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IN THE COURT OF COMMON PLEAS

STARK COUNTY, OHIO

CASE NO. 1998-CV-01694

KENNETH A. BOROS,)
Guardian for)
SUSAN M. BOROS,)
Plaintiff,) DEPOSITION OF
versus) STEPHEN L. SPEARING
MDIOLOGY SERVICES OF)
CANTON, INC., et al.,)
Defendants.)

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Deposition of STEPHEN L. SPEARING, a Witness
herein, called by the Plaintiff for
Cross-examination pursuant to the Ohio Rules of
Civil Procedure, taken before me, the
undersigned, Gary W. Hill, a Registered
Professional Reporter and Notary Public in and
for the State of Ohio, at the offices of Day,
Ketterer, Raley, Wright & Rybolt, 800 William R.
Day Building, Canton, Ohio, on Thursday, May 13,
1999, at 1:38 p.m.

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APPEARANCES:

On behalf of the Plaintiff:

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On behalf of the Radiology Services of Canton,
Lnc., and Dr. Murphy:

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On behalf of Defendant Mercy Medical Center:

ALICIA M. WYLER, ATTORNEY AT LAW
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CANTON, OHIO 44702

Also Present:

JEFF SMITH

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I N D E X

CROSS-EXAMINATION BY

MR. SCHULMAN 4, 87

MR. TREADON. 85

EXHIBITS

Plaintiff's Deposition Exhibits

No.	Description	Page Marked
1 . .	Radiology Policy Manual, Procedure for Untoward Reactions After Injection of contrast Media	39
2 . .	PCI Radiology Report	72

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WHEREUPON,

STEPHEN L. SPEARING,

who, being first duly sworn, testified as follows:

CROSS-EXAMINATION

BY MR. SCHULMAN:

Q. Would you state your name for the record, please?

A. Stephen L. Spearing, S-P-E-A-R-I-N-G, and it's S-T-E-P-H-E-N.

Q. Mr. Spearing, what is your home address?

A. 1635 Radcliff, R-A-D-C-L-I-F-F, Avenue, N.W., Massillon, Ohio 44646.

Q. Mr. Spearing, we're here today -- and again, my name is Allen Schulman, and this is Angela Vagotis, and we met before we went on the record here -- to take your testimony in regard to Susan Boros's case.

The reason we're taking your testimony is your name came up somewhat prominently in the deposition of Dr. Murphy which we took back on March 11 of this year. So we're going to have some questions to ask of you today, and I'm sure you've discussed at least the nature of what we're doing with the hospital's counsel, Alicia. But if you don't understand a question I have,

1 will you tell me, please, and I'll rephrase it.
 2 A. Definitely.
 3 Q. If you do answer a question though, I'm going to
 4 assume you understood my question and that you've
 5 answered it fully, and most importantly,
 6 truthfully. Okay?
 7 A. Okay.
 8 Q. And we'll try to get you out of here in a
 9 reasonable amount of time. I *think* all the
 10 lawyers in the room will attest that I try to do
 11 these relatively quickly.
 12 It's our understanding that you were
 13 the Administrative Director of Radiology --
 14 A. Yes, sir.
 15 Q. -- at Mercy Hospital or Columbia Hospital or
 16 whatever its name is?
 17 A. Right.
 18 Q. How long were you Administrative Director?
 19 A. From December 9 of 1991, till February 19 of '99.
 20 Q. And give us, if you would, a little bit about
 21 your background, sir. You're from Massillon?
 22 You're from this area?
 23 A. No. I was born in Lewistown, Pennsylvania,
 24 raised in Harrisburg, trained in radiology in
 25 Harrisburg.

1 Q. When you say trained in radiology, what do you
 2 mean?
 3 A. As a technologist, originally back in 1966
 4 through '68, and licensed as an RT, a RRT.
 5 Q. Let me ask you this. Where did you receive your
 6 radiology technology training?
 7 A. Polyclinic Medical Center in Harrisburg,
 8 Pennsylvania.
 9 Q. You went to high school where, sir?
 10 A. Central Dauphin High School.
 11 Q. Central --
 12 A. Dauphin.
 13 Q. Like a fish?
 14 A. D-A-U-P-H-I-N.
 15 Q. Central Dauphin?
 16 MS. WYLER Your hearing is going.
 17 Q. It is. Terrible. Central Dauphin High School?
 18 A. That's in Harrisburg, also.
 19 Q. Harrisburg. And what year did you graduate, sir?
 20 A. '66.
 21 Q. All right. So then you went from there to the --
 22 A. Graduated high school June 10th. June 20th, I
 23 started x-ray school.
 24 Q. And that lasted until '68?
 25 A. Two years, '68. Started employment at Polyclinic

1 Medical Center immediately upon graduation. Left
 2 there in '71, and I was the assistant chief
 3 technologist at the place I trained. Left there
 4 to go to Waynesboro, Pennsylvania, to be the
 5 chief technologist at about a hundred and some
 6 bed hospital, 102, I think, or somewhere in that
 7 neighborhood.
 8 Q. What was the name of that hospital?
 9 A. Waynesboro Hospital.
 10 Q. Waynesboro?
 11 A. W-A-Y-N-E-S-B-O-R-O. It's on East Main Street in
 12 Waynesboro, Pennsylvania. I was there for a
 13 while, a bunch of years, maybe ten. Left there,
 14 went to Gettysburg Hospital, Gettysburg,
 15 Pennsylvania, got into some mobile -- that's back
 16 when the mobile CT mobile applications came
 17 about. Got an opportunity to build a mobile
 18 breast center there, breast cancer detection
 19 center. Had a BCDP, Breast Cancer Detection
 20 Project.
 21 Q. Do me a favor. Gary is trying to take all this
 22 down. So the faster you talk, the more difficult
 23 it is for him.
 24 A. Oh, sorry, yeah, slow down.
 25 Q. So what was that after the mobile breast center?

1 I missed the initials.
 2 A. BCDP, Breast Cancer Detection Project. We had a
 3 grant from the federal government to look into
 4 hereditary factors of breast cancer. It was back
 5 in the, wow, late '70s, early '80s, somewhere in
 6 there. Pulling some cobwebs out right now.
 7 Q. That's okay. Thereafter, where did you go?
 8 A. Out of that I got an opportunity to move to
 9 Amarillo, Texas. Started out there as the
 10 director of a mobile company that I started there
 11 for the Catholic group in that town, St. Anthony
 12 in Amarillo, Texas. Ended up when I left there I
 13 was vice president/chief operating officer of a
 14 25-unit, 12-state mobile company, for-profit arm
 15 of St. Anthony's. It was called St. Anthony's
 16 Enterprises, Incorporated.
 17 I left there and went to Clearfield
 18 Hospital -- this would be 1989 -- which is in
 19 Clearfield, Pennsylvania, and was recruited from
 20 there to come to Mercy in '91. That's sort of a
 21 synopsis.
 22 Q. Okay, good. You left Polyclinic Medical Center
 23 and went to Waynesboro?
 24 A. Right.
 25 Q. Did you leave voluntarily from that job?

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1 A. Oh, yeah. Yeah, I went for an opportunity to
 2 be -- had my own shop.
 3 Q. And then from Waynesboro, you went to Gettysburg
 4 Hospital. Similarly, was that a voluntary
 5 departure?
 6 A. Oh, yes. Yes.
 7 Q. And then from, looks like Gettysburg to --
 8 A. Amarillo.
 9 Q. -- Amarillo, that was voluntary, also?
 10 A. Yes.
 11 Q. And then Amarillo to Clearfield in Pennsylvania,
 12 did you leave Texas voluntarily?
 13 A. Yes. Back home. We have a child; grandparents
 14 are in Pennsylvania.
 15 Q. You're married?
 16 A. Yes.
 17 Q. How long have you been married, sir?
 18 A. 25 years June 25th. No, excuse me, June 15th.
 19 Let me double check that.
 20 Q. You have children?
 21 A. Yes.
 22 Q. How many children?
 23 A. Three.
 24 Q. So you worked at Columbia from 1991 to 1999, and
 25 you were terminated from your employment?

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1 A. No, resigned.
 2 Q. On February 19th?
 3 A. Yes.
 4 Q. Why did you resign from your employment?
 5 A. I don't want to be in health care management
 6 anymore, sir. Period. And besides that, it's
 7 irrelevant to this case. My personal issues are
 8 between me and the hospital and my lawyer and
 9 their lawyers.
 10 Q. Do you have a lawyer?
 11 A. Yes, sir.
 12 Q. Who is that?
 13 A. I would rather not tell you at this point. You
 14 always have a lawyer. I mean I've had a lawyer
 15 for years.
 16 MR. TREADON: Everybody should have
 17 one.
 18 A. I'm a divorced gentleman. So I've had a lawyer
 19 since 1971.
 20 Q. So you left for personal reasons and also because
 21 you were tired of the health care management?
 22 A. Burned out, I guess, whatever term you want to
 23 call it. You know, I'm 50 plus years old.
 24 Q. How old are you?
 25 A. I'm 50.

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1 Q. 50?
 2 A. 50 plus. I'll be 51 next birthday. And there's
 3 a lot of changes in health care, and some of us
 4 dinosaurs don't fit what needs to be done anymore
 5 and don't agree with some of the things that are
 6 going on, so -- but that's irrelevant to this
 7 case.
 8 Q. Okay. Well --
 9 A. This happened --
 10 MS. WYLER: March of '98.
 11 A. -- in March of '98, way back when.
 12 Q. Well, way back when; it's only a year ago, sir.
 13 A. Yes, I understand. But in comparison to what
 14 happened on the 19th of this year. It had
 15 nothing to do with --
 16 Q. I mean if Dr. Murphy has testified that he
 17 understood you were terminated from your
 18 employment, that would be wrong?
 19 A. Well, the letter of resignation is at the
 20 hospital.
 21 MR. TREADON: Where does he say
 22 that, Allen? Do you know what page? I'm looking
 23 at it.
 24 MR. SCHULMAN: Let me get it for
 25 you.

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1 MR. TREADON: If you have it.
 2 MS. WYLER: We can assume that he
 3 testified to that.
 4 MR. SCHULMAN: I think on Page 75,
 5 Tom, I think it was mentioned earlier. On Line
 6 19, I say, "Question: You mentioned a
 7 Mr. Spearing. You say he has been let go. I'm
 8 not trying to pry into his employment history,
 9 but why was he let go?
 10 "Answer: I don't know. He was let go
 11 the day of the first deposition, and I heard
 12 about it when I was in the rest room."
 13 Well, then he goes on to say --
 14 MS. WYLER: What is your question?
 15 MR. SCHULMAN: I'm doing this for
 16 Tom. "I was on vacation that week, and I ran
 17 into Pete Hardin. Pete Hardin is one of our
 18 radiation oncologists, and he said, 'What's going
 19 on upstairs?' And I said, 'I have no idea. They
 20 fired Steve this morning and I haven't spoken to
 21 Steve since, so I don't know the specifics.'"
 22 MS. WYLER: Murphy is saying he
 23 doesn't know the specifics?
 24 MR. TREADON: Right.
 25 MR. SCHULMAN: Yes.

