, your good reason was the pain  
18 from gout?
- 19 A. Yes, sir.
- 20 Q. Okay.
- 21 A. And could I --
- 22 Q. Yes. Sure. Please.
- 23 A. We had tried other antigout medicines. Et  
24 didn't work so well.
- 25 Q. Like what?

1 A. Colchicine.

2 Q. Well, I mean did you try them as opposed to  
3 Indocin or in conjunction with the Indocin?

4 A. Over the years we had tried different things.

5 Q. Yes.

6 A. Indocin to me seemed to work the quickest and  
7 the best, and what I was attempting to do was  
8 select the drug that would take the least dose  
9 to give him relief. If I used a safer drug that  
10 didn't work, that accomplishes nothing. If I  
11 use a less safe drug, then I have to give him  
12 two weeks or three weeks.

13 If you could find a short-term drug that  
14 will give you relief, I think that's what you  
15 should look for. Indocin for Mike usually  
16 worked quick.

17 Q. You told me, doctor, that you gave him Indocin  
18 right from the start of your treatment?

19 A, I believe I did, for his acute gout.

20 Q. Did you ever stop it?

21 A. I never gave it to him regularly.

22 Q. Did you ever stop it?

23 A. Yes.

24 Q. When?

25 A. I just ran across a note when we discontinued

1 Indocin and tried Colchicine because the Indocin  
2 wasn't working. I have to find it.

3 Q. Take your time.

4 A. Well, certainly in March of '89. March of '89.

5 Also, I must say to you that when Mike had  
6 Colchicine he was always told to take one or the  
7 other, not both. In '86 he had Colchicine. You  
8 would tell your patient to take the pill that  
9 worked the quickest, but not to take them both.

10 Q. In looking at an April of '86 phone message  
11 showing the medications that he was taking --  
12 here, you can look at that. Do you see that?

13 A. Yes.

14 Q. It has got phone, it has some blood pressure  
15 readings, it shows the medications. Would you  
16 read the medications that he was taking?

17 A. Hydralazine, Lasix, Indocin p.r.n., means as  
18 needed.

19 Q. Go ahead.

20 A. Colchicine.

21 Q. What does it say about Colchicine, how often?

22 A. It doesn't say.

23 Q. Does it say one or the other?

24 A. No, but -- it does not say that.

25 Q. You left it up to him to decide which one to

3 take?

2 A. The one that worked the quickest.

3 Q. The next entry October 30th of '86?

4 A. Refill Hydralazine, refill Indocin.

5 Q. So I guess it was Indocin working the quickest?

6 A. That's been my memory of Michael.

7 Q. Well, a few moments ago you told me the Indocin  
8 was working and the Colchicine was not.

9 A\* No. I am sorry if I said that. At times the  
10 Indocin wouldn't work, we would try colchicine.

11 MR. SPISAK: I think that's the  
12 context of what you said before as well. But  
13 the record will speak for itself.

14 MR. RAMPINSKI: I understood the  
15 context.

16 Q. Once again, doctor, in December of '87 you got  
17 Colchicine q.d., do you see that?

18 A. Uh-huh.

19 Q. What is that?

20 A. Once a day.

21 Q. And then October of '88 you got Colchicine once  
22 a day and Indocin as needed?

23 A. That would indicate he had the Indocin. **He** was  
24 **to** use it if the other didn't work.

25 Q. Is that what that indicates?

1 A. That's right.

2 Q. I thought you said you were going to use one or  
3 the other, but apparently you were using both at  
4 the same time?

5 A. No. He had both in his possession. He was to  
6 use one or the other, but not both at the same  
7 time.

8 Q. Well, I mean, you're the one that referred to  
9 March of '89, doctor. You got Colchicine,  
10 what's that, once a day?

11 A. Uh-huh.

12 Q. Indocin, six pills a day?

13 A. Well, then I would have told him to stop that if  
14 he was doing it.

15 Q. What do you mean you told him to stop that?

16 A. You see Indocin. Colchicine q.i.d. I was  
17 telling Mike not -- he would occasionally as any  
18 patient does, DC indicates stop Indocin.

19 Q. Under March 16th, what does that say?

20 A. Off Colchicine, back on Indocin. Apparently  
21 Mike didn't feel that the Colchicine was  
22 working.

23 Q. Who was the doctor, you or Mike?

24 A. I'm the doctor.

25 Q. Well, you left it up to him to decide which

1 medication to take and when to take it and how  
2 often to take it, is that what was happening  
3 here?

4 A. That's not fair.

5 Q. No?

6 A. No.

7 Q. You tell me what's fair then.

8 A. I told him what to take, when to take it, and  
9 how.

10 Q. And there is no question but you were the one  
11 telling him to take Indocin because you kept  
12 prescribing it, right?

13 A. Say again, please.

14 MR. KAMPINSKI: Read it back,

15 - - - -

16 (Thereupon, the requested portion of  
17 the record was read by the Notary.)

