

<p style="text-align: right;">Page 1</p> <p>1 IN THE COURT OF COMMON PLEAS 2 CUYAHOGA COUNTY, OHIO 3 VICKI MIGLORE, et al., 4 Plaintiffs, 5 vs Case No. 99 CV 03 0973 6 LAWRENCE SPOLJARIC, 7 M.D., et al., 8 Defendants. 9 10 ----- 11 DEPOSITION OF JESSI SMITH 12 THURSDAY, SEPTEMBER 14, 2000 13 ----- 14 The deposition of JESSI SMITH, the Witness 15 herein, called by counsel on behalf of the 16 Plaintiff for examination under the statute, 17 taken before me, Vivian L. Gordon, a Registered 18 Diplomate Reporter and Notary Public in and for 19 the State of Ohio, pursuant to agreement of 20 counsel, at the Wadsworth-Rittman Hospital, 195 21 Wadsworth Road, Wadsworth, Ohio, commencing at 22 4:50 o'clock p.m. on the day and date above set 23 forth. 24 25</p>	<p style="text-align: right;">Page 3</p> <p>1 JESSI SMITH, a witness herein, called for 2 examination, as provided by the Ohio Rules of 3 Civil Procedure, being by me first duly sworn, as 4 hereinafter certified, was deposed and said as 5 follows: 6 EXAMINATION OF JESSI SMITH 7 BY MR. MISHKIND: 8 Q. Would you please state your name. 9 A. Jessi Smith. 10 Q. Where do you live? 11 A. 247 College Street, Wadsworth. 12 Q. Are you employed? 13 A. Yes. 14 Q. Where do you work? 15 A. Medina Post Office. 16 Q. How long have you worked at the post 17 office? 18 A. At that post office, one year. 19 Q. What did you do before that? 20 A. Cleveland Post Office. 21 Q. Did you go directly from the Cleveland 22 Post Office to Medina? 23 A. Yes. 24 Q. How long were you at the Cleveland 25 Post Office?</p>
<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES: 2 3 On behalf of the Plaintiff 4 Becker & Mishkind 5 BY: HOWARD D. MISHKIND, ESQ. 6 Skylight Office Tower Suite 660 7 1660 W. 2nd Street 8 Cleveland, Ohio 44113 9 10 On behalf of the Defendant Dr. Cola 11 Buckingham, Doolittle & Burroughs 12 BY: MARK D. FRASURE, ESQ. 13 One Cleveland Center 14 1375 East 9th Street 15 Cleveland, Ohio 44114 16 17 On behalf of the Defendant Dr. Spoljaric 18 Reminger & Reminger 19 BY: THOMAS E. CONWAY, ESQ. 20 The 113 St. Clair Building 21 Cleveland, Ohio 44114 22 ----- 23 24 25</p>	<p style="text-align: right;">Page 4</p> <p>1 A. One year. 2 Q. What do you do at the Medina Post 3 Office? 4 A. Distribution clerk. 5 Q. And at the Cleveland Post Office? 6 A. Mail processor. 7 Q. Where were you employed before the 8 Cleveland Post Office? 9 A. Dr. Spoljaric's office. 10 Q. When did you leave Dr. Spoljaric's 11 office? 12 A. I believe it was July 26th, 13 approximately. 14 Q. What year would that be? 15 A. '98. 16 Q. How long were you employed in Dr. 17 Spoljaric's office? 18 A. I believe it was four years or close 19 to it. 20 Q. Starting sometime in 1994? 21 A. Yeah, I believe it was in July of '94. 22 Q. What was your position in Dr. 23 Spoljaric's office? 24 A. Receptionist. 25 Q. Have you ever had your deposition</p>

Page 5

1 taken before?
2 A. No.
3 Q. You're doing a fine job so far.
4 Let me just indicate that in the event
5 I do ask you anything that is confusing, tell me
6 that you don't understand it. I doubt that I will
7 ask you anything that is going to be highly
8 technical, but if you don't understand a
9 question, don't venture an answer, just tell me I
10 don't understand and I will try and rephrase it.
11 Fair enough?
12 A. Okay.
13 Q. Also, wait until I am done with the
14 question, just so that Vivian doesn't have to
15 move her fingers quicker than she has to
16 otherwise.
17 A. Okay.
18 Q. I know when you came in to the
19 deposition you were holding some documents with
20 you. Is that the file?
21 A. Yes.
22 Q. And what is contained in that file?
23 A. It is Vicki's chart.
24 MR. MISHKIND: Do you mind if I take a
25 look?

Page 6

1 MR. CONWAY: Go ahead.
2 Q. The file that I have in my hand right
3 now is the file that you came in with, which is
4 the original of Vicki's file; correct?
5 A. Yes.
6 Q. Is this the entire document, the
7 entire content of material that you brought with
8 you today?
9 A. No.
10 Q. Was there something removed from this
11 file?
12 A. Yes.
13 Q. What was removed?
14 A. I had stopped at Mary Ellen's and she
15 gave me --
16 MR. CONWAY: This is stuff for me,
17 that she was going to give to me.
18 Q. Who is Mary Ellen?
19 A. She works at Dr. Spoljaric's office.
20 MR. MISHKIND: There is a deposition
21 transcript.
22 MR. CONWAY: A deposition which Mary
23 Ellen has marked certain things that she wants me
24 to look at that she is no part of. And I think
25 there was also --

Page 7

1 MR. MISHKIND: Well, let me ask the
2 witness. There is a deposition transcript.
3 MR. CONWAY: Without getting into the
4 contents of what is marked.
5 MR. MISHKIND: Absolutely.
6 Q. What else was removed?
7 A. What do you mean removed?
8 Q. The deposition transcript was with
9 you?
10 A. Right.
11 Q. As well as the file.
12 A. She handed me that stuff and I brought
13 it here.
14 Q. So there is a deposition that Mr.
15 Conway has, a file which I have in my hand right
16 now, and what else was there that you brought
17 with you?
18 A. A letter.
19 MR. CONWAY: From me to Dr. Spoljaric.
20 Q. The deposition transcript, is that the
21 deposition of Dr. Spoljaric?
22 A. I believe so. I guess.
23 Q. Did you read that deposition
24 transcript over?
25 A. No.

