1 (Pages 1 to 4)

	1		3
	THE STATE OF OHIO,)	1	INDEX
	COUNTY OF CUYAHOGA.) SS:	2	
	IN THE COURT OF COMMON PLEAS	3	WITNESS NAME: RICHARD MATTHEW WALSH, M.D.
	RICHARD RICHNAFSKY, et cetera,)	4	PAGE
	et al.,)) plaintiffs,)	5	Direct Examination by Mr. Becker
	vs.) Case No.	- 6	······································
) 559008 UNIVERSITY HOSPITALS OF CLEVELAND,)	7	INDEX OF OBJECTIONS
	et al.,	8	BY MS SANDACZ:
	defendants.)	10	PAGE/LINE PAGE/LINE PAGE/LINE
	Videotaped deposition of RICHARD MATTHEW	11	12/13 33/5 47/15
	WALSH, M.D., a witness herein, called by the plaintiffs as if upon cross-examination, and	12	16/6 33/18 48/24
	taken before David J. Collier, RPR, Notary	13	18/12 38/7 49/8
	Public within and for the State of Ohio, pursuant to Notice of Deposition and pursuant to	14	
	the further stipulations of counsel herein	15	20/2 41/12 51/22
	contained, on Tuesday, the 18th day of April, 2006 at 4:48 p.m., at the Cleveland Clinic	16	20/10 41/24 52/16
	Foundation, 9500 Euclid Avenue, City of Cleveland, County of Cuyahoga, State of Ohio.	17	20/20 42/8 53/24
	creverand, county or cuyanoga, State of ONLO.	18	21/1 43/11 54/25
		19	23/6 43/17 56/6
		20	26/18 44/22 58/13
		21	27/12 45/9 58/25
		22	27/22 45/15 59/25
		23	30/15 47/6
] .		24	
		25	
	2		4
1		1	(Plaintiff's Exhibits 1 through 4
1 2	APPEARANCES:	2	marked for identification.)
3	ON BEHALF OF THE PLAINTIFFS:	3	
4	Michael F. Becker, Esq.	4	RICHARD MATTHEW WALSH, M.D.
5	Becker & Mishkind	5	being first duly sworn, as hereinafter
6	660 Skylight Office Tower	6	certified, was examined and testified as
7	Cleveland, Ohio 44113	7	follows:
8	(216) 241-2600	8	
9		9	CROSS-EXAMINATION
10	ON BEHALF OF THE DEFENDANTS:	10	BY MR. BECKER:
11	Beverly A. Sandacz, Esq.	11	Q Good afternoon, Doctor.
12	Roetzel & Andress	12	A Good afternoon.
13	One Cleveland Center - Ninth Floor	13	Q Tell me your full name, please.
14	Cleveland, Ohio 44114	14	A Richard Matthew Walsh.
15	(216) 623-0150	15	Q And you're a physician?
16		16	A Yes.
17	e de la construcción de la constru	17	Q And you're currently employed by the
18	ALSO PRESENT:	18	Cleveland Clinic Foundation?
19	George H. Tackla, Videographer	19	A Yes, sir.
20		20	Q And I have had an opportunity to look at
21		21	your file. In addition to the materials in
22		22	front of you, which I see are two or three
23		23	depositions and the medical chart, have you
24		24	reviewed anything else that's not before you?
25		25	A No.