1 MS. WYLER: What is your question
 2 then?
 3 MR. TREADON: That was for my
 4 benefit actually.
 5 MS. WYLER: There's no question?
 6 MR. SCHULMAN: There is no
 7 question.
 8 MS. WYLER: Okay.
 9 BY MR. SCHULMAN:
 10 Q. So if people apparently believe that you've been
 11 fired, is that wrong? Is that how we're to
 12 understand it?
 13 A. I don't know where you're headed with this. It
 14 doesn't matter what people *think*. I know what
 15 happened.
 16 Q. Okay. So you're testifying --
 17 A. I resigned on February 19th around 9:30 in the
 18 morning. I have a severance package that lasts
 19 as the hospital policy situation says. I've got
 20 outplacement service to find a new career, and
 21 I'm satisfied. It's that simple. I don't know
 22 what else I can say. Do you know, Jeff?
 23 MS. WYLER: No, you've answered it.
 24 You've answered it, Steve.
 25 A. I mean --

1 MS. WYLER: That's all right.
 2 BY MR. SCHULMAN:
 3 Q. Well, did the hospital, did anyone from the
 4 hospital come to you and say either you tender
 5 your resignation or we're going to terminate your
 6 employment?
 7 A. I think that's irrelevant to this situation, sir.
 8 Q. Sir, Mr. Spearing, I appreciate what you think is
 9 irrelevant and what you *think* may be relevant.
 10 But with all due respect -- and I'm not trying to
 11 pry into your employment background, and I'm not
 12 trying to embarrass you. But there are certain
 13 things that we think may lead to relevant
 14 information. So we're just asking a very simple
 15 question.
 16 Did somebody come to you from the
 17 hospital -- did somebody come from the hospital
 18 and say to you, either in express language or
 19 indirectly, either you tender your resignation or
 20 you will be fired?
 21 MS. WYLER: I'm going to object,
 22 and Mr. Spearing is not going to answer that.
 23 He has indicated that it doesn't have anything to
 24 do with the issues in this lawsuit. So I'm
 25 directing him not to answer the question, Allen.

1 If you want to take it up with the
 2 Court, I understand you may want to, and we will
 3 address this with the Court. I represent to you
 4 that I know of no information that is relevant or
 5 even possibly calculated to lead to relevant
 6 information about Mrs. Boros's case involving
 7 procedures in the Radiology Department in '97 or
 8 '98, or at any time for that matter.
 9 So With all due respect, I would ask
 10 you to move on. If you want to go to the Court
 11 with this, you're certainly welcome to. But it
 12 is a personal matter, and he's not going to
 13 discuss it any further.
 14 BY MR. SCHULMAN:
 15 Q. Okay. Did I understand you to say that you have
 16 a severance package with the hospital?
 17 A. Yes.
 18 MS. WYLER: That's what he said.
 19 A. There's a policy when you resign that you get,
 20 and I'm covered.
 21 Q. Okay. Well, you said also something about
 22 outplacement. What is that?
 23 A. That's also covered for manager level that you
 24 can get outplacement where they help you with
 25 resumes and stuff like that.

1 Q. So the hospital is helping you find another
 2 position? That's all I'm trying to find out.
 3 A. Yes, yes, yeah. Got to find another career.
 4 Q. You were terminated on February 19 of 1999?
 5 MS. WYLER: Object.
 6 Q. I'm sorry. I'm sorry.
 7 A. I resigned on February 19 of '99.
 8 Q. Right, you resigned, I apologize, on February 19,
 9 1999?
 10 A. Yes, Friday, around 9:30 in the morning.
 11 Q. Did you have any idea that we were beginning
 12 depositions in this case?
 13 A. No.
 14 Q. None?
 15 A. None. No. I knew that there were depositions
 16 previously taken. At least I thought there were.
 17 MS. WYLER: I have no idea. And
 18 Steve, you've answered the question. I don't
 19 know how that's relevant, but --
 20 Q. Have you read any of the testimony in this case?
 21 A. No.
 22 Q. Have you met with any hospital officials about
 23 this case since your resignation on February 19?
 24 A. Just pre-meeting Tuesday with Alicia and Jeff.
 25 Q. Mr. Smith was here, also?

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1 A. Yes.
 2 Q. Was Mr. Smith your direct supervisor?
 3 A. My vice president, yes.
 4 Q. Well, was he the person you answered to?
 5 A. Yes.
 6 Q. I'm just trying to get the hierarchy.
 7 A. Yes.
 8 Q. Now, as Administrative Director of Radiology,
 9 what were your job responsibilities?
 10 A. Responsibility is to interface with the
 11 radiologists, radiation oncologists. It's sort
 12 of a two-fold position. You're interfacing with
 13 the medical people. You're interfacing with the
 14 hospital, other departments, such as Purchasing,
 15 whoever, to make the function of the department
 16 work and managing the management team of
 17 Radiology.
 18 Q. Who was the management team of Radiology?
 19 A. Supervisors and the senior technologists of which
 20 there's probably somewhere in the neighborhood of
 21 13 to 15, if you count them all. There's four or
 22 five supervisors, and then you have senior
 23 technologists in each of the sections.
 24 Q. So let me see if I can understand the hierarchy
 25 for a moment. You reported to Mr. Smith who is

1 throughout the whole department functions.
 2 Somewhere in that neighborhood, yeah. *You* have
 3 the Medical Center, and you have -- there's
 4 eight, I *think* there's eight off-site service
 5 areas, such as North Canton. There's radiology
 6 at North Canton. There's mammography and
 7 ultrasound. Jackson, there's services there. So
 8 there's technologists that are out there.
 9 Q. Okay. Now, were you responsible at all for
 10 participating in the drafting of a policy manual
 11 for the hospital's Radiology Department?
 12 A. Yeah, back in '92, roughly, if I remember
 13 correctly.
 14 Q. And can you share with us what kind of --
 15 A. We revised --
 16 Q. Can I interrupt you one second?
 17 A. Go ahead.
 18 Q. Do me one favor, for *Gary's* benefit again. Let
 19 me just finish my question, and then you can
 20 answer. I know you anticipate my question, but
 21 it makes it easier for *Gary* to take it down, if
 22 you don't mind.
 23 So you participated in the creation of
 24 the policy manual for the Radiology Department?
 25 A. Yes.

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1 in the room today?
 2 A. For administrative, yes. For medical, to
 3 Dr. David Spriggs, the Chairman of the
 4 Department. And then each section chief
 5 radiologist. There's a section chief radiologist
 6 for each section of the department, such as MRI,
 7 Dr. Mary McNulty; CT, Dr. John Rauchenstein;
 8 ultrasound, Dr. Diane Pretorius; Rozenbom in
 9 therapy. I mean they each have an expertise, an
 10 area of expertise that they sort of sit over.
 11 Q. So those are the people that you would report to?
 12 A. Report to and interact with, yes.
 13 Q. You worked for the hospital?
 14 A. Yes.
 15 Q. You didn't work for Dr. Spriggs' group?
 16 A. No.
 17 Q. No?
 18 A. No.
 19 Q. You were a hospital employee?
 20 A. Hospital employee.
 21 Q. The people under you, the people who reported to
 22 you, they were the supervisors in the Radiology
 23 Department, is that --
 24 A. Supervisors, senior techs and clerical, the whole
 25 staff, 135, around 135 employees altogether

1 Q. Among others? I mean you didn't do it yourself?
 2 You participated with others?
 3 A. Right, yeah.
 4 Q. And you were saying in 1992 --
 5 A. We revised the system, the policy procedure
 6 manual to become a system of manuals due to the
 7 size of the department and the complexity of the
 8 department, and each section has its own booklet.
 9 And then there's some overview, general policies
 10 for the whole department. So it's more of a
 11 system than one manual.
 12 Q. When did you first find out about Mrs. Boros?
 13 A. Probably moments -- I don't know exactly how
 14 long. Moments after it happened.
 15 Q. Who told you anything had happened?
 16 A. There was an announcement overhead, if I remember
 17 correctly, about code in CT; and as I normally
 18 do, I get out of my office, went to the area,
 19 checked the area, made sure that people reacted
 20 to the situation. Checked the area for other
 21 patients to make sure that they were back out of
 22 the area so that there was some privacy for
 23 what's going on, *et cetera*, like that, made sure
 24 things were moving along with the situation, and
 25 went back to my office like I usually do when

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1 there's a code call.
 2 Q. So as far as you were concerned, the code was
 3 being handled properly? I mean as far as
 4 personnel getting --
 5 A. From an administrative situation, the team was
 6 there; she was being administrated to. The
 7 privacy issues were taken care of and those kind
 8 of things.
 9 Q. Did you see her?
 10 A. No.
 11 Q. All right. So you went back to your office after
 12 the code was announced?
 13 A. Well, it was a process.
 14 Q. Then you went back to your office?
 15 A. Right.
 16 Q. What was the next thing you did With regard to
 17 Mrs. Boros's case or care, if anything?
 18 MS. WYLER: Outside of any possible
 19 quality review, whether there was or wasn't one,
 20 stay away from that. That's private,
 21 confidential, But if there is something that you
 22 did that would not be associated with any quality
 23 review or peer review, if in fact one occurred,
 24 then that's what you would be permitted to
 25 testify to.

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1 A. Good question. I had no active involvement in
 2 the code.
 3 Q. Might.
 4 A. So I would have nothing there.
 5 Q. Well, did you find out why the code was called?
 6 A. Yeah, yeah, later.
 7 Q. What did you find out?
 8 A. That she had a contrast reaction or supposedly
 9 had a contrast reaction.
 10 Q. Well, who told you that?
 11 A. Wow.
 12 Q. Do you remember?
 13 A. Not really.
 14 Q. Well, somebody told you that there was a contrast
 15 reaction?
 16 A. Any time that there's a code called in the
 17 department, whether it's CT or special
 18 procedures, the likelihood is it's going to be
 19 contrast related.
 20 Q. Well, how many codes have been called for
 21 contrast reactions in the time you've been there?
 22 A. Not many, I shouldn't say -- they're either
 23 cardiac or contrast, one or the other usually.
 24 Q. What you're saying is, in the eight years that
 25 you were administrator there, most of the codes

1 involved either a heart problem or a contrast
 2 problem?
 3 MS. WYLER: In the Radiology
 4 Department, Allen?
 5 Q. Yes, in the Radiology Department.
 6 A. Yes, that's probably true.
 7 Q. How many of those were there? Twenty?
 8 A. In seven years, that's probably a good number.
 9 Maybe less.
 10 Q. Well, did anybody keep track of these things?
 11 A. Yeah, they keep track, but I mean I don't
 12 physically have that number in my head, sir.
 13 Q. No, and I appreciate that, Mr. Spearing. I'm not
 14 suggesting you have it in your head.
 15 A. They would be -- they're very intermittent, very
 16 infrequent, I guess is the way to say it. I mean
 17 it's not like an everyday occurrence.
 18 Q. No, I'm sure it's not.
 19 A. And then another factor that happens is, they
 20 could happen when I'm not there. I mean in the
 21 off hours when they're treating gunshot wounds or
 22 whatever, and that's some other things they could
 23 end up having a code for is a bleed-out or
 24 something like that. I mean as far as contrast
 25 reactions, there's not a lot of them. It's a

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1 very -- it's a normally very safe situation.
 2 Q. All right. But as Administrative Director of
 3 Radiology, are we to understand that you at least
 4 kept some statistics on the reactions to the
 5 contrast?
 6 A. Statistics, no.
 7 Q. You just said -- let me finish, Mr. Spearing, let
 8 me finish, if I might. You just told us, at
 9 least I thought you did -- and we can have it
 10 read back. I thought you just said that when a
 11 code was called in the Radiology Department, it
 12 was usually either heart related or contrast
 13 reaction related. And I asked you whether there
 14 were statistics kept, and I thought you said yes,
 15 there were.
 16 A. Yes, there are statistics, but I don't personally
 17 keep them.
 18 Q. Who does keep them?
 19 A. They would be kept through the pharmacy and
 20 through the quality --
 21 MS. WYLER: Anything to do with
 22 quality --
 23 A. -- management area.
 24 MS. WYLER: -- you're not to
 25 testify to. You've said enough on quality.