Page 8

1 Q. Did you look through it?
2 A. I saw the front of it. I just got it.
3 MR. CONWAY: Actually, it's a
4 deposition of Vicki Miglore. I am just saying
5 this so there is no bad appearance. This is a
6 letter telling Dr. Spoljaric that I am taking her
7 deposition on the 14th, okay?
8 MR. MISHKIND: Taking whose
9 deposition?
10 MR. CONWAY: Or you are taking her
11 deposition on the 14th. I am presenting her for
12 deposition on the 14th, and the chart.
13 Q. I am not trying to make this
14 difficult. It's just --
15 A. That's okay.
16 Q. Besides the deposition of Vicki
17 Miglore and the letter that is now in Mr.
18 Conway's possession, and Vicki's chart, did you
19 bring anything else with you today?
20 A. My purse.
21 Q. Fair enough. I am not going to ask
22 you what is in the purse. How does that sound?
23 A. Good.
24 Q. Did you look at Vicki's deposition at
25 all, look at any of the content?

2 (Pages 5 to 8)

Page 9

1 A. I just, when I got in the car, you
2 know, I looked at the front and just set it on
3 the seat. Because I just stopped at her place
4 real quick.
5 Q. Her place being?
6 A. On Blake Road.
7 Q. That's Mary Ellen's?
8 A. Uh-huh.
9 Q. That's a yes?
10 A. Yes.
11 Q. And I'm sorry, Mary Ellen works for
12 Dr. Spoljaric?
13 A. Yes.
14 Q. What is her title there, do you know?
15 A. She does the billing, so she would be,
16 I don't know what they call those.
17 MR. FRASURE: Billing coordinator.
18 THE WITNESS: There you go.
19 Q. You had in your possession Vicki's
20 deposition, but you did not read it; true?
21 A. True.
22 Q. Have you looked through any of Vicki's
23 chart prior to coming here today?
24 A. Yes.
25 Q. Did you look through it from front to

Page 10

1 back?
2 A. Not really. I just looked at the
3 things that I remembered, where I did the
4 referral, and the day that she was there last.
5 Q. Okay. Aside from what we have talked
6 about in terms of the chart, the letter, and
7 Vicki Miglore's deposition, have you seen any
8 other documents that would in any way pertain to
9 Vicki Miglore?
10 A. No.
11 Q. Why did you leave Dr. Spoljaric's
12 office in July of '98?
13 A. I wanted to make more money.
14 Q. Did you resign from your position
15 there?
16 A. Yes.
17 Q. To take the position at Cleveland Post
18 Office?
19 A. Correct.
20 Q. Do you have any medical training?
21 A. No.
22 Q. Did you take any courses at all in any
23 medical-related, medical terminology or medical
24 technician courses?
25 A. No.

Page 11

1 Q. A receptionist in a doctor's office
2 can mean a number of different things, so I don't
3 want to assume what it meant in terms of what
4 your job responsibilities were. Can you
5 summarize for me what your job involved as the
6 receptionist in Dr. Spoljaric's office, please?
7 A. Sure. I answered the phone. I made
8 new charts. I took patients back. I did take
9 weights, referrals. And that would be about it.
10 Q. Please explain to me what is involved
11 in making a referral.
12 A. First you have to okay it with the
13 doctor, make sure that it's okay to refer to a
14 certain -- you know, a patient, if they call in
15 and ask can I go see doctor so-and-so for this
16 problem, you run it by Dr. Spoljaric, and if he
17 says I can see them for that, I need to see them
18 first, then they would come in. But it's just
19 fill out paperwork.
20 Q. Tell me, just to back up for a moment,
21 your educational background. How far did you go
22 with your schooling?
23 A. I graduated high school and took two
24 years in college.
25 Q. What college would that be?

Page 12

1 A. Akron University.
2 Q. What were you studying at Akron?
3 A. General classes. First year and then
4 business. Computer.
5 Q. I have not been in Dr. Spoljaric's
6 office when I met him. We took his deposition
7 here, so I have not had the opportunity to see
8 the physical layout of the office or to meet any
9 of the other ladies, but other people worked in
10 the office.
11 Besides yourself as the receptionist,
12 was Mary Ellen also a full-time employee at some
13 time -- when you were working there, was Mary
14 Ellen there, as well?
15 A. Yes.
16 Q. On a day-to-day basis, who else would
17 be working there on a full-time basis when you
18 were there, besides Mary Ellen and Dr. Spoljaric?
19 A. Sue Gerard.
20 Q. Do you know what Sue's position was?
21 A. She worked the front desk.
22 Q. Did she have any medical background?
23 A. She works at a nursing home. I
24 believe she was a nurses aide.
25 Q. Who else was employed when you were

3 (Pages 9 to 12)

Page 13

1 working prior to July of 1998 on a full-time
2 basis besides Sue, Mary Ellen, yourself and Dr.
3 Spoljaric?
4 A. Before I was there?
5 Q. Before you left.
6 A. Before I left?
7 Q. You told me about full-time
8 employees: Yourself, Sue, Mary Ellen.
9 A. That was it.
10 Q. When is the last time you talked to
11 Dr. Spoljaric?
12 A. I'm not sure.
13 Q. Well, have you talked to Dr. Spoljaric
14 since leaving your employment there in July of
15 '98?
16 A. Yes.
17 Q. Have you ever talked to Dr. Spoljaric
18 at any time concerning Vicki Migllore, since you
19 left your employment there?
20 A. Yes.
21 Q. When?
22 A. I was there for a doctor's
23 appointment.
24 Q. Is Dr. Spoljaric your physician?
25 A. Yes. And he had mentioned that I