2 (Pages 5 to 8)

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	5	5	7
1	Q Do you have any notes, Doctor, that you	1	Q Okay. You've been practicing for roughly
2	Q Do you have any notes, Doctor, that you created as a result of your review in this case?	2	20 years?
	A No.	3	A 14.
4	Q Is it your practice not to create notes	4	o 14.
5	when you review or do a medical/legal review?	5	Could you define the term "incidental
6	A Typically I would not. I might write in	6	finding."
7	the in the volumes that I've been given, but	7	A A finding that is happened to be found that
8		8	is not directly pertinent to what was the
	not separate notes.	9	test was being performed for.
9	Q Okay. Let's talk about your medical/legal	10	Q Okay. I forgot to give you my standard
10	experience. How long have you been reviewing	11	caveats. This is a question and answer session
11	cases?	12	under oath. It's important that you understand
12	A Oh, a dozen years.	13	the question that I ask you. If you don't
13	Q And approximately how many what how	14	• • • • •
14	many per year would you review?	15	understand the question, you let me know, I'll
15	A I would say on average less than one.		be glad to rephrase or restate the question.
16	Q Okay. And do you know how it was that you	16	Fair enough?
17	were contacted on this case?	17	A Yes.
18	A No.	18	Q However, unless you indicate otherwise, I'm
19	Q And have you ever worked for Beverly's law	19 .	going to assume you have fully understood the
20	firm before?	20	question that I've posed and you have given me
21	A Not that I know of.	21	your best and most complete answer today.
22	Q Do you know Dr. Elkhairi?	22	Fair enough?
23	A No.	23	A Yes.
24	Q Okay. Never met him?	24	Q Now, we were talking about an incidental
25	A Never.	25	finding or what it is. What you're saying is
L		anaran a far a state of the sta	
		6	8
1		_	
1	Q Okay.	-	it's a finding that when one doesn't
2	Q Okay. A Not that I know of.	- 1	it's a finding that when one doesn't anticipate, runs a test, but it's not
2 3	 Q Okay. A Not that I know of. Q Okay. I looked at a deposition of yours. 	1 2 3	it's a finding that when one doesn't anticipate, runs a test, but it's not anticipated?
2 3 · 4	Q Okay. A Not that I know of. Q Okay. I looked at a deposition of yours. It appears that you have maybe reviewed 12 to	- <u>-</u> 2 3 4	it's a finding that when one doesn't anticipate, runs a test, but it's not anticipated? A Correct.
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3 (Pages 9 to 12)

9 11 I А Yes. 1 Ά It's rare that I actually find cancer in 2 And as a general surgeon, have you ever had 2 the lung, even when it's an incidental finding. 0 a patient that had an abdominal CT or a chest But it's happened to your patients in the 3 3 Ô Δ film in preparation for surgery and there was an 4 past? incidental finding? I can't think of diagnosing a lung cancer 5 5 А any time recently for that, in that scenario. 6 А Yes. 6 7 Could you tell me, does that occur maybe 7 Well, would you actually be the one to \cap 0 once a year to you, or how often would that -diagnose lung cancer or would you be someone 8 8 0 Oh, I would say once a month maybe, 9 that would be referring the person ---А 10 something like that. 10 Well, even if I --А -- to a CT surgeon? 11 0 Once a month? 11 0 Even if I referred the patient and it Um-hum. 12 12 А Д 13 Okay. 13 subsequently came back lung cancer, that's been 0 I see a lot of people with CAT scans or very unusual --14 А 14 15 order a lot of CAT scans, so --15 Okay. 0 -- in my practice. Okay. Have any of those patients, when 16 16 \cap Ά 17 there's been an incidental finding, had a 17 Okay. When you have a suspicious finding 0 that is consistent with cancer, do you -- how do 18 suspicious spot or lesion on a chest film or 18 19 CT scan that would be consistent with lung 19 you advise the patient of that finding? 20 cancer? 20 This is a patient I'm working up for Ά another reason, I myself? 21 Possibly. Now, these are patients that I'm А 21 22 evaluating, correct? 22 Yes. Let's just deal with -- since we're 0 23 Your patients. 23 talking about --Q 24 My patients --24 Because that's not the situation here Α 25 25 o Right. though. 10 12Well, we're talking about an appendectomy. 1 Ά -- that I'm working up for a specific 1 0 2 so let's just use an appendectomy example. I'm, 2. complaint. sure you do hundreds of appendectomies, correct? 3 Right. 3 0 I don't do hundreds, no, but ---4 Ά Okav. 4 A 5 Not a specific complaint for the incidental 5 0 You do appendectomies? 0 Yes, sir. 6 finding. 6 Ά 7 Right, but -- right. 7 Okay. And in the course of doing Ô Ά 8 So how often would that occur? Once every 8 appendectomies --Ó 9 year or two years, maybe more than that? 9 For append -- acute appendicitis, you mean? Α Once -- yeah, I would say a couple times a Right. Right. And have you in fact had a 10 Ά 10 0 11 suspicious finding in the chest that could be 11 vear. 12 A couple times a year? 12 consistent with cancer? 0 13 Um-hum. I see a lot of people with 13 MS. SANDACZ: Objection. Go A 14 pancreatic cancer, so they get CAT scans and --14 ahead. Have I seen that? 15 0 And when you see a suspicious finding on 15 A 16 the lungs, let's just kind of focus in on a spot 16 Q Yes. I haven't actually had that exact scenario. 17 or a suspicious lesion on the lung, an 17 Ά 18 incidental finding, would you yourself arrange 18 Okay. If you had, what would -- let's deal 0 19 for further testing or would you refer the 1.9 with your actual practice. 20 patient out? 20 What kind of cancers, suspicious 21 21 lesions that could be cancerous, do you find in Д If I am the one who is ordering the -- it 22 depends, but if I'm ordering the test, I may 22 incidental findings in your practice, not what's 23 request another test or I might refer -- I might 23 referred to you? 24 do both. 24 Ά Right. So I deal a lot with pancreatic 25 25 cancer, so we're interested in metastatic 0 Okay.