18 - - - -

19 A. To take Indocin to relieve his acute gouty pain,  
20 yes.

21 Q. What is renal vascular hypertension, sir?

22 A. High blood pressure.

23 Q. What does it cause?

24 A. Pardon me?

25 Q. What is it caused by?

1 A. Renal vascular hypertension implies high blood  
2 pressure due to narrowing of the renal arteries.

3 Q. How does it present?

4 A. Usually as high blood pressure.

5 Q. Only?

6 A. Usually.

7 Q. Well, how about rising serum creatinine?

8 A, Yes, that can be, too.

9 Q. And does it present in conjunction with an  
10 unilateral small kidney?

11 A. It can.

12 Q. Well, the IVP in 1976 reflected that Mike did  
13 have a small kidney, didn't it?

14 A. It was a very small congenital -- it looked like  
15 a congenitally hytrophic kidney, not just a  
16 centimeter less than the other.

17 Q. Did Mike have renal vascular hypertension?

18 A. Probably.

19 Q. And how do you treat that?

20 A. Medication.

21 Q. What medication?

22 A. Apresoline, Lasix, high blood pressure pills.

23 Q. Was Mike, in your opinion, a transplant  
24 candidate?

25 A. He would be. He was not yet.

1 Q. But he would have been?

2 A. I believe so.

3 Q. Okay. Under what set of circumstances would you  
4 recommend dialysis on a person?

5 A. On Mike?

6 Q. All right, On Mike.

7 A. I believed Mike had acute hyperparathyroidism.

8 Q. When did you come to that conclusion, before we  
9 go on?

10 A, When he was in the hospital.

11 Q. Which hospital?

12 A. Lakewood.

13 Q. And did you diagnose that anywhere in the  
14 hospital?

15 A. Yes.

16 Q. And could you show that to me in the records  
17 somewhere?

18 A. Well, not exactly that way, excepting the  
19 discharge summary that I made.

20 Q. When did you dictate your discharge summary,  
21 doctor?

22 A. After he was home or after he was at the Clinic.

23 Q. I see. And you had gotten a letter from the  
24 Clinic where they diagnosed it, didn't you?

25 A. Oh, are you implying -- no, no. We knew he had

1 hyperparathyroidism before he left Lakewood.

2 Q. Well, where in the Lakewood chart is there any  
3 mention of hyperparathyroidism other than in  
4 your discharge summary, which was dictated after  
5 you got a letter from the Cleveland Clinic where  
6 they made that diagnosis?

7 A. Well, we talked about hyperparathyroidism on the  
8 night we transferred him. The joint x-rays are  
9 consistent with hyperparathyroidism. I was  
10 reluctant to believe before because of other  
11 things in his condition, but when we realized  
12 they were not present the only thing left was  
13 hyperparathyroidism.

14 One of the reasons to dialyze a patient in  
15 my opinion is hyperparathyroidism.

16 Q. Okay.

17 A. The other is early uremic symptoms.

18 Q. All right. Did he have those?

19 A. I thought he did, but it's possible they  
20 improved.

21 Q. When?

22 A. After he left us.

23 Q. After he left you?

24 A. After he left Lakewood. Uremic symptoms are  
25 subjective conditions, are you nauseated, do you

1           itch, that type of thing.

2   Q.   Let's go slow, doctor. I take it from what you  
3           just told me that it was your plan, and this is  
4           in the chart, to dialyze Mike at Lakewood  
5           Hospital?

6   A.   That's correct. Absolutely.

7   Q.   And you believed that that would have been the  
8           appropriate treatment and care of Mike at that  
9           time based upon his symptoms and the tests that  
10          you had done?

11  A.   I thought it was worth a try, yes.

12  Q.   Okay.

13  A.   I felt it might fail, it might fail.

14  Q.   Yes, but that would have been the first course  
15          of treatment, correct?

16  A.   In my mind, yes.

17  Q.   And that would be good medical care to have  
18          dialyzed him initially, correct?

19  A.   I hate to say that because that implies a lot of  
20          things that I don't want to imply. I think you  
21          could say it would be reasonable to dialyze  
22          Mike.

23  Q.   Well, would it be unreasonable not to then?

24  A.   **No.**

25  Q.   So it would be reasonable to do it and

1 reasonable not to do it?

2 A. Example, bleeding ulcer, should you operate on  
3 them or should you treat them medically for a  
4 while.

5 Q. Excuse me, doctor. Let's deal with this  
6 situation. I mean, Mike didn't have a bleeding  
7 ulcer.

8 A. Okay. I was trying to explain myself.

9 Q. Was it reasonable not to dialyze him?

10 A. Yes.

11 Q. Okay. What's renal osteodystrophy?

12 A. Thinning of the bones connected with kidney  
13 disease.

14 Q. Did Mike have that?

15 A. Yes.

16 Q. Okay. How do you treat that?

17 A. Hard to treat. Hard to treat. Transplantation  
18 helps. Dialysis sometimes, but not often. If  
19 it's associated with overactive parathyroid, you  
20 remove the parathyroid unless you can quiet it  
21 down.

22 Q. What do you mean, you try to quiet it down  
23 first?

24 A. Some people do.

25 Q. Can you reduce the parathyroid hormone levels by

1 medical treatment as opposed to surgical?