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<p>1 Q. Well, how do you know they're kept in the 2 pharmacy? Why would the pharmacy have kept 3 reactions to contrast dye, if you know? 4 A. I think you would have to talk to the pharmacy 5 gentleman. 6 Q. Who would we talk to, do you know? 7 A. Steve Armatas? 8 MS. WYLER: Just if you know. If 9 you know. 10 Q. You think it may be Steve Armatas? 11 A. Steve is the -- 12 MS. WYLER: Allen, if you want a 13 pharmacy person, we'll find out the person with 14 knowledge. 15 MR. SCHULMAN: I understand, 16 Alicia. I'm just trying to find out from him 17 whether he might know who it is. 18 A. It would be -- Steve Armatas was the director. 19 So I mean he would be the one to start with. 20 Q. Well, if you had a contrast reaction to the dye 21 in your department, as Administrative Director of 22 Radiology for the hospital, wouldn't that come to 23 your attention as a matter of course? 24 A. Yes, and it would also go into our quality 25 minutes, in our coinmittee.</p>	<p>1 taking notes just like you do in any trauma 2 situation. 3 Q. Wouldn't you get a copy of that, sir? 4 A. No. 5 Q. All right. Going back to Mrs. Boros. So 6 sometime after the code, someone in the 7 department told you that she had had a contrast 8 reaction; is that correct? Is that right? 9 A. Somebody, yeah. 10 Q. You don't remember who it was? 11 A. I don't remember exactly who. I mean obviously 12 the whole department when something like that 13 happens, since it happens very infrequently, gets 14 very energized. 15 Q. Did you become energized to the point where you 16 checked the file, her chart, her film jacket? 17 A. The following day or later that day I checked her 18 file myself, yeah. 19 Q. Why did you do that? 20 A. Why did I do that? 21 Q. Yes, why did you do that? 22 A. To make sure -- just in a review with other 23 personnel. We were checking on the case. 24 MS. WYLER: Hold it. If it's a 25 quality review, I don't want you to testify to</p>
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<p>1 Q. Well, Alicia doesn't -- and I appreciate that you 2 can't really get into that. We'll talk about 3 that with the Court. I don't want to know that. 4 But I mean wouldn't -- forget the quality 5 assurance for a moment. Wouldn't it come to your 6 attention at least initially in some fashion? 7 Wouldn't you find out about it as Administrative 8 Director of Radiology? 9 A. A severe reaction, yes. A nonsevere reaction, 10 no. There's levels of reactions. 11 Q. Is a code called generally for a nonsevere 12 reaction to contrast dye? 13 A. No. And there's a code team and there would be a 14 code report. And that's how -- 15 Q. Wouldn't that code report come -- 16 A. Not to me. 17 MR. TREADON: Let him finish. You 18 were going to say that's how -- 19 A. That's how it would be documented. Any time 20 there's a code called, there's a code team 21 report; that goes automatically to the hospital's 22 records. That's how they keep those kind of 23 data, through quality management through the 24 pharmacy, et cetera, et cetera, et cetera. I 25 mean the code team, when they arrive, they start</p>	<p>1 it. 2 A. It is quality review. 3 MS. WYLER: Then I don't want you 4 to go into that area. 5 A. Quality management did it. 6 MS. WYLER: I'm going to object and 7 move to strike that answer on the grounds it is 8 part of a quality review. 9 Steve, I don't know what constitutes a 10 quality review. I don't know everything that's 11 involved in it. You do, or you know at least 12 from your department's standpoint. I want you to 13 stay away from anything that you did relating to 14 a quality review of this matter; and if that 15 means you don't have any answer beyond that, then 16 so be it. But you know the boundaries of that 17 and what, if anything, was done. So I'm going to 18 have to rely upon you and your judgment. Stay 19 away from that and don't give an answer that 20 would invade that. Okay? 21 A. Okay. 22 Q. Well, did you come to discover that there was no 23 warning sticker on her jacket? 24 MS. WYLER: If that's part of a 25 quality review --</p>

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<p>1 Q. I don't care -- I'm not asking about quality 2 review. I'm saying, did you come to discover the 3 simple fact that there was no sticker, a warning 4 sticker of an allergic reaction to contrast dye 5 on Mrs. Boros's jacket? 6 A. Yes. 7 MS. WYLER: Separate and apart from 8 any quality review. In other words, independent 9 of, independent of a quality review. 10 MR. SCHULMAN: I thought he just 11 answered yes. 12 MS. WYLER: Did you independent of 13 a quality review at some point in time up to 14 today? 15 THE WITNESS: I don't know if that's 16 independent. 17 MS. WYLER: Okay. 18 THE WITNESS: It's, you know -- 19 MS. WYLER: I'll move to strike 20 that answer then as part of his knowledge 21 relating to a quality review. So answer the 22 questions, if you can, if you have an answer, if 23 you have information independent of and separate 24 and apart from a quality review. 25 Do you have any information</p>	<p>1 you have any information about that? 2 A. I don't recollect having any conversation of that 3 nature with Dr. Murphy. 4 Q. Okay, All right. Let me ask in general here for 5 a moment. 6 MS. WYLER: That's fine. 7 Q. Outside of Mrs. Boros's case, if during the time 8 that you were Administrative Director for the 9 Department of Radiology at the hospital, if a 10 patient had a contrast reaction, whose 11 responsibility was it to place a warning sticker 12 on the jacket? 13 A. First of all, there are levels of reaction, and 14 that's a medical call. That's a physician call. 15 Q. Tell me -- let me interrupt you, and I'm sorry, 16 but I have to do it. Let me interrupt you and 17 ask you, give me the levels of reaction. What 18 are you talking about, and what are the levels of 19 reaction? 20 A. There's actually right now since this case -- 21 Q. No, before this case. 22 A. Could I -- 23 Q. Sure. I'm sorry, go ahead. 24 A. You messed up my train of thought. 25 Q. I'm sorry, you said, "After this case."</p>
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<p>1 independent of a quality review relating to 2 discovering that there was no "Allergic to 3 contrast medium" sticker on the film jacket of 4 Mrs. Boros? 5 THE WITNESS: Can we step outside 6 for a second? 7 MS. WYLER: Sure. 8 MR. SCHULMAN: We'll step outside. 9 (A brief recess was had.) 10 MS. WYLER: For the record, Steve 11 doesn't have any information regarding that 12 discovery outside of the quality review. 13 BY MR. SCHULMAN: 14 Q. Let me see if I can ask it this way. In 15 Dr. Murphy's testimony, I asked him on Page 75, 16 Line 15, "How did you discover there was no 17 sticker on the jacket?" And his answer was, "I 18 think Steve Spearing mentioned it, but I don't 19 know for sure." 20 Do you remember telling Dr. Murphy -- 21 MS. WYLER: Hold on. 22 Q. -- that there was no sticker on the jacket? 23 MS. WYLER: If any conversation 24 with Dr. Murphy was outside of the quality 25 review, then you can answer that question. So do</p>	<p>1 A. After this case, the American College of 2 Radiology set a policy in force that really 3 delineates, I think there's four categories of 4 reaction levels now -- mild, severe, and all 5 that. 6 Prior to that, there was a lot of 7 grayness. One doc may call hives one level, if 8 there's only three or four hives. Another doc 9 may say another level. So at that point in time 10 there was a lot of grayness in this system. 11 There's probably still some grayness, depending 12 on where you go across the United States, because 13 not everybody has adapted or bought into the 14 American College of Radiology standards. They're 15 not laws. They're standards. 16 So therefore, that's why I said it was 17 a medical call whether the sticker went on or 18 not. The technologist or nurse working the case 19 would be the one that actually physically made 20 sure the sticker got on. The physician should be 21 the one calling whether it's a level -- it's a 22 medical decision whether it's a level enough to 23 warrant a sticker being on. Does that answer 24 what you need? 25 Q. It does for the time being. Let me follow up for</p>

1 a couple minutes, if I might. Where is that
 2 policy? Where could we find that policy that
 3 you're addressing that was in effect before Mrs.
 4 Boros's case?
 5 A. That's probably not a written policy. Like I
 6 said, it's a gray area. Dr. A may interpret it
 7 one way; Dr. B another. There should be a
 8 policy -- there is a policy in there about
 9 putting the stickers on. About defining when the
 10 stickers are put on and when they're not, that's
 11 not defined,
 12 Q. Well, whose responsibility was that to come up
 13 with a policy that would address that? Yours?
 14 You were Administrative Director of Radiology.
 15 Isn't that your policy? I mean isn't that
 16 your --
 17 A. Any Administrative Director of Radiology doesn't
 18 have medical control. The policies are put
 19 together, designed and approved by the
 20 radiologists, especially when they're in medical
 21 policies.
 22 Q. You're saying that it was --
 23 A. I don't have one here to show you, but there's
 24 usually -- the books have a physician's signature
 25 on the front. They're supposed to be reviewed by

1 the chairman of the department or the section
 2 chief of the department and signed off by them
 3 that they agree with what's in the books.
 4 Q. Well, Dr. Murphy, I want you to assume, has
 5 testified in regard to this particular case that
 6 the policy that existed before Mrs. Boros's
 7 tragic reaction was that if drugs were prescribed
 8 to relieve the allergic reaction, that that would
 9 necessitate the nurse or the technologist placing
 10 a sticker on the patient's jacket.
 11 Now, assuming that to be the case,
 12 assuming that that's what Dr. Murphy testified
 13 to, was that your understanding as Administrative
 14 Director of Radiology for the hospital?
 15 A. That would be the policy -- the policy would read
 16 that. Now, the actual practice might be a little
 17 different because of the type of drug that's
 18 being administered. That's what I was trying to
 19 explain to you earlier is that one physician may
 20 think two or three hives isn't enough to put the
 21 sticker on. Another may think two or three
 22 hives, I want the sticker on.
 23 Q. But I want you to assume that Dr. Murphy stated
 24 to us, I believe, that that was the whole reason
 25 for the policy that I just explained to you.

1 That took away any discretion. If *drugs* were
 2 used to relieve the reaction, the allergic
 3 reaction to the contrast dye, then the sticker
 4 went on automatically. It wasn't a question of
 5 counting the hives or making a judgment call.
 6 That took total discretion away.
 7 I'm just asking for you to assume
 8 that. Did you understand that to be the policy,
 9 that it was in place before Mrs. Boros's
 10 reaction?
 11 A. The policy, yes. The policy, yes.
 12 Q. And you're telling us that that policy was not
 13 followed? Let me rephrase it.
 14 Are you telling us that that was the
 15 policy, but it was not always followed by the
 16 technologists or the nurses?
 17 A. Wow.
 18 Q. I'm just asking because I thought that's what you
 19 just said to us.
 20 Would it help, Mr. Spearing, if I had
 21 Gary go back and just give you what I *think* your
 22 answer was a couple minutes ago? Would that help
 23 you or --
 24 MS. WYLER: DO YOU Want the
 25 question reread?

1 Q. The record won't show where you're sort of
 2 looking like you're really intently thinking
 3 about the question.
 4 A. I am intently thinking about the question. I'm
 5 trying to give you an honest answer.
 6 Q. That's what we would like.
 7 A. Yeah, and the bottom line is, it's a muddy water
 8 situation. There are policies that are in effect
 9 that a medical decision will supersede, and
 10 that's a call of the radiologist. That may be
 11 on -- there's policies on if you do this set of
 12 films on an IVP or on a chest x-ray or whatever,
 13 and the physician makes a decision that he needs
 14 a different set, well, then they change.
 15 The same thing occurs on a policy like
 16 this. If a doc doesn't want the sticker on, he
 17 thinks it's a very mild anxiety reaction, for
 18 example, hives due to anxiety, not hives due to
 19 contrast, then he may not put the stickers on.
 20 Q. Okay. But if the doctor --
 21 A. Does that help at all?
 22 MR. TREADON: Could you read back
 23 the beginning of that answer for me?
 24 (The answer was read by the Court
 25 Reporter.)