Page 14

1 would be doing a deposition, or asked me if I
2 would, I'm not sure.
3 Q. Would that have been the first time
4 that you were aware of the fact that you might
5 have this occasion to meet me or to talk with an
6 attorney about Vicki Migllore?
7 A. I don't understand.
8 Q. Fair enough. When you went to see Dr.
9 Spoljaric, it was for your personal health; true?
10 A. Yes.
11 Q. And at that time, in the context of
12 seeing him and the physician/patient
13 relationship, he said to you, by the way, you may
14 have to give a deposition?
15 A. It was after I was out of the room and
16 leaving. And I believe -- yeah. After I got
17 out, it was after I was standing there and I was
18 writing my check and leaving.
19 Q. Tell me, as best as you can recall, as
20 you're paying your bill, getting ready to leave,
21 tell me to the best of your recollection what it
22 is that Dr. Spoljaric said to you.
23 A. He asked me if I remembered the
24 patient Vicki Migllore and that possibly I would
25 be asked to give a deposition for that, and asked

Page 15

1 if that would be a problem. I said no.
2 Q. Was that the only time that you talked
3 to Dr. Spoljaric about Vicki?
4 A. I believe so.
5 Q. Did you ever have any conversations
6 with him over the phone at any time thereafter?
7 A. No.
8 Q. You said I believe so. Are you
9 uncertain as to whether you might have talked to
10 him again or are you pretty certain that that was
11 the only time?
12 A. Oh, I have been in the office a few
13 times, you know. I think I have had two
14 appointments there in the past year. So I can't
15 remember if we talked about it before that.
16 Q. So what you are telling me, it's
17 possible that just in passing he may have said
18 something to you when you were there for your own
19 appointment, but nothing stands out in your mind?
20 A. Right. Like maybe he might have said
21 Vicki Migllore is suing me or something like that,
22 because I know that I heard that she was. But
23 that could have been from the office girls also.
24 Q. How long has Dr. Spoljaric been your
25 doc?

Page 16

1 A. Probably three years.
2 Q. So he started to be your doc while you
3 were still working there, as well?
4 A. Right.
5 Q. And you just continued going after
6 going to the post office?
7 A. Yes.
8 Q. Have you had conversations about Vicki
9 with any of the employees, such as Mary Ellen or
10 Sue, since leaving Dr. Spoljaric's employment?
11 A. Yes.
12 Q. Who?
13 A. Mary Ellen.
14 Q. How many times have you talked with
15 Mary Ellen?
16 A. Maybe twice.
17 Q. Now, you stopped today to pick up the
18 material which you brought with you. And you
19 obviously had a conversation with Mary Ellen at
20 that time?
21 A. I told her I was on my way to do the
22 deposition, and that was pretty much it. She said
23 could you give these to him, and I said yes.
24 Q. Tell me about the occasions where
25 you've talked to Mary Ellen about Vicki Migllore.

4 (Pages 13 to 16)

Page 17

1 When did those take place?
2 A. It's been a while. When, I guess,
3 they first found out that she was also suing Dr.
4 Spoljaric, she asked me if I remembered the case.
5 Q. Did she give you a call or were you
6 still working there at the time?
7 A. No, I wasn't working there at the
8 time.
9 Q. So she contacted you?
10 A. Right.
11 Q. At the post office, perhaps?
12 A. No, at home.
13 Q. And asked you whether you remembered
14 Vicki?
15 A. Yes.
16 Q. And did you have a conversation at
17 that time about what you remembered?
18 A. Yes, uh-huh.
19 Q. This would have been over the
20 telephone with Mary Ellen?
21 A. I don't quite remember. It could have
22 been over the telephone or in person.
23 Q. There was one other occasion also that
24 you had a substantive conversation with Mary
25 Ellen about Vicki?

Page 18

1 A. Twice, yeah.
2 Q. Would that have been in person or over
3 the telephone?
4 A. I don't remember.
5 Q. Would it be, again, to review what it
6 was that you remembered about Vicki?
7 A. Yes. She asked me what, you know,
8 what I remembered, and I said I remember doing
9 referrals for her.
10 Q. I'm going to talk to you about what it
11 is that you remember in a moment, but I just want
12 to find out, besides Mary Ellen and the reference
13 of the conversation that you told me about with
14 Dr. Spoljaric, are there any other individuals
15 from Dr. Spoljaric's office that you talked to at
16 any time about Vicki since leaving?
17 A. No.
18 Q. I take it you remember Vicki Miglore?
19 A. Yes. Somewhat. It's been two years.
20 Q. Were you involved in any aspect of
21 making any referrals?
22 A. Yes.
23 Q. Can you tell me when and how many
24 referrals?
25 A. I did the emergency room referral, and

Page 19

1 when she left the emergency room, or when she was
2 referred to another, I guess for dialysis, I did
3 that referral.
4 Q. The emergency referral would have been
5 in March, does that sound about right?
6 A. Yes.
7 Q. Is there something noted in the chart
8 that causes you to be able to recall making that
9 referral?
10 A. Sure. The referral paper. But I knew
11 that. I remembered.
12 Q. You remembered making the referral.
13 And then you looked and saw the document that
14 confirmed that you made the referral; correct?
15 A. Yes.
16 Q. Can you show me the document in the
17 file that would have been the referral form?
18 A. This one.
19 MR. CONWAY: Actually, Howard, there
20 was one other item that is not part of the
21 transcript which Mary Ellen gave to her to give
22 to me, but I'm not going to share with you what
23 it is. But it's a document that you have nothing
24 to do with.
25 MR. MISHKIND: It looks like a page

Page 20

1 from a calendar.
2 MR. CONWAY: Yeah, all right, whatever
3 you want to do, but I am just telling you.
4 MR. MISHKIND: Does it have any
5 relevance to this case in terms of perhaps
6 scheduling of appointments or something?
7 MR. CONWAY: It does, but it has
8 nothing that she can testify to. And if you want
9 to talk about it later on, I can talk with you
10 about it.
11 MR. MISHKIND: Obviously, if it's
12 something that may be relevant or potentially --
13 MR. CONWAY: I understand that. But
14 you had nothing to do with this, so it's not even
15 germane, but I will talk to you later.
16 MR. MISHKIND: That's fine.
17 Q. Now, the document that I have in front
18 of me, the original -- actually it's the primary
19 care physician copy and it's pink. I have a copy
20 in my file that was provided by Mr. Conway. It's
21 not pink, it's white, because it's Xeroxed. Is
22 this a document that you filled out?
23 A. Yes.
24 Q. There is a reference to the date of
25 March 10, the member's name, member's ID, where

5 (Pages 17 to 20)

Page 21

1 the patient is being referred to, the date of
2 birth, diagnosis, ICD 9 codes and then the
3 appointment date. And that's all in
4 handwriting. Is that in your handwriting?