2 A. Well, sometimes you can. That's a tough  
3 judgment, tough judgment. Sometimes it works  
4 and sometimes it doesn't.

5 If you dialyze, try to treat them  
6 medically, they can fall apart quick. Some if  
7 you operate fall apart quick. It's a real  
8 delicate problem, in my opinion.

9 Q. Doctor, was Mr. Carrick's blood pressure well  
10 controlled in the 1980's? And you can look at  
11 your records if you need to.

12 A. Right.

13 Q. Let me suggest to you that they were anywhere  
14 from 160 to 180 systolic and a 100 to 110  
15 diastolic throughout the 1980's.

16 Would you consider that to be well  
17 controlled blood pressure or poorly controlled?

18 A. I try to keep the diastolic between 95 and a  
19 100. I try to keep the systolic 160 or below.

20 Q. So would you say that that was poorly controlled  
21 then?

22 A. I average those numbers out, how far away or  
23 what percent were we away from the average?

24 Q. Can you answer my question?

25 A. I have to have numbers,

1 Q. Well, I am giving you hypothetically those were  
2 the numbers, 160 over 180 to 110.

3 A. Wait. 160 to 180 over 100 --

4 Q. Doctor, excuse me. Don't write on your chart.

5 A. I'm sorry.

6 MR. SPISAK: That's okay. We can  
7 put a note there that that's what was written  
8 right now. What did you write, this?

9 A. Yes.

10 MR. SPISAK: Put today's date  
11 there, which is June 16, 1990, and we'll know  
12 for future purposes that in an attempt to answer  
13 that question you wrote on that chart at that  
14 time.

15 A. Initial it, circle it?

16 Q. Yes.

17 MR. SPISAK: Okay.

18 Q. All right.

19 A. All right. Thanks.

20 170, average, 105, no, I would have liked  
21 him a little lower, 160 over 101. I would have  
22 liked them lower.

23 Q. So you would agree that that's not well  
24 controlled then?

25 A. I wish I could have gotten them lower.

- 1 Q. Does that mean it was not well controlled, sir?
- 2 A. Yes.
- 3 Q. All right. The BUN raised throughout the
- 4 1980's, too, didn't it? As a matter of fact, by
- 5 December, 1988 it was up to 96. November of
- 6 1988 it was 90. That's not good, is it?
- 7 A. That's not good.
- 8 Q. What were you doing to treat the elevated BUN?
- 9 A. Diet, trying to control his blood pressure.
- 10 Q. That's it?
- 11 A. That's it.
- 12 Q. Is that the only treatment there is for elevated
- 13 BUN?
- 14 A. Dialysis, transplant.
- 15 Q. Creatinine in 1988 in November was 7.5 and
- 16 December was 7.7. Was that good?
- 17 A. No. It's not good.
- 18 Q. How do you treat that, sir?
- 19 A. Same answers for the BUN, namely try very hard
- 20 to control blood pressure, talk to the patient
- 21 about his diet.
- 22 Q. That's it?
- 23 A. That's it.
- 24 Q. And continue Indocin, right?
- 25 A. Only when it hurts, and only if nothing else

1 works.

2 Q. Did you ever stop to think that maybe you needed  
3 a consult with a nephrologist?

4 A. Mike and I talked about that, but it isn't on  
5 the chart. Yes,

6 Q. Yes? And did you refer him to anybody?

7 A. I did not.

8 Q. Why not?

9 A. We didn't feel it was necessary.

10 Q. "We", you mean you and Mike?

11 A. Uh-huh.

12 Q. Well, what did you say to him and what did he  
13 say to you?

14 A. Oh, God. These were many conversations over  
15 many years,

16 Q. Well, I'm talking about the one that we're  
17 trying to focus in on now in terms of a referral  
18 to a nephrologist.

19 A. I just can't recall the exact words, the dates,  
20 but I did not consult another nephrologist, I  
21 did not.

22 Q. Well, you said a minute ago that we decided not  
23 to, and I want to know what input Mike had into  
24 this in terms of this decision making process.

25 A. I can't give you his exact words or feelings,

1 I'm sorry.

2 Q. Well, the decision to refer is yours, isn't it,  
3 sir?

4 A. Yes. And I am saying I didn't do it.

5 Q. And why not?

6 A. No real reason.

7 Q. Do you have -- I apologize, I may know the  
8 answer to this, and if I do, I'm sorry, and you  
9 can object, Les, what's your insurance limits,  
10 sir? Did you answer an interrogatory on that?

11 MR. SPISAK: I don't think you  
12 did. You are certainly entitled to that, and I  
13 will provide you with that information.

14 Q. Well, what is it?

15 A. I don't know.

16 Q. You don't know what your insurance limits are?

17 Do you have a personal attorney other than  
18 Mr. Spisak representing you, sir?

19 A. I do not.

20 Q. What diet did you put him on?

21 A. I told Mike to eat meat once a day or less, stay  
22 away from milk products, cheese and beans.  
23 That's essentially a low protein, low phosphorus  
24 diet.