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1 BY MR. SCHULMAN:
 2 Q. If a doctor is told of a contrast reaction by a
 3 technologist or a nurse, and the doctor, the
 4 radiologist prescribes medication to relieve the
 5 allergic reaction and does not supersede the
 6 policy, are you telling us that if under that
 7 scenario and before Mrs. Boros's reaction if that
 8 occurred, then either the technologist or the
 9 nurse was to apply the warning sticker as a
 10 matter of policy and course of the hospital to
 11 the jacket?
 12 A. That's the policy, yes.
 13 Q. So it's only under the circumstance when you say
 14 it's a muddy situation where the doctor
 15 intervenes to change the policy; otherwise, if
 16 the doctor does not intervene to change the
 17 policy, it is the technologist's or the nurse's
 18 responsibility to put the sticker on the
 19 patient's jacket, correct? Is that right?
 20 A. Correct.
 21 Q. In your experience as Administrative Director of
 22 Radiology, was that the practice of the nurses or
 23 the technologists?
 24 MS. WYLER: what was? Was what?
 25 Q. I'm *sorry*. Let me rephrase it. As

1 A. Not that I ever knew of. It was never
 2 highlighted.
 3 Q. Did it ever come to your attention that the
 4 radiologists were complaining about the policy
 5 being followed?
 6 A. Not to my recollection.
 7 Q. From what you're telling us, it would not have
 8 been the nurses' or the technologists' discretion
 9 to decide whether to put it on or not? It was
 10 not in their discretion to do it?
 11 A. The policy states what it states. They should
 12 follow that.
 13 Q. Okay.
 14 A. Now, the question is what their actual practice
 15 is that you're asking about. I'm not aware if
 16 they had -- I came in '91. A lot of the
 17 personnel had been there and had routines with
 18 these docs and relationships with these docs and
 19 habits with these docs that, you know, I'm not
 20 aware of, to be quite honest.
 21 (Plaintiff's Deposition Exhibit 1
 22 Spearing was marked for
 23 identification.)
 24 MS. WYLER: These are his writings.
 25 This is not on the original document.

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1 Administrative Director of Radiology, was that
 2 the practice of the nurses or the radiologists,
 3 that is, to put --
 4 MS. VAGOTIS: Not the radiologists.
 5 Q. The technologists, *sorry*. Off the record.
 6 (Discussion Off the record.)
 7 BY MR. SCHULMAN:
 8 Q. During the time that you were Administrative
 9 Director of Radiology, was it the practice of the
 10 nurses to put the warning sticker on the
 11 patient's jacket?
 12 MS. WYLER: Nurses and techs?
 13 Q. And the technologists, to put the warning sticker
 14 on the jacket if a radiologist prescribed
 15 medication? Was that the customary policy and
 16 practice?
 17 A. That would be my understanding of the intent of
 18 the policy, yes.
 19 Q. But was that the practice? Was that what you
 20 actually saw being done?
 21 A. I actually wouldn't see that. I've got
 22 supervisors between me -- I wouldn't know their
 23 actual practice unless a problem would exist that
 24 I would hear about.
 25 Q. Well, did a problem ever arise?

1 MR. SCHULMAN: Just assume this is
 2 a clean document.
 3 MR. TREADON: Maybe I have a clean
 4 one. You want to mark a clean one?
 5 BY MR. SCHULMAN:
 6 Q. Let me show you what we've marked as your Exhibit
 7 Number 1. Are you familiar with that? It's
 8 entitled "Procedure for Untoward Reactions after
 9 Injection of Contrast Media".
 10 A. That's out of one of the policy and procedure
 11 manuals, yes.
 12 Q. What did you have to do with this policy, if
 13 anything?
 14 A. Probably back in '92, we revised the whole
 15 situation. This was reviewed by myself and other
 16 persons, and then eventually approved and put
 17 into practice. And then the effective date was
 18 '93 here actually, it says up here. Then it was
 19 reviewed every year through '96.
 20 Q. It says revised. Does that just mean though that
 21 it was reviewed?
 22 A. Reviewed and revised, usually.
 23 Q. Before you left, in your office did you have all
 24 these policies?
 25 A. There are ten or eleven blue booklets, which is

1 the system in the office. There are also ten of
 2 them out behind Room 2 and 3, so the personnel in
 3 the department have access to them. There is the
 4 specific section book in each of the sections of
 5 the department. So there are three or four
 6 copies, I guess, is what you would call them, of
 7 each booklet, obviously, the master being back in
 8 the management section of the department.
 9 Q. When it says revised 6-94, 6-95, 4-96, would you
 10 know how this was revised, without --
 11 A. It's reviewed by the appropriate supervisors,
 12 senior section chief radiologist, et cetera.
 13 Changes are made.
 14 Q. Would you know those changes? Would you know
 15 what changes were made during those particular
 16 times?
 17 A. Not sitting here looking at it, no.
 18 Q. Is there a way that we could find that out?
 19 A. I guess if there was a copy of the old ones
 20 somewhere available.
 21 Q. Did you keep those in your office at all?
 22 A. No.
 23 Q. How often were these policies reviewed, if you
 24 know?
 25 A. They're supposed to be reviewed on an annual

1 basis.
 2 Q. All right.
 3 A. Joint Commission on Accreditation of Hospitals.
 4 Q. In the first paragraph it talks about -- I may be
 5 mispronouncing this -- urticaria. Do you know
 6 what that is?
 7 A. Yes.
 8 Q. What is it?
 9 A. It's got to do with eyes.
 10 Q. It's got to do with the eyes?
 11 A. Yeah.
 12 Q. What does that have to do with the eyes?
 13 A. Swelling and stuff.
 14 Q. Swelling of the eyes?
 15 A. Urticaria, yeah.
 16 Q. Would you think that the nurses and technologists
 17 should know what this means?
 18 A. Definitely, yeah.
 19 Q. The next one is pruritus.
 20 A. Urticaria is not -- hold it. Urticaria is not
 21 what I said it was.
 22 Q. what is that?
 23 A. I've got to think. I've been out of the
 24 radiology now for two months, and some of this
 25 stuff is getting --

1 Q. That's all right.
 2 A. I would hate to say exactly what it is.
 3 Urticaria -- strike that. I don't know.
 4 Q. What about pruritus?
 5 A. They both have to do with reacting to contrast
 6 media. That's essentially what they are.
 7 Q. As Administrative Director of the hospital's
 8 Radiology Department, you knew that a reaction to
 9 the contrast dye could be catastrophic for a
 10 patient; is that correct?
 11 A. Yes.
 12 Q. I mean, the worst situation would be an
 13 anaphylactic reaction?
 14 A. Yes.
 15 Q. You know what that is, an anaphylactic reaction?
 16 A. Yes.
 17 Q. What is it? What do you think that is?
 18 A. It's blood pressure -- you're going to die.
 19 Q. Okay.
 20 A. You've obviously got me very upset here. I'll be
 21 very honest with you.
 22 Q. I'm not trying to get you upset.
 23 A. Well, yeah, you do.
 24 Q. I apologize.
 25 MR. TREADON: He has that effect on

1 many people.
 2 A. I've had a very calm life since 2-19, and this
 3 has been a little grilling today.
 4 MS. WYLER: We'll recognize the
 5 fact that depositions are difficult.
 6 Q. Let me tell you, Mr. Spearing, I'm not trying to
 7 be --
 8 A. Difficult, I understand.
 9 Q. -- difficult or disrespectful to you or obnoxious
 10 to you; and if I am, I apologize.
 11 A. You're not.
 12 Q. If you want to take a break, you let me know.
 13 A. I can tell. I'm sweating and --
 14 Q. If you want to take a break, let me know.
 15 A. No. This policy is your normal policy that --
 16 there's some standard books that you buy, when I
 17 came to Mercy, I bought and used to set up
 18 policies. One is the Midwest A.H.R.A., American
 19 Health Care Radiology Administrator's
 20 booklet. I think that set is in the office,
 21 still. There's another set that's there.
 22 They're tan, I think, in color, if I remember
 23 correctly. They're model policies, so that
 24 you're fitting into the standards of the United
 25 States.

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1 Q. Do you think that this is a model policy?
 2 A. It would start out as a model, and then you
 3 tailor it to your practice.
 4 Q. Well, it says, "In the event of any untoward
 5 reaction" -- I'm looking at paragraph 3; are you
 6 with me?
 7 A. Right.
 8 Q. -- "notations should be written on patient's
 9 request." What is that? What does that mean?
 10 A. The patient's request, that's the form that
 11 starts the case that trails from the front office
 12 through getting the patient down from the floor
 13 or the outpatient in, and then the technologist
 14 picks that up and they know it's Joe Smith and
 15 he's going to have a chest x-ray or whatever.
 16 That's the request.
 17 Q. It says, "In the event of any untoward reaction,
 18 notations should be written on patient's
 19 request." What do you understand that to mean
 20 specifically? What is the --
 21 A. They're going to note on the patient's request so
 22 when it gets to the radiologist to dictate it,
 23 that he can note that there was a reaction.
 24 Q. All right.
 25 A. Because that should go in the body of the report.

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1 Q. Then it goes on to say, "If any medication is
 2 administered, the form 'Reactions to Contrast
 3 Media' must be completed along with the
 4 radiologist's signature."
 5 What is the Reactions to Contrast
 6 Media form?
 7 A. There's a form that they fill out.
 8 Q. Who fills out?
 9 A. The nurse, the technologist. Usually the nurse,
 10 because if there's going to be a medication
 11 administered, obviously a nurse is going to do
 12 it, unless the physician himself does it.
 13 Q. Now, in the time that you were Administrative
 14 Director, was it the practice of the
 15 technologists and/or nurses to complete the
 16 Reactions to Contrast Media form as described
 17 here?
 18 A. That's what the policy says.
 19 Q. And that says it must be completed along with the
 20 radiologist's signature. Was that a practice of
 21 the radiologists?
 22 A. Yes.
 23 Q. Yes?
 24 A. That's what the policy says.
 25 Q. Then it goes on to say, "The patient's film file

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1 jacket shall be marked appropriately to alert
 2 personnel in the future of the occurrence." Is
 3 that what we just discussed?
 4 A. Right.
 5 Q. That it was either the technologist or the
 6 nurse --
 7 A. Right.
 8 Q. -- that would put the sticker --
 9 A. Sticker.
 10 Q. -- on the jacket?
 11 A. The film jacket.
 12 Q. On the film jacket, correct?
 13 A. Right, right.
 14 Q. And that was not only a policy; that was a
 15 practice, correct?
 16 A. (Nods head.)
 17 Q. Yes?
 18 A. Yes.
 19 Q. Sorry. What was the reason for that?
 20 A. For future situations. The patient comes in; you
 21 want to know that for the future if they had a
 22 reaction.
 23 Q. Well, wouldn't the patient know that? I mean
 24 couldn't you just rely on the patient, if the
 25 patient had a reaction, to tell the personnel?