5 A. Yes, it is.

6 Q. The diagnosis, possible dehydration
7 and gastroenteritis, where did you obtain that
8 information to put the diagnosis down?

9 A. Probably Dr. Spoljaric.

10 Q. Do you have a specific recollection of
11 Dr. Spoljaric giving you that information or is
12 that just normal practice?

13 A. When she called that day, I talked to
14 him and he said she might be dehydrated, or you
15 know, she needs to go to the emergency room, so
16 that's where I got the dehydration from. And he
17 probably looked at the throwing up and that would
18 be the gastroenteritis.

19 Q. The purpose for this question is just
20 to try to determine areas where I should or need
21 to ask you questions about, so I'm going to try
22 to limit things and that's why this question is
23 asked.

24 Do you have any recollection, Jessi,
25 of any communication or contact that you had with

Page 23

1 Q. And that all took place on March 10;
2 true?

3 A. As far as I can remember, yes. That
4 was the day of the appointment.

5 Q. Now, before March 10, March 9, back to
6 the beginning of the year, back to the beginning
7 of January of that year, do you have any
8 recollection of any conversations in person or on
9 the phone with Vicki or with her husband?

10 A. Yes.

11 Q. Tell me when you remember having
12 conversations with Vicki before March 10.

13 A. It was either she came in or I talked
14 to her on the phone about, she was switching over
15 to Dr. Spoljaric, and, you know, when people are
16 switching over, we used to tell them, you know,
17 have your records sent or get your records.

18 After that, she came in and she had
19 made an appointment because she wasn't feeling
20 well, and we got her in, and she came in and she
21 was at the window and she said something about
22 not having her records. And so either we told
23 her that she needed to go to Dr. Cola's office
24 and sign a release to get them and she said she
25 would do that.

Page 22

1 Vicki prior to March 10, before March 10, 1998?
2 Do you remember anything about any contact or
3 communication before this date?

4 A. Yes.

5 Q. What do you remember and when?

6 A. She called and said she was sick. She
7 said she was vomiting and, whatever, vomiting and
8 tired or whatever, and she would like to see the
9 doctor. So we made her an appointment.

10 Q. Do you recall what --

11 A. Or that's wrong. I'm sorry.

12 Q. That's okay.

13 A. She called and said she was vomiting
14 and we told her that, you know, it sounds like a
15 virus. Actually we put her on hold and talked to
16 Dr. Spoljaric and he said it sounds like, you
17 know, it's a virus; call in a couple days if she
18 is worse, or call if she gets worse. And so
19 that's what we told her.

20 And then I believe she called or her
21 husband called back and said she couldn't even
22 get out of bed, and we either took a phone number
23 or put her on hold, him on hold and talked to the
24 doctor again and he said you need to send her to
25 the emergency room.

Page 24

1 Q. Feel free to look at the record if
2 this would help put dates behind some of these
3 conversations.

4 My understanding is that Vicki was
5 first seen in Dr. Spoljaric's office after a long
6 period of not being a patient of his on December
7 30, 1997. Is that consistent with what your
8 records show?

9 A. Yes.

10 Q. The reference that you just made in
11 terms of her calling to set up an appointment to
12 see Dr. Spoljaric, can you tell me when it was
13 that she called?

14 A. The first time when I was telling you
15 was before, it was before that she had called and
16 asked for, told us that she wanted to come back
17 to Dr. Spoljaric and if that would be all right.
18 And I said get your records, that would be fine,
19 and call when you need an appointment.

20 Q. My question to you is, can you tell me
21 either from what you remember independently or
22 from what is in the chart when it was that she
23 made that call to reinitiate the relationship or
24 to set up an appointment to see Dr. Spoljaric?

25 A. To set up this appointment, it would

6 (Pages 21 to 24)

Page 25

1 have been either that day or the day before. Dr.
2 Spoljaric's practice is we usually get them in
3 that day.
4 Q. Is there anything reflected in the
5 chart that would indicate that she called on the
6 30th or called on the 29th to set up this
7 appointment?
8 A. No.
9 Q. What you are testifying to is the
10 doctor's general practice in terms of trying to
11 set up an appointment as soon as it can be done?
12 A. Right.
13 Q. Okay. But you don't have a specific
14 recollection as you are sitting here right now,
15 do you, of the date, whether it's the same day or
16 the day before or days before, as to when Vicki
17 first made the contact with the office and said,
18 I would like to see Dr. Spoljaric; is that
19 correct?
20 A. According to her chart, it was
21 probably that day. When somebody has, you know,
22 if they call and they are sick, we get them in.
23 If they want a checkup, you know, they usually,
24 it might be a week later.
25 Q. The chart, again, it doesn't reflect

Page 27

1 Are you, as well?
2 A. That was prior to.
3 Q. Oh, it was prior to the visit?
4 A. It was the first, when she first made
5 contact with us.
6 Q. Again, that would have been a day or
7 two before?
8 A. Both visits that we talked to her, we
9 told her she needed to get her records.
10 Q. When you say both visits --
11 A. Well, she either stopped in or called
12 on the phone and said, I want to transfer, you
13 know, see Dr. Spoljaric again. And I said, get
14 your records from Dr. Cola's office. And then
15 the second time she came, I guess it was December
16 30th, we did not have her records. And I said,
17 you need to -- she said she had already contacted
18 Dr. Cola's office and they hadn't given them to
19 her yet, or we didn't receive them in our office,
20 and we said, well -- I remember she said she
21 would go over there and sign a release. I'm not
22 sure if that was the first one or the second
23 time.
24 Q. Can you tell me -- if you can't,
25 that's fine -- how much time passed between the

Page 26

1 -- just so I'm not missing anything -- it
2 doesn't reflect the time or the date that she did
3 make that telephone call; correct?
4 A. No.
5 Q. Do you specifically remember her
6 making the telephone call to the office?
7 A. Not really.
8 Q. You mentioned a moment ago about
9 something as it relates to telling her to arrange
10 to get her doctor's records. Do you specifically
11 remember telling her to get her doctor's records?
12 A. Yes.
13 Q. You told her that over the telephone
14 or in person?
15 A. I think she was at the window when we
16 were talking about it. I told her she needed to
17 sign a release and take it to Dr. Cola's office.
18 Q. Did she then leave the office with
19 that release to get the records?
20 A. I believe -- I don't know if we gave
21 her a release or not. If we did, it would be at
22 Dr. Cola's office, but they have them at every
23 office, usually, a release for medical records.
24 Q. I guess I want to understand what your
25 recollection is. I'm on December 30th, 1997.