25 Q. Okay. When did you put him on that diet?

1 A. When his BUN first began to show elevation, some  
2 years ago,

3 Well, I mean, what are we talking about,  
4 Eighties, Seventies? I mean, you put him on  
5 Indocin right away for the gout, his BUN started  
6 showing elevations when, early Eighties?

7 A. I believe that's true.

8 Q. Okay. Is that when you put him on the diet?

9 A. I believe so.

10 Q. Did you ever change the diet?

11 A. No.

12 Q. Well, let me see if I understand, doctor. You  
13 told me that the treatment for the elevated BUN  
14 and creatinine was the diet and the attempt to  
15 manage the blood pressure. You've indicated to  
16 me that you never changed the diet, so you never  
17 tried to change the treatment in that regard in  
18 the face of a rising creatinine and BUN, and the  
19 blood pressure I thought you told me a few  
20 moments ago was poorly controlled.

21 So I mean, why in the world wouldn't you  
22 try to seek help from someone else if you  
23 weren't able to do the job?

24 A. I don't know how to answer that question.

25 Q. Well, truthfully.

1 MR. SPISAK: You have just  
2 answered it.

3 Q. I mean, is there an answer, or did you fail in  
4 your responsibilities as this man's physician,  
5 sir, in ignoring the signs that, you know, we're  
6 coming to through these tests that you were  
7 ordering and not getting this man some help?

8 MR. SPISAK: I am going to object  
9 to it because there is clearly an accusatory  
10 note in the question.

11 MR. KAMPINSKI: You are absolutely  
12 right.

13 MR. SPISAK:: I don't think that's  
14 proper.

15 MR. KAMPINSKI: You can object all  
16 you want.

17 Q. Now I want an answer.

18 MR. SPISAK: You answer the  
19 question if you can, and you can give Mr.  
20 Kampinski any explanations you think are  
21 appropriate in doing that, as to why you did  
22 what you did, why you did not bring an  
23 additional consultant in, et cetera, et cetera.

24 It's up to you. If you can answer the  
25 question, you do it.

1 A. I can give a vague, general answer.

2 I can't show you notes. I referred a lot  
3 of people to nephrology, the Clinic over the  
4 years. I had no reason not to refer Mike. I  
5 had talked to him about the various things they  
6 might have to do, tests, angiograms, and he  
7 requested not to do it, but to just play the  
8 game this way and take our chances, and I agreed  
9 with that. That's the truth.

10 Q. And an angiogram would have ruled out treatable  
11 forms of renal vascular disease, wouldn't it?

12 A. Well, with the unilateral kidney, throughout  
13 most of those years I don't believe any center  
14 in the area was doing renal artery repair when  
15 you only had one functioning kidney. In the  
16 last few years I think they are trying it, but  
17 the risk is extremely high.

18 Q. Well, that's not the only form of treatment, is  
19 it?

20 A. No.

21 Q. What else is there, dialysis, transplant, right?

22 A. Right.

23 Q. And those were certainly in vogue in the early  
24 Eighties, weren't they?

25 A. Yes.

1 Q. So once again, getting back to my original  
2 question, a renal angiogram can rule out  
3 treatable forms of renal vascular disease, can  
4 it not?

5 A. Yes.

6 Q. And that was never done by you?

7 A. No. Because nobody was doing the surgery in  
8 those days on a unilateral renal artery. When  
9 you only have one kidney --

10 Q. Well, you told me earlier that Mike was a  
11 candidate for transplant, wasn't he?

12 A. No. I said he would be,

13 Q. He would have been?

14 A. Coming up, in the future.

15 Q. And that would have been determined -- well, the  
16 future would have been determined how? I mean,  
17 when do you know the future is now?

18 A. Usually when a patient becomes sick enough to  
19 require chronic hemodialysis. That's when they  
20 become candidates for transplant.

21 Q. And you hadn't even gotten him to the point  
22 where you felt dialysis was appropriate?

23 A. Not until the very end.

24 Q. And when we say the very end, you're talking  
25 about when he was admitted for his bad gouty



1 MR. SPISAK: Are you talking about  
2 the Lakewood admission now?

3 MR. KAMPINSKI: Yes.

4 MR. SPISAK: It starts right  
5 here.

6 A, It was 174.

7 Q. 174, that's pretty high, isn't it? Is that due  
8 to his gout?

9 A. I can quote, tell you exactly what that was due  
10 to. I can name several things.

11 Q. How about the prednisone?

12 A. Unlikely.

13 Q. Okay. How was his CPK?

14 A, 1,600, very high.

15 Q. What was the cause of that?

16 A. We didn't know.

17 Q. Was that due to the prednisone, sir?

18 A. I don't believe so.

19 Q. What was his CPK level on admission to the  
20 Cleveland Clinic?

21 A. I have -- I don't have their --

22 Q. Well, if I told you it was 400, what would that  
23 mean to you as a physician in terms of the CPK  
24 being 1,600 at Eakewood?