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1 Why did it have to be on the chart?
 2 A. Just -- would the patient know it? The patient
 3 would know it, yes.
 4 Q. Well, then, why mark the chart accordingly? Just
 5 a safety --
 6 A. Just a safety measure that you would try to -- I
 7 mean obviously you're going to have patients come
 8 from other institutions or other areas of the
 9 country that might have had a problem, and you're
 10 going to have to rely on them for their personal
 11 knowledge. But if you've got a captured patient
 12 and you can document a problem, that would just
 13 be to your advantage of safety.
 14 Q. Was there any written policy that you were aware
 15 of that specified how and in what fashion the
 16 technologist and/or the nurse was to tell the
 17 patient they had a reaction to the contrast
 18 media? Do you understand what I mean? First, do
 19 you understand what I mean?
 20 A. Yes, I understand what you're saying. Was there
 21 any specific guidelines or statements that they
 22 should give them?
 23 Q. Yes.
 24 MS. WYLER: In writing?
 25 Q. No, either verbal -- let's talk about verbally

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<p>1 first. A policy whereby the nurse or</p> <p>2 technologist verbally was required to explain in</p> <p>3 a certain fashion a reaction to a contrast media.</p> <p>4 MS. WYLER: And you're talking</p> <p>5 about a written policy?</p> <p>6 Q. Yes, I am talking about a written policy, yes.</p> <p>7 MR. TREADON: Relative to a verbal</p> <p>8 instruction?</p> <p>9 MR. SCHULMAN: Yes.</p> <p>10 MS. WYLER: Do you understand that</p> <p>11 question?</p> <p>12 A. I think so.</p> <p>13 MS. WYLER. Okay.</p> <p>14 MR. TREADON: Isn't it great to</p> <p>15 have all of us help you asking your questions?</p> <p>16 MR. SCHULMAN: I wouldn't be able</p> <p>17 to get through this.</p> <p>18 A. To my recollection, there's no written policy to</p> <p>19 that effect. In general, there may be in special</p> <p>20 procedures. I'm trying to think back. But in</p> <p>21 general, I don't think -- in my recollection,</p> <p>22 there's no specific one of that.</p> <p>23 Q. All right.</p> <p>24 A. Each -- I don't know how to state what I'm</p> <p>25 thinking.</p>	<p>1 A. There's risk with any medication.</p> <p>2 Q. Well, isn't there a known risk though in some</p> <p>3 people to the contrast dye?</p> <p>4 A. Yeah, yeah. I'm allergic to contrast.</p> <p>5 Q. You are?</p> <p>6 A. Yes.</p> <p>7 Q. How did you discover that you're allergic to it?</p> <p>8 A. Through spritzing it on my forehead back in 1967</p> <p>9 and hives right away.</p> <p>10 Q. So did you ever have to undergo --</p> <p>11 A. Luckily, I've never had a procedure.</p> <p>12 Q. But if you --</p> <p>13 A. And I have been tested for iodine reaction, and I</p> <p>14 do have an iodine reaction.</p> <p>15 Q. How were you tested for that?</p> <p>16 A. Back then, back in the old days, we used to give</p> <p>17 a five-minute test dose, which is not practiced</p> <p>18 anymore.</p> <p>19 Q. Because that's dangerous, I take it; is that</p> <p>20 right?</p> <p>21 A. Yeah, 3 or 4 cc's, and five minutes later you</p> <p>22 might have a problem. Yeah, practices have</p> <p>23 changed since sixty-something.</p> <p>24 Q. So based upon your knowledge and experience and</p> <p>25 training, if you had to undergo a radiological</p>
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<p>1 Q. You tell me if you want to add anything. I don't</p> <p>2 know what exactly --</p> <p>3 A. I don't know how to express what I'm thinking</p> <p>4 right now properly.</p> <p>5 Q. Were you in attendance at any meetings or did you</p> <p>6 ever recommend as Administrative Director of</p> <p>7 Radiology that if a patient had an adverse</p> <p>8 reaction to the contrast media, something in</p> <p>9 writing be given to the patient, actually handed</p> <p>10 to the patient and explained by the technologist</p> <p>11 or nurse as to what happened and what the patient</p> <p>12 should be concerned about in the future?</p> <p>13 A. To my recollection, no, I was never present when</p> <p>14 any of that was discussed, to my recollection.</p> <p>15 Specific -- I shouldn't say that.</p> <p>16 Homebound instructions and things like</p> <p>17 that were discussed. Now, pieces and parts of</p> <p>18 what you're asking could have been in that. But</p> <p>19 as far as a specific separate document, no.</p> <p>20 Q. Would it be the policy of the hospital to tell</p> <p>21 patients who were undergoing any type of</p> <p>22 radiological test that uses contrast dye that the</p> <p>23 contrast medium is a harmless liquid dye?</p> <p>24 A. I would hope not.</p> <p>25 Q. Why is that?</p>	<p>1 test that required a dye, contrast dye, you would</p> <p>2 what, get the nonionic?</p> <p>3 A. I would request the nonionic, yes.</p> <p>4 Q. And that's why, based upon your experience?</p> <p>5 A. Well, I have several issues. Based upon my</p> <p>6 previous history, plus I have a thyroid issue,</p> <p>7 plus I'm a diabetic, and I'm on Glucophage. So I</p> <p>8 have some of the ACR criteria for needing</p> <p>9 nonionic. There are standards that the ACR, that</p> <p>10 I talked about earlier, that they've set up that</p> <p>11 predicates whether you should have nonionic or</p> <p>12 ionic.</p> <p>13 Also, my mother had a reaction to it,</p> <p>14 the contrast media, years ago. That would be</p> <p>15 another reason.</p> <p>16 Q. Do you know how, other than the written policy,</p> <p>17 how the technologists and/or the nurses were</p> <p>18 trained on telling the patient whether or not</p> <p>19 they had a reaction? Do you understand my</p> <p>20 question?</p> <p>21 If a patient had a reaction at the</p> <p>22 hospital to the contrast media, aside from the</p> <p>23 policy, how were the nurses or the technologists</p> <p>24 to tell the patient about that reaction, if you</p> <p>25 know?</p>

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<p>1 A. Well, most of their training would be back -- the</p> <p>2 training for that would be back when they did</p> <p>3 their two-year training course in school. Then</p> <p>4 the next thing would be when they had their</p> <p>5 on-the-job training, it would be reviewed; also</p> <p>6 policy and procedure manuals reviewed with them,</p> <p>7 et cetera, and their three, four, five, six-week</p> <p>8 orientation, whatever they're set up in. Would</p> <p>9 they have specific discussion of that? I</p> <p>10 wouldn't -- I couldn't state for the record yes.</p> <p>11 Q. After Mrs. Boros's reaction, did any of the</p> <p>12 policies in the department change with regard to</p> <p>13 the contrast media?</p> <p>14 MS. WYLER: Object. You can answer</p> <p>15 if you know the answer.</p> <p>16 Q. Go ahead.</p> <p>17 MS. WYLER: Outside of any quality</p> <p>18 matter, independent of any quality, if you have</p> <p>19 any information.</p> <p>20 Q. Let me rephrase it. Independent, as Alicia says,</p> <p>21 of any quality assurance, did in fact, for</p> <p>22 whatever reason, any policies change or were they</p> <p>23 added or revised with regard to contrast media,</p> <p>24 allergic reactions, warning stickers, any of</p> <p>25 that, anything like that, after Mrs. Boros's</p>	<p>1 went on a hospital-wide computer system. Is that</p> <p>2 correct?</p> <p>3 MS. WYLER: What information are</p> <p>4 you referring to, Allen?</p> <p>5 Q. Patient information in the Radiology Department.</p> <p>6 Reactions to dye, for example.</p> <p>7 A. Meditech.</p> <p>8 Q. Meditech?</p> <p>9 A. Meditech is the hospital information system</p> <p>10 that's now currently in effect.</p> <p>11 Q. Well, if Mrs. Boros, assume for me, had had a</p> <p>12 previous reaction before the March 5th reaction,</p> <p>13 if she had had a previous reaction to the dye,</p> <p>14 should that have gone in on the computer, if</p> <p>15 policy was being followed?</p> <p>16 A. If I remember her situation --</p> <p>17 Q. Pardon?</p> <p>18 A. If I remember, her original IVP was done in</p> <p>19 December of --</p> <p>20 MS. WYLER: '97. Why don't you</p> <p>21 give him the facts behind that so he can</p> <p>22 understand the context.</p> <p>23 Q. Let me give you a hypothetical. Let's just say a</p> <p>24 patient before Mrs. Boros's reaction on March</p> <p>25 5th--</p>
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<p>1 reaction?</p> <p>2 A. Policies -- all policies were reviewed, and</p> <p>3 contrast media, like I said, with the ACR changes</p> <p>4 in their standards, obviously that's been changed</p> <p>5 since then. It was not in reaction to her case.</p> <p>6 It would be in reaction to the ACR standards.</p> <p>7 I worked with Dr. Diane Pretorius</p> <p>8 specifically to work on changing several of the</p> <p>9 policies -- I can't remember exactly specifically</p> <p>10 which ones -- in regards to the change the ACR</p> <p>11 made,</p> <p>12 Q. Who is Diane Pretorius?</p> <p>13 A. She's one of the radiologists.</p> <p>14 Q. Do you recall when the standards were issued or</p> <p>15 when they came out?</p> <p>16 MS. WYLER: These changes that he's</p> <p>17 just referred to?</p> <p>18 MR. SCHULMAN: Yes.</p> <p>19 MR. TREADON: ACR, you're talking</p> <p>20 about?</p> <p>21 MR. SCHULMAN: Right.</p> <p>22 A. Yes, the ACR. Probably spring of last year, I'm</p> <p>23 guessing. Yeah, spring of '98. Yeah. Somewhere</p> <p>24 in that neighborhood.</p> <p>25 Q. Now, some of this information, we've been told,</p>	<p>1 MS. WYLER: In '97?</p> <p>2 Q. Yes, correct.</p> <p>3 MS. WYLER: That would be the time.</p> <p>4 I don't remember when Meditech went into effect,</p> <p>5 but it was in effect, I think, in December of</p> <p>6 '97.</p> <p>7 Q. Okay. In December of 1997, if a patient had a</p> <p>8 reaction to the contrast media, would that have</p> <p>9 gone into the computer, to the best of your</p> <p>10 knowledge?</p> <p>11 A. To the best of my knowledge, it should go into</p> <p>12 the computer.</p> <p>13 Q. And would the physician, radiologist then be able</p> <p>14 to bring that back up if the patient came in</p> <p>15 again to discover that the patient had a reaction</p> <p>16 to the contrast media?</p> <p>17 A. It would be retrievable. As far as how easily</p> <p>18 retrieved, I can't speak to that.</p> <p>19 Q. Were there complaints about the computer system</p> <p>20 from the radiologists to the hospital that you</p> <p>21 were aware of?</p> <p>22 A. The Meditech system?</p> <p>23 Q. Yes.</p> <p>24 A. Yes.</p> <p>25 Q. Were any of those concerns or complaints about</p>