Page 28

1 first contact that she made and when she actually
2 appeared in the office on December 30th?
3 A. I'm not sure.
4 Q. It could have been potentially weeks?
5 A. Two weeks, yeah.
6 Q. As to when an authorization was given
7 to her and she said she would take it to Dr.
8 Cola's office, you are not certain whether it was
9 on December 30th or whether it was on that very
10 first contact?
11 A. The release, you have to sign a
12 release to get your records, but she -- I don't
13 know if, you know, we gave her one or I'm not
14 sure about that, but I remember on both of those
15 visits, we told her, you need to get your
16 records. And I believe on the December 30th
17 visit, I actually called Dr. Cola's office and
18 asked them and gave them the information and they
19 said she needed to sign a release.
20 Q. Do you know whether Vicki had already
21 given a release or authorization to Dr. Cola's
22 office to transfer the records before December
23 30, 1997?
24 A. I'm not sure.
25 Q. Do you recall having any

7 (Pages 25 to 28)

Page 29

1 communication, yourself, on December 30th, 1997
2 with Dr. Cola or Dr. Cola's office about
3 transferring the records over for Dr. Spoljaric?

4 A. I'm pretty sure it was December 30th
5 that I did call Dr. Cola's office.

6 Q. Do you have a specific recollection of
7 that conversation?

8 A. Not specific, but I did ask them that,
9 told them that we needed her records and gave
10 them our address and everything.

11 Q. Do you recall on December 30, 1997
12 whether any of the records were faxed over to
13 your office?

14 A. No. We did not have them that day.

15 Q. How do you know that?

16 A. Because we didn't. I remember. I
17 mean, I remember we didn't have them that day,
18 because he came out, maybe, and asked for them
19 and we didn't have them.

20 Q. Tell me why, if you know, why Dr. Cola
21 came out and asked -- excuse me.

22 Dr. Spoljaric came out and asked for
23 the records?

24 A. I believe she told him. She mentioned
25 a couple times that, you know, she was unhappy

Page 31

1 would either be taken by the patient or would be
2 sent from your office to the doctor's office?

3 A. Yes.

4 Q. Do you know specifically in this case
5 how the process was accomplished in terms of
6 getting Dr. Cola to release his records to Dr.
7 Spoljaric?

8 A. Well, Vicki tried and she said they
9 wouldn't release them. And I said, well, I will
10 call Dr. Cola's office and see if we can have
11 them released. And I called and they eventually
12 sent them.

13 Q. How long after you made that telephone
14 call did the records arrive?

15 A. I'm not sure about that.

16 Q. It wasn't the same day, was it?

17 A. No.

18 Q. Do you have a recollection as to what
19 explanation, if any, they gave you at that time
20 as to why the records hadn't been released?

21 A. No.

22 Q. Was it Dr. Spoljaric's -- strike
23 that.

24 When records would arrive, did you
25 have any part in doing something with records on

Page 30

1 with Dr. Cola and that she could not get her
2 records from him, for some reason.

3 Q. You remember that?

4 A. Uh-huh.

5 Q. That's a yes?

6 A. Yes.

7 Q. And you remember Dr. Spoljaric coming
8 out on December 30th asking whether or not the
9 records had arrived or were there?

10 A. I believe he did.

11 Q. You talked about Dr. Spoljaric's
12 practice of setting up appointments fairly prompt
13 after a patient will call to request an
14 appointment; true?

15 A. Yes.

16 Q. Was Dr. Spoljaric's practice to
17 require that the patient arrange to get the
18 records transferred over, or would Dr. Spoljaric
19 arrange to get records from the previous doctor?
20 What was the office practice?

21 A. It depended. Either way. Sometimes
22 we would have them sign a release as we sat there
23 and we would fax it over right away if we knew
24 the fax number and we were not extremely busy.

25 Q. And other times the authorization

Page 32

1 a new patient?

2 A. Yes.

3 Q. What would you do with the records?

4 A. Attach the records to the chart and
5 put them on his desk.

6 Q. And then would Dr. Spoljaric review
7 those records?

8 A. When he did his charts, he would
9 review them.

10 Q. Would you have been the one that would
11 have eventually received Dr. Cola's records and
12 attach them to the chart or might that have been
13 someone else?

14 A. It could have been any one of us.

15 Q. Are you able to tell by looking at the
16 chart whether it was you or someone else?

17 A. No.

18 Q. Can you tell from the chart when it
19 was that the records were received?

20 A. No. I can tell that it probably
21 wasn't faxed, because it would have our little
22 fax numbers at the top.

23 Q. Before December 30th, there was one
24 contact that Vicki had made to set up the
25 appointment and to transfer her care over to Dr.

8 (Pages 29 to 32)

Page 33

1 Spoljaric; true?
2 A. Yes.
3 Q. The exact date or week that that
4 contact was made, you can't remember?
5 A. Right.
6 Q. And as far as anything reflected in
7 the chart as to when she made that contact, there
8 is nothing reflecting that either, is there?
9 A. No.
10 Q. Before she arrived on December 30th,
11 do you remember anything else about any
12 communication that you had with Vicki in advance
13 of the December 30th appointment?
14 A. No.
15 Q. Tell me as best as you can recall all
16 that you can recall about what you observed or
17 heard when she came to the office on December
18 30th, 1997 for her first official visit at that
19 time.
20 A. I believe she explained why she was
21 coming back, about her insurance changing over
22 and that she wasn't happy with Dr. Cola and that
23 she wanted to -- she liked Dr. Spoljaric
24 previously when he was her doctor.
25 Q. Anything else that you recall?