25 A. It means that it was much lower.

1 Q. That's good. What does that mean medically as  
2 opposed to numerical?

3 A, Whatever was causing its elevation was  
4 improving.

5 Q. What do you think was causing the elevation?

6 A. See, in my mind I am thinking when he was  
7 admitted to Lakewood Hospital and we saw these  
8 numbers, we didn't know. Mixes --

9 MR. SPISAK: You answered the  
10 question.

11 Q. Did you get a consult from a nephrologist when  
12 he was admitted?

13 A. No.

14 Q. Why not?

15 A. At that point I didn't feel that it was  
16 indicated.

17 Q. Well, you just told me that you didn't know what  
18 was going on with the man. Why didn't you get a  
19 consult?

20 MR. SPISAK: You answered the  
21 question.

22 Q. Because you didn't feel it was indicated?

23 A. No.

24 Q. I see. Well, what did you think his problem was  
25 when he was admitted?

1 A. I was a bit confused. Here is a man with severe  
2 muscle and joint pain, elevated CPK, and gout  
3 that wasn't responding to the usual medications,  
4 I was worried that Mike might have some kind of  
5 a myositis myopathy, so --

6 Q. How long had he been sick, weak and tired, how  
7 long had that been the case prior to March of  
8 '89?

9 A. I'd have to --

10 MR. SPISAK: Yes. Don't guess.  
11 Check your records.

12 A. March 10th. Would that be correct? I can't  
13 find the '89.

14 MR. SPISAK: Please read back the  
15 question.

16 - - - -  
17 (Thereupon, the requested portion of  
18 the record was read by the Notary.)

19 - - - -

20 A. Can I speak to my --

21 Q. Go ahead.

22 A. The best I can tell from this would be the  
23 beginning of March, March of '89. The first  
24 time he saw me was March 10th.

25 Q. When was the time he saw you before then?

- 1 A. '89, '88.
- 2 Q. It's on the back of the page. I think January  
3 of '89, is that right?
- 4 A. I can tell --
- 5 Q. On the back of the March page, doctor, is  
6 January of '89, right?
- 7 A. Yes. I am looking here to see if that's  
8 correct, and it is.
- 9 So January of '89.
- 10 Q. What were you looking at to see if it was  
11 correct?
- 12 A. My front sheet tells me when people come or  
13 call, or it should, and that should correspond  
14 to this as a general rule. I was looking here  
15 to see if there was another date between January  
16 and March that he might have been in.
- 17 Q. And when did you start that system, in 1988?
- 18 A. That goes all the way back.
- 19 Q. I see.
- 20 A. It isn't foolproof.
- 21 Q. Does this list physicals?
- 22 A. If it says complete, that's the way it's  
23 supposed to work.
- 24 Q. I see. How was he when he saw you in January of  
25 '89?

- 1 A. He said he was sick over Christmas, he had gone  
2 to the med center, ~~had a throat~~ culture, which  
3 was negative.
- 4 Q. And what else?
- 5 A. Joint pains. He had no fever. Blood pressure  
6 was 140 over 90.
- 7 Q. I'm sorry. It says 150 over 90?
- 8 A. Well, standing 140 over 90.
- 9 Q. I see. You're reading from the nurse -- below  
10 the nurse's note is your note, is that correct?
- 11 A. That's right.
- 12 Q. Would you read me --
- 13 A. Sick over Christmas, went to med center, throat  
14 culture negative.
- 15 Q. There is two more lines, aren't there?
- 16 A, I am trying to read it. I'm sorry. I can't  
17 make that out. Prednisone 20 milligrams twice a  
18 day for three days.
- 19 Q. Wait a second. The line before that?
- 20 A. I can't read it.
- 21 Q. That's your writing, isn't it?
- 22 A. Yes, it is.
- 23 Q. You don't know what that says?
- 24 A. X R.
- 25 Q. Does that mean x-ray?

- 1 A. I'm sorry. I can't make it out,
- 2 Q. Okay. And that's when you put him on
- 3 prednisone?
- 4 A. For three days, yes.
- 5 Q. And we went over this before, but the
- 6 medications at that time were Colchicine and
- 7 Indocin?
- 8 A. Well, he is taking Colchicine one a day, but he
- 9 possesses Indocin.
- 10 Q. Well, it says p.r.n., as needed, right?
- 11 A. I'm explaining what my notes, what these mean.
- 12 Q. It says Indocin p.r.n., right? Does that mean
- 13 he is taking Indocin as needed?
- 14 A. That would mean that he took it only when he
- 15 isn't taking Colchicine.
- 16 Q. How about Minipress, what's that for?
- 17 A. Blood pressure, one three times a day.
- 18 Q. And what is the next one?
- 19 A. Lo-Sal. He hadn't taken any for two weeks.
- 20 Q. I see. Benadryl?
- 21 A. That he was doing on his own, but that's what he
- 22 was taking. That's a nonprescription drug.
- 23 Q. Well, on the one hand you're taking me what he
- 24 is taking and on the other hand you are telling
- 25 me what he isn't taking. I mean, you said he's