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<p>1 the computer system put in writing to you?</p> <p>2 A. Put in writing?</p> <p>3 Q. To you?</p> <p>4 A. I don't think in writing. Verbal, I think.</p> <p>5 Q. And these were coming from the doctors, is that</p> <p>6 correct?</p> <p>7 A. They were coming from everybody. I mean the</p> <p>8 whole system. You have to understand, we had a</p> <p>9 stand-alone radiology information system prior to</p> <p>10 Meditech called IDX RAD which was a specific</p> <p>11 system designed for radiology. With the</p> <p>12 institution of Columbia, we went to a national</p> <p>13 HIS system, which is a hospital information</p> <p>14 system which radiology is a piece of.</p> <p>15 So some of the functions that were</p> <p>16 available under a stand-alone system were not</p> <p>17 quite the same level of expertise and ease of use</p> <p>18 under a global type system. Not just</p> <p>19 documentation of contrast, but mammography</p> <p>20 documentation, several of the things that were</p> <p>21 more in-depth in the stand-alone system weren't</p> <p>22 that detailed in the more generic hospital</p> <p>23 system.</p> <p>24 Q. Well, just assume for me in 1997 in December, if</p> <p>25 I had come into the Radiology Department and had</p>	<p>1 Q. Outside of quality assurance or peer review?</p> <p>2 MS. WYLER: If you have any</p> <p>3 information, tell him that information.</p> <p>4 Otherwise, tell him you have no information.</p> <p>5 A. I have no information.</p> <p>6 MS. WYLER: Allen, Steve has to get</p> <p>7 out of here by 3:30. Are you going to be done?</p> <p>8 MR. SCHULMAN: We'll be done,</p> <p>9 unless Tom has some questions. Yeah, I'm pretty</p> <p>10 sure.</p> <p>11 BY MR. SCHULMAN:</p> <p>12 Q. The Reaction to Contrast Media form that we've</p> <p>13 discussed that you're aware of, did you say that</p> <p>14 that was as a matter of practice filled out?</p> <p>15 A. I said as a matter of policy.</p> <p>16 Q. what about practice?</p> <p>17 A. Again, I've got several layers of management</p> <p>18 between me and them. I would suspect that the</p> <p>19 practice should be there. I don't know for sure.</p> <p>20 You're talking about a hundred and fifty thousand</p> <p>21 roughly exams per year; and to say that I have</p> <p>22 minute detail of how each procedure is done and</p> <p>23 each interreaction, verbal interreaction, I mean</p> <p>24 I can't swear to it.</p> <p>25 Q. The hospital did a hundred and fifty thousand</p>
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<p>1 gone through an IVP and had a reaction to the</p> <p>2 contrast media and was prescribed medication,</p> <p>3 would that information -- let me put it this way.</p> <p>4 Should that information have been put into the</p> <p>5 computer for future reference?</p> <p>6 A. Yes, in the radiologist report, it should be, and</p> <p>7 also through the other screens that are</p> <p>8 available.</p> <p>9 Q. So then if I came back in 1998, would that have</p> <p>10 been accessible by either the nurse or the</p> <p>11 technologist or the radiologist?</p> <p>12 A. It would be accessible. The question is the ease</p> <p>13 of use to get to it and the usability of it</p> <p>14 because of the ease of use.</p> <p>15 Q. So what you're saying is, it would have been</p> <p>16 accessible but not too easily?</p> <p>17 A. Right. The system was not as user-friendly as</p> <p>18 the previous stand-alone system.</p> <p>19 Q. Now, outside of quality assurance or peer review,</p> <p>20 did you talk to any of the people who were</p> <p>21 involved with Mrs. Boros, either in December of</p> <p>22 '97 or March of '98? The nurses or the</p> <p>23 technologists?</p> <p>24 MS. WYLER: Outside of the peer</p> <p>25 review or quality.</p>	<p>1 radiological exams per year?</p> <p>2 A. That's what we did in the year just past, '97.</p> <p>3 MS. WYLER: '98 or '97?</p> <p>4 A. Excuse me, '98.</p> <p>5 Q. Well, then, who is in charge of making sure that</p> <p>6 the R.N.s and the technologists are following</p> <p>7 these procedures we've been discussing?</p> <p>8 A. You have the management team. You have the</p> <p>9 radiologists that were teams, a team, and</p> <p>10 everybody is out there making sure that things</p> <p>11 are done correctly; and if they're not, they're</p> <p>12 brought forth, and we discuss them and document</p> <p>13 them and write them up or whatever.</p> <p>14 Q. Well, again, outside of any quality assurance,</p> <p>15 was anybody written up or disciplined in regard</p> <p>16 to not following policy in Mrs. Boros's case?</p> <p>17 By that I mean nurses or technologists?</p> <p>18 MS. WYLER: Again, if you have no</p> <p>19 information outside of quality assurance, then --</p> <p>20 A. Nobody was written up for that case at all that I</p> <p>21 know of.</p> <p>22 Q. Well, did you ever discover why the Contrast</p> <p>23 Media form was not completed, either on December</p> <p>24 12, '97, or March 5, '98?</p> <p>25 MS. WYLER: Again, if you have no</p>

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1 information --

2 A. I have no information.

3 MS. WYLER: Okay.

4 Q. Have you ever seen one for Mrs. Boros's case?

5 Have you ever seen a Reaction to Contrast Media

6 form that you're aware of?

7 A. I've not seen one.

8 Q. To your knowledge, was a patient ever given the

9 opportunity or -- let me put it this way. Was

10 the patient ever given the informed choice as to

11 whether to get the nonionic versus the ionic

12 contrast done?

13 MS. WYLER: Are you talking about

14 something concerning informed consent?

15 MR. SCHULMAN: Yes.

16 MS. WYLER: Or is this something

17 different?

18 MR. SCHULMAN: No.

19 BY MR. SCHULMAN:

20 Q. Let me rephrase it. In 1997 and 1998, was a

21 patient undergoing one of these radiological

22 tests that involve contrast media, as a matter of

23 policy, given the opportunity to choose between

24 nonionic and/or ionic contrast media?

25 A. It was not offered as a choice at Mercy.

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1 Q. Why not, if you know?

2 A. I don't -- it was not offered.

3 Q. Well, was it cost, to your knowledge? Would you

4 agree with me that nonionic costs more than

5 ionic?

6 A. Yes.

7 Q. Was that ever discussed while you were

8 Administrative Director for the eight years at

9 the hospital that we're not going to offer the

10 choice because the nonionic is more expensive?

11 A. Not in that -- cost was discussed, but not in

12 those types of words.

13 Q. Well, tell me how cost was discussed then.

14 A. Obviously in cost control situations of trying to

15 make sure that the proper patients, the proper

16 criteria got the nonionic.

17 Q. What do you mean by that? I'm sorry.

18 A. Well, again, using the ACR guidelines --

19 Q. Well, these ACR guidelines -- I hate to

20 interrupt -- were after Mrs. Boros, correct?

21 A. There was a set prior to Mrs. Boros, but they

22 were revised -- that's why I said this is an

23 ongoing, earlier I said it's an ongoing issues.

24 You said were policies changed? Yes, they were,

25 but it wasn't because of the Boros case.

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1 Contrast is an ongoing issue. Use of nonionic

2 versus ionic is an ongoing issue nationwide, not

3 just at Mercy.

4 Q. Was it ever discussed that nonionic was less

5 reactive than ionic?

6 A. Yes.

7 Q. Is that pretty much known in your field?

8 A. I think if you check the statistics, it's

9 something like four percent supposedly less

10 harmful or something like that.

11 Q. And I think you indicated that certainly based

12 upon your personal experience, if you were to

13 have a CAT scan or some radiological test --

14 A. But again, I have the criteria, the ACR criteria

15 to need it.

16 Q. Right, but you would expect nonionic?

17 A. I would ask for it, yes.

18 Q. Yes, and you would expect it?

19 A. But I have insider information sort of since I'm

20 in the field.

21 Q. All right. Did the department have any

22 guidelines to follow as to who would get nonionic

23 versus ionic?

24 A. Yes.

25 Q. And what were those?

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1 A. Back under the IDX RAD system, specifically there

2 were codes developed and a sheet by the two CT

3 units and over in the IVP area, back in specials,

4 that if a patient had the ACR guideline issues,

5 then they got the nonionic. And that was driven

6 off the questionnaire that they answered; and

7 then when the technologist or nurse reviewed the

8 questionnaire with them, those criteria go down

9 all the way to anxiety, and they had codes for

10 them we used to put in the IDX system that we

11 could not do in the Meditech system.

12 Q. Well, if Mrs. Boros, assume for me, had come in

13 on March 5th --

14 MS. WYLER: What year?

15 Q. Well, '97.

16 MS. WYLER: '97?

17 Q. '98, March 5, '98, and there had been a sticker

18 on her file, "Patient allergic to contrast

19 media," what would have happened as a matter of

20 policy?

21 A. She got the nonionic.

22 Q. And why, based upon your experience and knowledge

23 and training?

24 A. Why?

25 Q. Yes.

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<p>1 A. Because it states she had a previous reaction. I 2 shouldn't probably say it that succinct. Her 3 case would be reviewed and she would probably get 4 the nonionic. 5 Q. Would she have been a part of that discussion? 6 A. What discussion? 7 Q. Would she have been involved in that choice, that 8 discussion? On March 5, '98 -- 9 A. Not -- 10 Q. Wait, let me finish, Mr. Spearing. Let me ask 11 the question. 12 On March 5 of 1998, if the sticker, 13 the warning sticker, "Patient allergic to 14 contrast media," had been on her file jacket, 15 would she have participated in the discussion as 16 to whether or not ionic versus nonionic was going 17 to be used as a matter of policy? 18 A. Not as --no. 19 Q. She wouldn't be? 20 A. No. She would have been questioned probably as 21 to what actually happened previously, just like I 22 would or you would. 23 Q. And suppose she said, "I don't know, they said I 24 had -- 25 A. They would check her --</p>	<p>1 A. If it's available, yes. Any data that's 2 available. 3 Q. Where is that kept? 4 A. It should be in the film file jacket, stapled to 5 thereport. 6 Q. Would it be anywhere else? 7 A. Shouldn't be by policy. Whether somebody kept an 8 aberrant file or something, I wouldn't know about 9 it. 10 Q. I'm sorry, a what file? 11 A. An additional file or whatever you want to call 12 it. If somebody kept their own records or 13 something. 14 Q. Oh, you meant aberrant. I understand. Let's 15 take a quick break here. 16 (A brief recess was had.) 17 BY MR. SCHULMAN: 18 Q. I <i>think</i> I only have about three more areas, so 19 bear with me. 20 If we went to Mercy Hospital today, 21 for example, and wanted to pull up on the 22 computer Mrs. Boros's care and treatment from the 23 Department of Radiology, what computer would we 24 go to or what computer would you have gone to 25 before you resigned your employment?</p>
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<p>1 Q. Wait. She said, "I don't know. I had an 2 allergic reaction. 3 A. They would check her report, which they have in 4 the jacket. 5 Q. What report? 6 A. The physician report, radiologist's report. 7 Q. Because there are a lot of papers. So they would 8 check the radiologist's report? 9 A. Radiologist's report. That would be the normal 10 sequence. Again, I'm talking about what 11 different physicians would do. 12 Q. Okay. 13 A. They would check the report. They would check 14 the computer. They would chat with <i>the</i> patient, 15 and then they would make a decision on what 16 contrast she's going to get. And the odds are, I 17 would say, that she would get nonionic. The 18 patient would not be offered a choice, I don't 19 think. 20 MS. WYLER: Who would make the 21 decision? 22 A. The physician. 23 Q. Would there be someone looking at the contrast 24 reaction media fonn? Would that be a part of 25 what you --</p>	<p>1 A. Well, I had clearance at my office. I would go 2 to the computer at my desk. 3 Q. And what would you do? How would you access it? 4 A. I would access it by her medical record number or 5 access through her name. And being 6 Administrative Director, I had clearance; I could 7 check on patient report, patient statistics, 8 whatever. 9 Q. Now, I just want to try to go over this. I'm not 10 trying to belabor it. But we're trying to get an 11 overview as to what happened when a patient had a 12 reaction to the contrast media when you were 13 Administrative Director. I'm just trying to get 14 an idea as to what fonnns are generated and where 15 they're going. 16 I come in, let's say, in December of 17 1997. You're the Administrative Director of 18 Radiology. I'm undergoing an IVP. I have a 19 reaction. The doctor gives me medication. 20 You've indicated as a matter of policy, either 21 the nurse or the technician should put the 22 warning sticker on my jacket that says "Allergic 23 to contrast media," correct? 24 A. Yes, there's a manufacturer's sticker we used. 25 Q. Now, what else should have been done for me? I</p>