Page 34

1 A. No.
2 Q. You weren't in Dr. Spoljaric's office
3 -- you didn't go into Dr. Spoljaric's office
4 when Vicki was in with Dr. Spoljaric, did you?
5 A. No.
6 Q. Was Vicki accompanied by anyone on
7 that date?
8 A. I don't recall.
9 Q. It's possible? You just don't recall
10 one way or another?
11 A. I don't believe so, but I'm not sure.
12 Q. Did you participate at all in taking
13 the weights or doing anything on Vicki on that
14 date?
15 A. The weight. Oh, actually, yes, I
16 initialed it. I did the weight on 12-30.
17 Q. You do recall Dr. Spoljaric coming out
18 and asking whether the records had arrived, that
19 you specifically remember; true?
20 A. I'm pretty sure it was the December
21 visit.
22 Q. By that, it could have been one of the
23 subsequent visits, as well?
24 A. Possibly.
25 Q. In any event, assuming it was on the

Page 35

1 December visit that he came out and asked if the
2 records were available, do you recall anything
3 else that he said while Vicki was present?
4 A. No.
5 Q. After Vicki finished seeing Dr.
6 Spoljaric on that day, do you recall anything
7 else?
8 A. No.
9 Q. Did you have any contact with Vicki
10 that you recall before we get to March of '98?
11 A. No.
12 MR. CONWAY: You mean January?
13 MR. MISHKIND: No, March. After the
14 December visit.
15 Q. Did you have any further contact?
16 A. She had a visit in January.
17 Q. Right. But do you have any
18 recollection of that January visit?
19 A. No.
20 Q. Were you present -- were you working
21 on that day when she was there?
22 A. Yes, I took her weight.
23 Q. So that's a good indication that you
24 were there.
25 A. Yes. It says I was.

Page 36

1 Q. But other than taking the weight --
2 for example, if I asked you, tell me what you
3 remember Vicki saying on that day, can you tell
4 me anything?
5 A. No.
6 Q. Or tell me what you said to Vicki, can
7 you tell me that?
8 A. No.
9 Q. Or how she appeared on that day?
10 A. I mean, according to the chart, she
11 had the flu.
12 Q. But from your --
13 A. Possibly.
14 Q. From your personal observation, you
15 don't have a recollection --
16 A. That appointment did not stand out.
17 Q. Got you. And after January 22nd, she
18 then is seen on March 2nd?
19 A. Uh-huh.
20 Q. True?
21 A. Yes.
22 Q. Were you working on March 2nd?
23 A. I'm not sure.
24 Q. Did you make any notes?
25 A. No, I did not do the weight that day.

9 (Pages 33 to 36)

Page 37

1 Q. Do you have any recollection at all of
2 anything that transpired with Vicki there?
3 A. Well, yeah, that was the day that she
4 had the emergency room -- or, no, that was right
5 before that. I don't recall that day.
6 Do you know, what day of the week was
7 it?
8 Q. We can check that, but certainly it's
9 some eight days before we get to the emergency
10 room visit.
11 A. I don't.
12 Q. You have no independent recollection?
13 A. No.
14 Q. Did you make any notes at all of
15 anything relative to Vicki's case that either
16 were made back in '98 that might not be in the
17 chart, or since you left working for
18 Dr. Spoljaric?
19 A. Not that I recall.
20 Q. Has Dr. Spoljaric ever indicated to
21 you when it was that he first received Vicki's
22 records?
23 A. No.
24 Q. Did Mary Ellen indicate to you when
25 she believes Dr. Spoljaric first received Vicki's

Page 39

1 called early and said she wanted to see Dr.
2 Spoljaric. What did you do when she made that
3 request?
4 A. Made her an appointment.
5 Q. You immediately then grabbed the
6 schedule and gave her a time to come in?
7 A. I believe so.
8 Q. Would you have had to have checked
9 with Dr. Spoljaric first before making the
10 appointment?
11 A. It depends on when she made the
12 appointment if she was vomiting or not, or if she
13 said I need to see Dr. Spoljaric, I don't feel
14 well, and you know, if she had another symptom,
15 headaches or whatever she had, we would make her
16 an appointment.
17 Then I believe they must have called
18 back and said she was vomiting and couldn't get
19 out of bed.
20 Q. Did Dr. Spoljaric instruct you that if
21 a patient calls with certain symptoms that you
22 should schedule them to come in or -- strike
23 that.
24 Were you advised as to what type of
25 symptoms needed to be reported immediately to the

Page 38

1 records?
2 A. They are not sure.
3 Q. That's what she told you?
4 A. Yeah. She asked me.
5 Q. All right. I am going to jump now to
6 March 10th, but I want to make sure that you've
7 told me everything that you can recall about your
8 observations or conversations with Vicki setting
9 up the first appointment and when she arrived on
10 December 30th. Have you told me everything that
11 you can recall at this point?
12 A. I believe so.
13 Q. When Vicki called on March 10th, was
14 the doctor booked? Did he have a full schedule
15 that day?
16 A. Well, we put her, I believe we put her
17 in. I mean, we ended up making her an
18 appointment, I thought. Maybe not.
19 Q. Tell me, if you would, please --
20 A. She had called earlier and said she
21 wanted to see Dr. Spoljaric.
22 Q. Okay.
23 A. And then she called back and said she
24 was, you know, vomiting.
25 Q. Let's go back to the beginning. She