- 1 got Indocin p.r.n., but you are saying he is not  
2 taking it if he is taking the Colchicine  
3 everyday3
- 4 A. I am explaining what we mean by our notes,  
5 Colchicine one q.d. means he takes one everyday.
- 6 Q. Okay. And this by your notes means Indocin if  
7 he doesn't take Colchicine once a day?
- 8 A. If he has acute gout and the Colchicine doesn't  
9 work, yes, but not to take both,
- 10 Q. Okay. So he had muscle weakness when he saw you  
11 in January of '89?
- 12 A. I don't have any note about that, and I don't  
13 recall that he did.
- 14 Q. I thought you said that?
- 15 A. Well, I didn't mean to.
- 16 Q. What did you give him the prednisone for?
- 17 A. Joint pain,
- 18 Q. What joints?
- 19 A. I didn't write them down, but usually it was  
20 Mike's knees and ankles.
- 21 Q. Is this the first time you ever gave him a  
22 steroid?
- 23 A. Yes.
- 24 Q. Why did you give him a steroid on this occasion  
25 when you had been using nonsteroidal drugs

1 before?

2 A. Because the others seemed to me weren't working  
3 and he was hurting. I thought it would be worth  
4 a try.

5 Q. What was the admitting diagnosis in the March  
6 hospitalization?

7 A. Acute gouty arthritis, chronic renal failure.  
8 Nephrosclerosis. Interstitial nephritis.  
9 Hypertension.

10 Q. I'm sorry. Where does it say in there anything  
11 about parathyroidism?

12 A. On the admission diagnosis it does not.

13 Q. ~~Okay. Did you continue giving him prednisone?~~

14 A. **No**, sir. I don't think so.

15 Q. Why don't you take a look?

16 A. Okay.

17 I'm sorry. I cut him down to 10 milligram  
18 prednisone once a day.

19 Q. Well, I'm sorry. This is March now, and you  
20 told me that you gave it to him for three days  
21 back in January.

22 A. That's correct.

23 Q. Well, when did you give him prednisone again?

24 A. To my knowledge, I did not. I started 10  
25 milligram a day in the hospital.

1 Q. Well, you just said you cut it down to 10  
2 milligrams a day, doctor.

3 A. Sorry.

4 MR. SPISAK: Well, it was  
5 different in March, wasn't it?

6 A. See, in March I wrote --

7 Q. 20?

8 A. 20 twice a day.

9 MR. SPISAK: Yes. For three days?

10 A. Off Colchicine.

11 MR. SPISAK: Well, that's a  
12 cutdown, isn't it, 10 milligrams once a day?

13 Q. I see. So, in other words, between January and  
14 March he wasn't taking any?

15 A. Not to my knowledge.

16 Q. All right. So you started him on prednisone  
17 again then in the hospital?

18 A. No, sir. March 16th, I believe this is by  
19 telephone. Off Colchicine, 20 prednisone  
20 b.i.d., down to one a day.

21 So in March I was trying prednisone again.

22 Q. On March 10th?

23 A. Yes.

24 Q. Was he taking prednisone then?

25 A. No. But I prescribed it.

- 1 Q. All right. Why don't you read your entry to me,  
2 if you would?
- 3 A. Shoulders ache, right thigh and kneecap  
4 swollen. PE, gout, Stop Indocin, try  
5 Colchicine four a day, and try prednisone twice  
6 a day.
- 7 Q. Was he still at 20 milligrams?
- 8 A. 20 milligrams prednisone twice a day.
- 9 MR. SPISAK: It says 20 parens  
10 b.i.d., I think.
- 11 A. That's right.
- 12 Q. So on March 10th you put him back on prednisone?
- 13 A. Yes, I did.
- 14 Q. So with no limitation as to how many days, so  
15 that would mean when he came into the hospital  
16 he was still taking the prednisone?
- 17 A. No, sir. He was to call me, which he did.
- 18 Q. And that would be March 16th?
- 19 A. Yes,
- 20 Q. Why don't you read that entry for me?
- 21 A. Off Colchicine, two Indocin. Reduce **the**  
22 prednisone **to** once a day. Four something.
- 23 Q. You can't read that?
- 24 A. I cannot,
- 25 Q. All right. So you had him on the prednisone

- 1           then on March 10th, you reduced him to one a day  
2           on March 16th, right?
- 3   A.   Right.
- 4   Q.   And when he came into the hospital you reduced  
5           the dosage from 20 milligrams to 10?
- 6   A.   That's correct.
- 7   Q.   All right.  And this was for the pain?
- 8   A.   This was to try to suppress his inflammation.
- 9   Q.   Wasn't Indocin an antiinflammatory?
- 10  A.   Yes.
- 11  Q.   Colchicine an antiinflammatory?
- 12  A.   Yes.
- 13  Q.   They weren't working, though?
- 14  A.   No.
- 15  Q.   You didn't stop them, though, did you?
- 16  A.   I cut them down.
- 17  Q.   **You** did?
- 18  A.   I believe I did.
- 19  Q.   Well, he stopped one on one occasion, and you  
20           stopped the other on the other?
- 21  A.   I stopped Indocin, upped the Colchicine, and  
22           when that wasn't working I said stop the  
23           Colchicine, go to two Indocin, down to one  
24           prednisone.
- 25  Q.   All right.