1 mean thenurse, the nurse or the technologist,
 2 what fonns do they fill out and what computer
 3 information do they input?
 4 A. For me to answer exactly what they would do
 5 probably is not accurate.
 6 Q. Let's take --
 7 A. The more I think about this whole situation, the
 8 questions you've been asking me all day today,
 9 when I came in '91, basically I've been handling
 10 growth issues and problems; and unless something
 11 was brought up -- I'm having a little voice
 12 change myself, and I quit smoking a long time
 13 ago. Puberty again.
 14 Q. We're becoming empathic.
 15 A. Anyhow, what I'm trying to say is, unless there
 16 was a problem or an issue, there may have been
 17 practices going on that I wasn't a hundred
 18 percent aware of, because the volume of
 19 interreactions and practices, I mean for me to
 20 say I know what's going on in Room 17 at 2:00 on
 21 Friday, no, there's no way. That's why you have
 22 policies and procedures. These are guidelines
 23 for you to follow. That's why we train people to
 24 follow certain things. And then that's why I
 25 delegate the management team and the radiologists

1 to see that those policies are followed.
 2 To say specifically that they are
 3 followed is tough for me to say, in all cases. I
 4 mean obviously, they're followed generally or you
 5 would hear about it. So I guess for me to say,
 6 you know, what would they actually fill out as
 7 far as fonns, I would say whatever the policy
 8 says is what they should fill out. How did they
 9 practice, I can't speak to it in detail and in --
 10 Q. Okay. Well, I'm just trying to clarify because
 11 you did say you knew what the patient's request
 12 was?
 13 A. Yes.
 14 Q. Okay. It says, "In the event of any untoward
 15 reaction, notations should be written on
 16 patient's request."
 17 A. Right.
 18 Q. Then it says, "If any medication is administered,
 19 the form 'Reactions to Contrast Media' must be
 20 completed along with the radiologist's
 21 signature," correct?
 22 A. That's what the policy says, yes.
 23 Q. And that should have --
 24 A. Should have occurred.
 25 Q. And that's the policy?

1 A. Via policy, right.
 2 Q. Those go into the jacket?
 3 A. They should go into the jacket.
 4 Q. And anywhere else?
 5 MS. WYLER: Are you talking about
 6 the Reaction to Contrast Media fonn?
 7 MR. SCHULMAN: Yes, exactly.
 8 Thanks, Alicia.
 9 A. I don't remember that form enough to know if it's
 10 a multi-part form or not. I mean if it's a
 11 multi-part form, obviously, it would go multiple
 12 places. My recollection of that form is not
 13 enough to give you the detail you need, I guess
 14 is the best answer I can give you.
 15 Q. But to the best of your recollection being
 16 Administrative Director of the Radiology
 17 Department, at least you know it should have been
 18 filled out and put into the jacket?
 19 A. Via policy it should have been filled out and
 20 signed by the radiologist and put into the jacket
 21 for future reference. I mean that's the theory
 22 behind the policy.
 23 Q. And then that information should be put on the
 24 computer, should be input into the computer?
 25 A. Right, for future --

1 Q. For future reference?
 2 A. Right.
 3 Q. And then the radiologist would prepare a dictated
 4 report, and it should be made a part of his
 5 report, correct?
 6 A. Dictated report would be the study that was done
 7 in there. Somewhere in there, there should be a
 8 paragraph or words, sentences, whatever, about
 9 the reaction.
 10 (Plaintiff's Deposition Exhibit 2
 11 Spearing was marked for
 12 identification.)
 13 Q. After you've had a chance to look at it, tell me;
 14 then I know we can move on and get you out of
 15 here.
 16 MS. WYLER: You've reviewed that,
 17 Steve?
 18 A. Yeah, I've reviewed it.
 19 Q. You see that -- this is Mrs. Boros's IVP report
 20 from Dr. Murphy. At least that's what was given
 21 to us from the hospital, right? Do you agree
 22 with that?
 23 A. Yes.
 24 Q. 12-12-97?
 25 A. 12-12-97.

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<p>1 Q. At the bottom of your Exhibit Number 2, do you 2 see where it has apparently something already 3 preprinted on that form, and it says Contrast -- 4 A. Media Reaction. 5 Q. Right. Is that the form you're referring to? 6 When you say that the radiologist would dictate 7 something, is that where it should be dictated? 8 A. Yes and no. There should be something there, and 9 most radiologists put something in the body of 10 the report, also. 11 Q. Do you see anything in the body of Dr. Murphy's 12 report that talks about a reaction? 13 A. I see nothing in the body of that report that 14 says anything about reaction. 15 Q. Based upon your experience and as Administrative 16 Director of the Radiology Department for the 17 hospital and having worked with the radiologists 18 in the department, ordinarily, if there was a 19 reaction to the contrast media, that would be a 20 part of the body of the dictation here on Exhibit 21 2? Is that what you're saying? 22 A. Yes. If there was a reaction here that the 23 radiologist felt was reportable. Again, it goes 24 back to that gray area. 25 Q. Well, the radiologist -- you've just said that</p>	<p>1 class or whatever criteria, and then monitoring 2 the films as they're done. Then the request and 3 the films come in and he reads them. He dictates 4 them into a dictaphone. It's typed off. Then he 5 proofreads it and signs it electronically. 6 Q. Then where would he pull off the reaction to the 7 contrast media? 8 A. It would be on that request that naturally had -- 9 and all the paperwork would track with the case. 10 Q. And so that patient request would be in the 11 jacket, right? 12 A. Right. 13 Q. I mean the -- 14 A. The whole case, the films, the paperwork that 15 follow with the case would all come back to 16 Dr. Murphy, or whatever radiologist, to be read. 17 They hang them up and read them, and that way 18 they can look at the requests and the data while 19 they're looking at it. That's how they know to 20 read Case Number H dit-dit-dit-dit-dit, Joe 21 Smith, IVP. 22 Q. So the Reaction to Contrast Media form should be 23 a part of that, and then the doctor would be able 24 to see that, read it, and then dictate it into 25 his report; is that correct?</p>
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<p>1 the Radiology Department handles upwards of a 2 hundred and fifty thousand exams a year, right? 3 A. Yeah. 4 Q. So Dr. Murphy, to be fair to him, he's seeing a 5 lot of people a day, isn't he? Or reading a lot 6 of studies a day? 7 A. Well, roughly -- I guess you could just do a 8 mathematical, say one-tenth of that, 15,000 a 9 year. There's 11 radiologists now. There were 10 10. Just added one. 11 Q. Well, how would he know when he's ready to 12 dictate this report that there was an adverse 13 reaction to the media? If you know? 14 A. The way the procedure works, the doctor who 15 orders the contrast media for the IVP -- they're 16 assigned to like an area for the day. One doc 17 will be in CT; one doc will be in MR; one doc 18 will be in general; one Doc will be in 19 ultrasound, et cetera, et cetera, et cetera. 20 So whoever is doing IVPs on 12-12 -- 21 it obviously was Dr. Murphy -- he would be the 22 one prescribing nonionic/ionic, looking over the 23 questionnaires of the patients, looking at the 24 scout films prior to the injection, saying to 25 give 100 cc's or 50 cc's or whatever by weight</p>	<p>1 A. If he does. Like I said, some docs put it in 2 their report; some Docs just put it down here. 3 Q. Okay. 4 A. There's different -- 5 MS. WYLER: "Here" meaning at the 6 bottom of Exhibit 2? 7 A. I'm sorry, yes. 8 Q. But they put it somewhere? 9 A. Yes. 10 Q. And then the Reaction to Contrast Media form 11 remain with the jacket as a matter of policy, 12 correct? 13 A. They would track with the report. 14 Q. They would be part of the jacket? 15 A. They would end up in the jacket. They should end 16 up in the jacket, yes. Should end up there. 17 Q. And they should also end up in the computer, 18 correct? 19 A. Yes. 20 Q. Okay. 21 A. But -- 22 Q. Now, do you know who put the sticker on Mrs. 23 Boros's jacket on March 5th? 24 A. Yes. 25 Q. Who did that?</p>

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<p>1 A. I did.</p> <p>2 Q. You did that?</p> <p>3 A. Yes. I also dated it 3-5-98.</p> <p>4 Q. Now, was that your customary job?</p> <p>5 A. No.</p> <p>6 Q. Why is it that you put the sticker on?</p> <p>7 A. Part of quality management.</p> <p>8 MS. WYLER: Move to strike that</p> <p>9 answer.</p> <p>10 Q. Does the patient's request that we've been</p> <p>11 talking about, that stays with the patient's</p> <p>12 jacket? It's not destroyed, is it?</p> <p>13 A. It's destroyed.</p> <p>14 Q. The patient's request is destroyed?</p> <p>15 A. Yeah, it's just a piece of paper about this big,</p> <p>16 about 4 by 8, 5 by 8.</p> <p>17 Q. So the patient's request is pitched, is thrown</p> <p>18 away after the doctor reviews it and dictates it</p> <p>19 into the record?</p> <p>20 A. Right.</p> <p>21 Q. And it's basically, as Tom said off the record --</p> <p>22 or maybe Alicia, maybe Angela -- a requisition</p> <p>23 form?</p> <p>24 A. Yes, it's a requisition form.</p> <p>25 Q. Now, let me show you what we've previously marked</p>	<p>1 Exhibit 1, Reactions to Contrast Media form?</p> <p>2 A. No.</p> <p>3 Q. That's different?</p> <p>4 A. That's a different form.</p> <p>5 Q. At the bottom of that Sills 6, do you see the</p> <p>6 writing there?</p> <p>7 A. Yes.</p> <p>8 Q. And isn't that a reaction to the contrast media</p> <p>9 based upon your knowledge, training, education,</p> <p>10 being the Administrative Director of the</p> <p>11 Radiology Department?</p> <p>12 A. Yes, that's a mild reaction.</p> <p>13 Q. Well, mild -- it's a reaction?</p> <p>14 A. It's a reaction.</p> <p>15 Q. And medication is given?</p> <p>16 A. Medication is given, Benadryl.</p> <p>17 Q. All right. Now, where does this Contrast Form,</p> <p>18 Sills 6, go? What happens to this form? After</p> <p>19 it's filled out, what happens to it?</p> <p>20 A. That should go to the jacket.</p> <p>21 Q. To the jacket. Does the radiologist --</p> <p>22 A. To the report. The clerical people would staple</p> <p>23 this to the report and put it in the jacket.</p> <p>24 Q. All right. And then when the radiologist reviews</p> <p>25 this case --</p>
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<p>1 as Plaintiff's Deposition Exhibit 6 in Nurse</p> <p>2 Sills' deposition. Take a look at that, please.</p> <p>3 Are you ready?</p> <p>4 A. Yes.</p> <p>5 Q. You've had an opportunity to review that. Do you</p> <p>6 know what that is?</p> <p>7 A. Yes, sir.</p> <p>8 Q. Can you describe it for the record here?</p> <p>9 A. It's the Patient Questionnaire Contrast form.</p> <p>10 Q. Would this be considered what is described as</p> <p>11 "Reactions to Contrast Media form"? Or is this</p> <p>12 something different?</p> <p>13 MS. WYLER Tom, do you have to</p> <p>14 stand there? We'll make a copy of this.</p> <p>15 MR. TREADON: I'm sorry, no. I'll</p> <p>16 stand back here. Am I bothering you?</p> <p>17 MS. WYLER: Yes.</p> <p>18 MR. TREADON: I just wanted to see</p> <p>19 it. Sorry. Am I bothering you, Gary?</p> <p>20 THE REPORTER: NO.</p> <p>21 A. Rephrase that. Restate it, whichever. I got</p> <p>22 sort of --</p> <p>23 Q. That's okay. Is this, Sills's 6, where it says</p> <p>24 Contrast Form, is that the same as what we've</p> <p>25 been talking about here on your Deposition</p>	<p>1 A. Oh, initially, this would go with the films to</p> <p>2 the radiologist to read, yes.</p> <p>3 Q. So the radiologist should read this?</p> <p>4 A. He should check it. I mean obviously here --</p> <p>5 this is the orders he gave for the use of ionic</p> <p>6 and nonionic and the films that he asked for.</p> <p>7 Q. Okay.</p> <p>8 A. And that's his initials.</p> <p>9 Q. Right. But that's before the --</p> <p>10 A. That's before the case. Now, when the case comes</p> <p>11 through with the request, the requisition, this</p> <p>12 and any other paperwork come in with the films</p> <p>13 for him to dictate; hopefully, he's going to lay</p> <p>14 them out in front of the films and review the</p> <p>15 case.</p> <p>16 Q. And as a matter of policy, Will he review what is</p> <p>17 written at the bottom of the page, which is a</p> <p>18 reaction to the contrast dye?</p> <p>19 A. Not as a matter of policy. It would be a matter</p> <p>20 of how he practices, I would <i>think</i>. There's not</p> <p>21 a policy that says you must review Contrast Form;</p> <p>22 you must review requisition; you must review -- I</p> <p>23 mean no.</p> <p>24 Q. Well, in the policy of the hospital Radiology</p> <p>25 Department, aside from the radiologist, on your</p>