Page 40

1 doctor, as opposed to just simply scheduling an
2 appointment?
3 A. I believe I learned that as I worked
4 there. I mean, I was told by the girls, you
5 know, whenever I would answer the phone, I would
6 always say, could you hold, please, let me get
7 the appointment book. I would mention this and
8 this and this is going on.
9 And I think vomiting is one of the
10 only things, or if they are bleeding or
11 something, if it's an emergency type situation,
12 you send them to the emergency room. It's kind
13 of like a common sense thing. You don't want
14 somebody there vomiting, you know, maybe exposing
15 the other patients to it.
16 Q. In terms of making the decision as to
17 whether the patient needed to be seen in the
18 office or sent to the emergency room, would you
19 put the patient on hold and check with the nurse
20 or with the doctor?
21 A. Yes. We would always check with the
22 doctor. Either put them on hold or if he wasn't
23 there, we would call them and ask him.
24 Q. When Vicki called that day on March
25 10th, did you check with the doctor first before

10 (Pages 37 to 40)

Page 41

1 setting her up for an appointment, the first
2 call?
3 A. I'm not sure.
4 Q. In any event, sometime later after
5 that call, someone called back?
6 A. Yes.
7 Q. And was that her husband?
8 A. Yes.
9 Q. Do you remember talking to her
10 husband?
11 A. Yes.
12 Q. You do remember that conversation?
13 A. Not all the conversation exactly what
14 was said, but yes.
15 Q. Tell me what you recall about the
16 conversation.
17 A. He said she was vomiting and she could
18 not get out of bed. She was very weak.
19 Q. And what did you do?
20 A. I said she probably needs to go to the
21 emergency room. If you will hold, let me talk to
22 the doctor.
23 Q. Do you remember going and talking to
24 Dr. Spoljaric?
25 A. Yes.

Page 42

1 Q. And what did Dr. Spoljaric tell you?
2 A. She needs to go to the emergency
3 room. She could be dehydrated.
4 Q. Did he tell you anything else?
5 A. No.
6 Q. You then went back and got on the
7 phone and was --
8 A. I said, send her to the emergency
9 room.
10 Q. The form that you have, the pink form,
11 was this something that they needed to pick up to
12 be able to get into --
13 A. No, we fax them.
14 Q. Where did you fax that to?
15 A. The hospital.
16 Q. Did you have any further communication
17 with Vicki or with her husband on March 10, after
18 telling her husband to take Vicki to the
19 emergency room?
20 A. No, not that I recall.
21 Q. Did you advise them to call an
22 ambulance or just to drive to the emergency room?
23 A. I said if he could not get her there,
24 we usually, when we send somebody, if they are in
25 bed, we say, you know, if you need to, call an

Page 43

1 ambulance.
2 Q. Do you have a recollection of what you
3 said during that conversation?
4 A. That's just something we usually say.
5 Q. And I understand that there is sort of
6 a protocol that you would follow. I just want to
7 find out what specifically you remember saying to
8 Mr. Migllore. If you don't remember --
9 A. It's very vague.
10 Q. That's fine. I don't want you to
11 guess. You are doing a good job so far.
12 Let's move past March 10th. When is
13 the next time that you had any contact, either in
14 person or on the phone concerning Vicki?
15 A. Probably on 3-26, when I did this
16 referral.
17 Q. Is this when she was in the hospital?
18 A. She was being sent to Akron City.
19 Q. Again, do you remember the
20 conversation with Vicki that led up to the
21 completion of this referral?
22 A. Vaguely.
23 Q. Tell me as best as you can. Don't
24 guess, but tell me what you remember.
25 A. She called and she said she needed a

Page 44

1 referral to go to Akron City and told me what she
2 had, I believe, and kind of was shocked that she
3 had something that bad. And that's about it.
4 Q. Do you remember her telling you what
5 it was that she had?
6 A. Vaguely.
7 Q. What do you remember her telling you
8 she had?
9 A. Renal failure.
10 Q. Did she use the term Wegener's
11 granulomatosis?
12 A. I'm not sure.
13 Q. If she had used that term, would that
14 have been something that you would have been
15 familiar with?
16 A. No.
17 Q. Did you have to talk to Dr. Spoljaric
18 to get this form filled out?
19 A. No. Something like this, she was
20 referred by, I guess, the nephrologist, and we
21 don't -- it's kind of a given. He knew about
22 it. He knew she was going there. You know, we
23 do run it by him usually when we do referrals.
24 Q. Do you remember running this by Dr.
25 Spoljaric?

11 (Pages 41 to 44)

Page 45

- 1 A. I'm sure.
2 Q. Do you specifically remember?
3 A. Most of the time, I mean, if it's for
4 a wart or something, that's kind of -- if he has
5 already told us they are going to go see a
6 certain doctor, then we don't, we just do a
7 referral. But something like this, I'm sure I
8 probably mentioned to him that I did a referral
9 for her to go to Akron City.
10 Q. Tell me what he said to you.
11 A. Okay.
12 Q. Again, are you guessing?
13 A. It's vague. This is just what usually
14 happens in the office.
15 Q. Again, I know that there is a usual
16 process. I want you to remember just what you
17 recall. Forget about the usual practice, whether
18 that occurred or not. We will just leave that
19 aside.
20 I just want, Jessi, for you to tell me
21 what she remembers. Do you specifically remember
22 having a conversation with Dr. Spoljaric?
23 A. No.
24 Q. Fair enough.
25 After this referral relative to the

Page 47

- 1 you didn't have a lot of contact, but how did you
2 and her get along in terms of interaction in the
3 office?
4 A. Her first visit, she had let me know
5 that she was a clown, and I, you know, I have
6 kids, so I was, you know, I talked to her about
7 it and asked her questions and we got along good.
8 And then when she came in to pick up her records,
9 she had said that this had nothing to do with Dr.
10 Spoljaric, because, I guess, we had already heard
11 about her suing Dr. Cola.
12 Q. How did you hear about it?
13 A. Probably through Dr. Spoljaric maybe.
14 Q. Dr. Spoljaric told you that Vicki was
15 suing Dr. --
16 A. Maybe Vicki did.
17 Q. When did Vicki tell you that she was
18 suing Dr. Cola?
19 A. It was probably when she picked up her
20 records. She came in and just, she said that
21 this has nothing to do with Dr. Spoljaric.
22 Q. She came in and said this has nothing
23 to do with Dr. Spoljaric, but I need a copy of
24 Dr. Spoljaric's records?
25 A. Yes.