1 A. Trying to tailor it.

2 Q. Is there a risk of bleeding with an increased  
3 BUN? What does BUN stand for?

4 A. Blood urea nitrogen.

5 Q. And if it's high, does that indicate to you as a  
6 physician that there's an increased risk of  
7 bleeding?

8 A. One of the things that can happen in uremia is  
9 an increased tendency to bleed.

10 Q. And that would make operating on a person with  
11 an increased BUN somewhat more hazardous,  
12 correct, in terms of the risk of bleeding  
13 perioperatively?

14 A. Well, can I explain that?

15 Q. Sure.

16 A. It isn't the BUN that causes the bleeding, but  
17 as the kidneys begin to fail they affect the  
18 clotting mechanisms sometimes of the body. So  
19 by measuring the clotting mechanisms, if they're  
20 all right, you are reasonably safe, because  
21 occasionally you must operate on people with  
22 elevated BUN.

23 Q. Is the reason you wanted to dialyze Mr. Carrick  
24 because his BUN was so high?

25 A. Well, there were a group of reasons.

1 Q. What were they?

2 A. That was one of them.

3 Q. All right.

4 A. One was, Mike to me wasn't getting better, he  
5 wasn't eating, he looked sick, the BUN was  
6 staying high. We had excluded any myopathy.  
7 The x-ray people talked about parathyroidism.

8 Q. The x-ray people, what x-ray people?

9 A. The x-rays of Michael's joints --

10 Q. Yes?

11 A. -- were read as consistent, as consistent with  
12 hyperparathyroidism.

13 Q. Did they mention hyperparathyroidism in the  
14 x-ray reports?

15 A. Yes.

16 Q. Can you show that to me?

17 MR. SPISAX: Do you have it,  
18 Chuck, or do you want him to -- what's the  
19 date?

20 A. 3/22.

21 Q. '89?

22 A. Uh-huh. Both shoulders.

23 Q. Yes. Showing evidence of calcific deposits?

24 A. Yes.

25 Q. All right. And his impression was abnormal

- 1 calcifications surrounding both shoulders, more  
2 extensive in the right shoulder?
- 3 A. Secondary hyperparathyroidism, do you have  
4 that?
- 5 Q. Yes. From the known severe renal failure can  
6 give this appearance?
- 7 A. Yes.
- 8 Q. And differential diagnosis?
- 9 A. Yes.
- 10 Q. Gout, pseudogout, myositis, ossificans, severe  
11 bilateral peritonitis calcarea, and skeleton,  
12 metabolic, bone survey might give additional  
13 information, right?
- 14 A. Right.
- 15 Q. What's the difference between secondary  
16 hyperparathyroidism and primary?
- 17 A. Secondary hyperparathyroidism **is** caused by some  
18 other illness like renal failure.
- 19 Primary hyperparathyroidism no one knows  
20 the cause. The glands just start to become  
21 overactive.
- 22 Q. When did you diagnose Mr. Carrick as being in  
23 renal failure?
- 24 A. Whenever we reviewed before when his **BUN** and  
25 creatinine started to go up.

- 1 Q. Early Eighties?
- 2 A. I thought so.
- 3 Q. Okay. So from that point on he was in renal  
4 failure as far as you were concerned?
- 5 A, A degree of it, that's correct.
- 6 Q. And you told him that, too, I assume?
- 7 A. Yes.
- 8 Q. Did you ever talk to his wife?
- 9 A. No. Well, I think the last day Mike was in  
10 Lakewood.
- 11 Q. And what was that discussion?
- 12 A. I had called her at home to ask her permission  
13 to dialyze Mike the next day at Lakewood, put  
14 him on a kidney machine, or to notify her that  
15 that was my intention, whatever is the correct  
16 way to say that.
- 17 Q. What did she say?
- 18 A. Well, I don't remember her exact words, She  
19 asked would I get a second opinion from a  
20 boarded nephrologist.
- 21 Q. And what did you say to that?
- 22 A. I tried to talk to her a little bit. She was  
23 understandably very upset, and I translated her  
24 request, at that point, in my opinion, Michael  
25 Carrick's case was very complicated, it was

1 going to require a series of decisions, not just  
2 one. And I thought the best way to satisfy what  
3 I think she was saying to me was to send him to  
4 a place that I thought had the best team for  
5 this whole problem, which was the Clinic.

6 Q. So that was your decision then, right?

7 A. That was my decision, I called then to Mike's  
8 bedside and talked to him, I think his mother  
9 was in the room with him, and explained what was  
10 going on, and he agreed.

11 Q. The family didn't insist on taking him out of  
12 your care and transferring him to the Clinic?

13 A. No.

14 Q. No. Okay. What's renal azotemia?

15 A. Azotemia is a biochemical term. It means  
16 abnormal blood chemistries. Renal azotemia  
17 means abnormal chemistries due to poor kidney  
18 function.

19 Q. You would disagree that you had Mr. Carrick on  
20 the administration of Indocin from 100, 200  
21 milligrams a day throughout the period of 1979  
22 to 1989?