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1 Exhibit Number 1 which we've been referring to
 2 all afternoon here, it says, "If any medication
 3 is administered, the form 'Reactions to Contrast
 4 Media' must be completed along with the
 5 radiologist's signature;" is that correct?
 6 A. That's what it says.
 7 Q. That's the policy of your department, the
 8 hospital's department?
 9 A. That's the policy, right.
 10 Q. Now, do you recall ever seeing -- and I don't
 11 want to know where you might have looked at it.
 12 But do you recall ever seeing in this case any
 13 Reactions to Contrast Media form with regard to
 14 Mrs. Boros?
 15 A. Not to my recollection.
 16 Q. And would it be fair to say, Mr. Spearing, that
 17 one of the reasons that this form, this Reactions
 18 to Contrast Media form was a policy of the
 19 hospital and it required basically a sign-off by
 20 the radiologist was to incorporate another safety
 21 measure for the patient's well-being if the
 22 patient returned to the hospital and had the
 23 potential of having the dye used again?
 24 A. Read that.
 25 (The question was read by the Court

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1 Reporter as follows: "And would it be fair to
 2 say, Mr. Spearing, that one of the reasons that
 3 this form, this Reactions to Contrast Media form
 4 was a policy of the hospital and it required
 5 basically a sign-off by the radiologist was to
 6 incorporate another safety measure for the
 7 patient's well-being if the patient returned to
 8 the hospital and had the potential of having the
 9 dye used again?")
 10 A. Yes.
 11 Q. And in addition, the Reactions to Contrast Media
 12 form was also a way to present to the radiologist
 13 that there had been a reaction, right?
 14 A. Yes.
 15 Q. Because the radiologist might not, in the course
 16 of reviewing many cases during the day, might not
 17 remember whether Patient X had a reaction, fair?
 18 A. I guess fair, yeah.
 19 Q. Okay. Going back to your Plaintiff's Deposition
 20 Exhibit 2 where it says at the bottom, "Contrast
 21 Media Reaction", who puts that information in
 22 there? If you know?
 23 A. That's a very good question. A lot of that stuff
 24 is put in by the technologist. The pregnancy
 25 thing would be put in by the technologist. Yeah,

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1 a lot of this down here would be filled out by
 2 the technologist.
 3 Q. Is that the Meditech system, or is that the IDX
 4 system?
 5 A. This is the PCI, so it should be Meditech.
 6 That's what the patient -- I forget what the "C"
 7 stands for. Something information. Patient
 8 Computer Information or something like that, PCI.
 9 Q. So the Contrast Media Reaction, to the best of
 10 your knowledge, is to be filled out by either the
 11 technologist or the nurse?
 12 A. Probably, yeah.
 13 Q. Have they been, to your knowledge, trained -- the
 14 technologists and the nurses -- to describe and
 15 to know what is supposed to be placed in this
 16 Contrast Media Reaction section here?
 17 A. They would take directions from the radiologist
 18 on what grade or what to put there, from the
 19 conversation they had. I mean obviously, are
 20 they trained specifically? Was there a specific
 21 course to teach them to put certain things in
 22 there? No. Would they through practice, you
 23 know, put "hives" or "nausea" or -- there are key
 24 words that you use, yes. And they're basically
 25 those ACR guideline words would be the quickest

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1 thing because you're not going to write a
 2 paragraph there. You're going to put key words.
 3 Q. Well, let me put it *this* way. If this Contrast
 4 Media Reaction section had been filled out on or
 5 about December 12, 1997, and Mrs. Boros had come
 6 in then on March 5, '98, and somebody had seen
 7 that on December 12, 1997, she had a reaction to
 8 the contrast media dye, what would have happened?
 9 MS. WYLER: I'm going to object.
 10 That's speculation, but as far as you know.
 11 Q. Let me rephrase it.
 12 MS. WYLER As a matter of
 13 practice?
 14 Q. As a matter of practice and policy, what would
 15 have happened if somebody sees there was a
 16 reaction on December 12th?
 17 A. If it said "hives" or "nausea" as was described
 18 somewhere else that you showed me, there would
 19 have been a discussion happen, probably a little
 20 more in-depth than what happened, and then a
 21 decision by the radiologist on whether ionic or
 22 nonionic was used.
 23 Q. And in all probabilities, nonionic would have
 24 been used; fair?
 25 A. Possibly. I can't -- that's a medical decision I

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1 can't make. I mean because, like I said, hives
 2 can come from anxiety. Hives can come from
 3 multiple things. That's more of a medical
 4 decision than a technologist or a nurse making a
 5 decision. I'm a technologist by trade. I'm not
 6 a physician.
 7 Q. Okay. Well, my last question here. If that --
 8 and I apologize. If that had --
 9 A. The odds are, yes, nonionic would have been used
 10 because everybody tries to err on the --
 11 Q. More probably than not, right?
 12 A. Right.
 13 Q. That's all I have. Thank you very much.
 14 -----
 15 MR. TREADON: I do have a couple
 16 now.
 17 MS. WYLER: This is Dr. Murphy's
 18 attorney.
 19 -----
 20 CROSS-EXAMINATION
 21 BY MR. TREADON:
 22 Q. My name is Tom Treadon. We met before. I only
 23 have a few questions.
 24 This Reaction to Contrast Media form
 25 that's referred to in your Exhibit 1 -- put that

1 -----
 2 FURTHER CROSS-EXAMINATION
 3 BY MR. SCHULMAN:
 4 Q. You don't even know whether it exists?
 5 A. To my recollection. I mean you're talking
 6 about --
 7 Q. I want to follow up on this. Do you mean you
 8 don't know whether Mrs. Boros's Reaction to
 9 Contrast Media form exists or that the form
 10 itself, Reactions to Contrast Media form, exists?
 11 MS. WYLER: Let's take them one by
 12 one. First of all, I think he said he never saw
 13 one with respect to Mrs. Boros.
 14 Q. Let me rephrase it. When you answered Tom's
 15 question a moment ago, you said I don't know even
 16 if it exists. Are you saying you don't know
 17 whether the Reactions to Contrast Media form in
 18 general exists at the Radiology Department of
 19 Columbia or Mercy Hospital? Is that what you
 20 meant, sir?
 21 A. No, that's not exactly what I meant. What I'm
 22 saying is, I don't know if it exists in practice.
 23 It was drawn up originally when the form was
 24 made. Whether people are using it or not, I
 25 can't speak to today.

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1 in front of him. Have you ever seen that form?
 2 Do you know what that form looks like?
 3 A. To my recollection, no.
 4 Q. Okay. And you really don't know whether it goes
 5 with the jacket or goes to the pharmacy or goes
 6 to some other committee or some other place in
 7 the hospital, do you?
 8 A. Like I said, I can't remember if it was a
 9 multi-part form. If I was to design it today, I
 10 would make it a multi-part and have it go several
 11 places,
 12 Q. Do you know that it goes, in fact, if it's filled
 13 out, goes to the pharmacy?
 14 A. I don't know that.
 15 Q. Do you know in fact if it actually becomes part
 16 of the film jacket?
 17 A. I don't know that for a fact.
 18 Q. Have you ever seen a Reaction to Contrast Media
 19 form filled out?
 20 A. Not to my recollection.
 21 Q. That's all the questions I have.
 22 A. I don't know if it exists, to be honest with you.
 23 Q. Fine.
 24 MS. WYLER: Do you have anything
 25 else, Allen?

1 Q. Did anyone ask the technologists or the nurses or
 2 the supervisors after Mrs. Boros's reaction
 3 whether this form existed?
 4 MS. WYLER: Hold on. If you have
 5 any knowledge independent of a quality review, if
 6 you have any information, you can tell him. If
 7 you don't have any information, then tell him you
 8 don't have any information.
 9 A. I don't have any information.
 10 MR. SCHULMAN: What I would like to
 11 do is, we're going to stop the deposition now. I
 12 would like to, rather than terminate it, I would
 13 like to suspend it, at least until we have an
 14 opportunity to present to Judge Sinclair some of
 15 the issues about this quality assurance and
 16 quality control and peer review. So we'll just
 17 stop there.
 18 MS. WYLER: Mr. Spearing, you're
 19 going to read the transcript when it's
 20 transcribed. We'll provide you a copy.
 21 Gary, please send me a copy of it, and
 22 I'll send it to Mr. Spearing for review.
 23 -----
 24 Deposition concluded at 3:45 p.m.
 25 -----

1 CERTIFICATE

2
3 STATE OF OHIO }
4 STARK COUNTY }
5

6
7 I, STEPHEN L. SPEARING, do hereby
8 certify that I have read the foregoing deposition
9 in the case of KENNETH A. BOROS, Plaintiff,
10 versus RADIOLOGY SERVICES OF CANTON, INC., et
11 al., Defendants, and said deposition constitutes
12 a true and correct transcript of my testimony
13 given at the specified time.
14

15
16
17 STEPHEN L. SPEARING

18 Subscribed and sworn to before me this
19 day of , 1999.
20

21 Notary Public
22 My commission expires
23
24
25

1 CERTIFICATE

2
3 STATE OF OHIO }
4 STARK COUNTY } SS
5

6 I, Gary W. Hill, a Registered
7 Professional Reporter and Notary Public in and
8 for the State of Ohio, duly commissioned and
9 qualified, do hereby certify that the within
10 named Witness, STEPHEN L. SPEARING, was by me
11 first duly sworn to testify the truth, the whole
12 truth and nothing but the truth in the cause
13 aforesaid; that the testimony given was by me
14 reduced to Stenotypy and afterwards transcribed
15 upon a typewriter, and that the foregoing is a
16 true and correct transcription of the testimony
17 so given by him as aforesaid.

18 I do further certify that this
19 deposition was taken at the time and place in the
20 foregoing caption specified.

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

25 IN WITNESS WHEREOF, I have hereunto
set my hand and affixed my seal of office at
Canton, Ohio, on this May 21st day of May, 1999.

26
27 Gary W. Hill, RPR & Notary Public
28 My commission expires April 5, 2000.
29
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35