Page 46

- 1 dialysis was done, did you have any further
2 contact in person or on the phone with Vicki at
3 any time after that?
4 A. Yes.
5 Q. When would that be?
6 A. She came into the office to get her
7 records.
8 Q. Do you remember when that was?
9 A. It was a while after all this. I
10 believe the slip in here says it was March 9th of
11 '99 when she got her records.
12 Q. Had you seen or talked to Vicki since
13 March 26th, 1998 until she came in to get her
14 records?
15 A. I don't know. I don't believe so.
16 Q. Does anything stand out in terms of
17 having any contact with her?
18 A. No.
19 Q. When she came in, did she come in
20 unannounced or did she call ahead of time?
21 A. She came in unannounced.
22 Q. When she came in, did you remember who
23 she was?
24 A. Oh, yes.
25 Q. How did you and Vicki -- even though

Page 48

- 1 Q. True?
2 A. Uh-huh.
3 Q. Did she say anything else to you at
4 that time?
5 A. She was just out to get Dr. Cola.
6 Q. And did she use those terms, that she
7 was out to get, or is that your interpretation?
8 A. It just kind of rings a bell. It's
9 vague.
10 Q. Not that she necessarily used those
11 terms, but that's how you interpreted what she
12 was saying?
13 A. Right.
14 Q. She told you that this had nothing to
15 do with Dr. Spoljaric, but I need a copy of my
16 records?
17 A. She had nothing against Dr. Spoljaric
18 and it was just Dr. Cola she was after.
19 Q. Did you ask her any further questions
20 to explain to you what she meant by that?
21 A. No.
22 Q. Did she clarify at all what she meant
23 by that, to you?
24 A. Not really.
25 Q. Was this a relatively brief

12 (Pages 45 to 48)

Page 49

1 conversation that you had?
2 A. I believe I copied her records that
3 day and gave them to her.
4 Q. Did you have any further conversation
5 with her as you were copying the records?
6 A. No. The copy machine is around the
7 window, so I really couldn't see her.
8 Q. She didn't come back and help you
9 copy?
10 A. No.
11 Q. Did you have to clear obtaining the
12 records from Dr. Spoljaric first?
13 A. No.
14 Q. You provided her a copy of the records
15 and handed them to her. Did you have any further
16 conversation at that point as to what her plans
17 were or what she was intending to do with regard
18 to the records?
19 A. No.
20 Q. Did you ask her any further questions
21 as to whether or not she intended to file a
22 lawsuit against Dr. Spoljaric?
23 A. No. She told us that.
24 Q. She said that this had nothing to do
25 with Dr. Spoljaric, were her words?

Page 50

1 A. Correct.
2 Q. Did she ever say anything else to you
3 during that meeting other than what you have told
4 me?
5 A. Not that I recall.
6 Q. Was Dr. Spoljaric in the office on
7 that day?
8 A. I might have seen patients that day,
9 but I don't think he was in the office when she
10 stopped in. I'm not sure though.
11 Q. Have you told me everything that you
12 remember about that visit in '99 when she came in
13 to get a copy of her records?
14 A. Yes.
15 Q. Any contact with Vicki at any time
16 after the occasion when she came in to get her
17 records?
18 A. No. Not that I recall.
19 Q. Have you ever seen Vicki out and about
20 in the community?
21 A. No, not that I can remember.
22 Q. Ever hire her as a clown?
23 A. No, never got around to it.
24 Q. I am almost done. I just want to make
25 sure that there isn't anything that I am missing

Page 51

1 with regard to any interactions that you had.
2 From the standpoint of prior to the
3 first appointment, then the first appointment in
4 December, and then the appointments in January
5 and March, have you told me everything that you
6 can remember in terms of what you observed or
7 what was said during the appointments that you
8 were personally able to hear and see?
9 A. Yes.
10 Q. And then with regard to filling out
11 the forms, the referrals, have you told me
12 everything that you remember about the process of
13 filling them out and what was said by Vicki?
14 A. Yes. I had to call SUMMA to find out
15 how to go about filling out the one for the
16 dialysis, because I wasn't sure. I wanted to
17 make sure it was for the right amount of visits.
18 And she wasn't too sure what she was going to be
19 doing with the dialysis.
20 I called Akron City also and asked
21 them what I should put down to make sure that the
22 referral went through okay, because it was kind
23 of a big -- I mean, I thought it was a big thing.
24 MR. MISHKIND: Thank you for your
25 time. I have nothing further.

Page 52

1 MR. FRASURE: Nothing.
2 MR. CONWAY: She will read it over.
3 ----
4 (Deposition concluded at 5:45 p.m.)
5 (Signature not waived.)
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13 (Pages 49 to 52)

Page 53

AFFIDAVIT

I have read the foregoing transcript from
page 1 through 52 and note the following
corrections:

PAGE LINE	REQUESTED CHANGE
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JESSI SMITH

Subscribed and sworn to before me this
day of , 2000.

Notary Public

My commission expires

Page 54

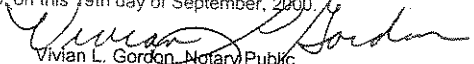
CERTIFICATE

State of Ohio,
SS:
County of Cuyahoga.

I, Vivian L. Gordon, a Notary Public within
and for the State of Ohio, duly commissioned and
qualified, do hereby certify that the within
named JESSI SMITH was by me first duly sworn to
testify to the truth, the whole truth and nothing
but the truth in the cause aforesaid; that the
testimony as above set forth was by me reduced to
stenotypy, afterwards transcribed, and that the
foregoing is a true and correct transcription of
the testimony.

I do further certify that this deposition
was taken at the time and place specified and was
completed without adjournment; that I am not a
relative or attorney for either party or
otherwise interested in the event of this action.

IN WITNESS WHEREOF, I have hereunto set my
hand and affixed my seal of office at Cleveland,
Ohio, on this 19th day of September, 2000.


Vivian L. Gordon, Notary Public
Within and for the State of Ohio

My commission expires June 8, 2004.

14 (Pages 53 to 54)