23 A. I would disagree.

24 Q. And if you did have him on that kind of  
25 administration of Indocin, not only would that

1 be malpractice, doctor, that would be criminal,  
2 wouldn't it?

3 MR. SPISAK: Objection. You don't  
4 have to answer that. I am going to instruct you  
5 not to answer.

6 Q. Well, that would fail to meet the appropriate  
7 standard of care, wouldn't it, required of a  
8 physician?

9 A. I wouldn't do it.

10 MR. SPISAK: That's fair.

11 A. And I didn't do it.

12 Q. And if a physician did do that in Mr. Carrick's  
13 case, that would be a failure to adhere to the  
14 appropriate standard of care required, wouldn't  
15 it?

16 A. I don't know how to answer that question.

17 Q. Well, either yes or no.

18 MR. SPISAK: If you can answer it,  
19 fine. If you can't, then tell Mr. Kampinski you  
20 can't.

21 A. I can't.

22 Q. We agree that that would be inappropriate,  
23 wouldn't it?

24 MR. SPISAK: I think you have  
25 already told him you wouldn't do it.

1 Q. Well, is the reason you wouldn't do it is  
2 because that would be inappropriate?

3 A. Really it shouldn't be necessary.

4 Q. The question is would it be appropriate?

5 A. I don't know.

6 Q. Would you agree that the one drug specifically  
7 indicated for gouty nephropathy is Allopurinol?

8 A. No, I would not,

9 Q. What other drugs are there?

10 A. I don't know of any, really, that are totally  
11 safe, proven to work,

12 Q. Well, is Allopurinol indicated for gouty  
13 nephropathy?

14 A. There is disagreement on that. Not everyone  
15 agrees.

16 Q. Well, you apparently agreed because you tried  
17 it.

18 A. Excuse me. I used it to try to prevent his  
19 acute gouty attacks. That may sound like  
20 splitting hairs, I am not, not because I believe  
21 it would reverse renal failure.

22 Q. But to prevent the attacks?

23 A. That's correct,

24 Q. I see. So it was being given as a prophylactic  
25 drug then?

1 A. Correct.

2 Q. Okay.

3 MR. KAMPINSKI: That's all I  
4 have.

5 MR. LAURENSEN: We reserve our  
6 right on behalf of Cleveland Clinic.

7 MR. KAMPINSKI: Deirdre?

8 MR. FIFNER: We reserve our  
9 rights.

10 MR. KAMPINSKI: If you want to ask  
11 questions, ask questions,

12 MR. SPISAK: I don't have  
13 objections to reserving your rights.

14 MS. HENRY: I reserve my right.

15 MR. KAMPINSKI: The one thing I  
16 would like, Les, and let me see if this is  
17 agreeable, just hold on one second, doctor,  
18 obviously there is some problem with the  
19 deciphering of the doctor's notes. Now we could  
20 sit here and go through them. I prefer not to  
21 do that.

22 I would like two things done. Number one,  
23 I would like a photograph copy. Obviously I  
24 will pay for photographs of his charts.

25 MR. SPISAK: Everything here?

1 MR. KAMPINSKI: That's right.

2 MR. SPISAK: When you say  
photograph copy, a Xerox?

4 MR. KAMPINSKI: No. Photograph.  
5 Secondly, I would like him to decipher his notes  
6 beginning with the beginning and have them typed  
7 up or whatever form you want to put it in, just  
8 so we know what he has written.

9 MR. SPISAK: Translation?

10 MR. KAMPINSKI: Yes.

11 MR. SPISAK: Okay.

12 MR. KAMPINSKI: And when I say  
13 photographed, I **am** talking about his written  
14 notes, not the whole chart, the rest **of** it  
15 Xeroxed, but the written ones photographed.

16 Is that agreeable?

17 MR. SPISAK: Yes. I don't have  
18 any problem with that, none at all.

19 MR. KAMPINSKI: Okay. And I  
20 assume you want him to read it?

21 MR. SPISAK: Yes.

22

23

---

ROBERT P. RILEY, M.D.

24

25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

C E R T I F I C A T E

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

I, Susan M. Cebron, a Notary Public within and for the State of Ohio, authorized to administer oaths and to take and certify depositions, do hereby certify that the above-named ROBERT P. RILEY, M.D., was by me, before the giving of their deposition, first duly sworn to testify the truth, the whole truth, and nothing but the truth; that the deposition as above-set forth was reduced to writing by me by means of stenotypy, and was later transcribed into typewriting under my direction; that this is a true record of the testimony given by the witness, and was subscribed by said witness in my presence; that said deposition was taken at the aforementioned time, date and place, pursuant to notice or stipulations of counsel; that I am not a relative or employee or attorney of any of the parties, or a relative or employee of such attorney or financially interested in this action.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office, at Cleveland, Ohio, this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 19 \_

\_\_\_\_\_  
Susan M. Cebron, Notary Public, State of Ohio  
1750 Midland Building, Cleveland, Ohio 44115  
My commission expires August 16, 1993