4 (Pages 13 to 16)

	13		15
1	disease to the lung, so that's where most	1	the eval if I'm working up a specific thing,
2	everything I'm going to be involved with.	2	and so it's part of that workup. So the typical
3	Q Okay.	3	example is a patient is referred for a mass,
4	A Okay?	4	already a suspected cancer, and I find something
5	Q Where the where the cancer, the	5	in the lung. I would need to document that.
6	primary	6	That's part of the evaluation of the process, of
7	A Is already in the pancreas.	7	the problem I'm dealing with.
8	Q source is a pancreatic	8	Q Okay.
9	A Right.	9	A If for some reason I don't think the
10	Q cancer primary metastasized to the	10	patient may follow through, I may want to
11	lungs?	11	document it. Otherwise I can't think of a
12	A But I'm the one taking care of the	12	specific example. There are certainly times
13	pancreatic cancer.	13	when I have recommended to patients that they
14	Q Okay.	14	follow up with their regular doctor for any host
15	A So I'm trying to decide if the patient has	15	of problems that is not related to surgery, or
16	disease going to the lung.	16	my surgery.
17	Q Okay. Can you give me any other examples	17	Q Okay. And would you send a letter to the
18	of incidental findings besides pancreatic	18	referring physician or
19	lung cancers secondary to a pancreatic cancer	19	A Sometimes yes, sometimes no. It it's
20	patient?	20	there isn't a specific criteria that I have that
21	A Not typically. I mean, it could be found	21	would dictate that.
22	on any CT scan for any reason, but that would be	22	Q You said that you would document it when
23	the most typical in my experience.	23	you think the patient wouldn't follow up. What
24	Q When you have a suspicious finding, can we	24	do you mean by that?
25	agree that it's important to inform the patient	25	A If for some reason I thought the patient
	A F		1 6
	14		16
1	of the suspicious finding?	1	was unreliable but I did want to document that I
2	of the suspicious finding? A Yes.	2	was unreliable but I did want to document that I found something on a specific situation, then I
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5 (Pages 17 to 20)

	17		19
1	Q Under those circumstances, did you rec	1	listen to this
2	did you document your recommendation for a	2	MS. SANDACZ: I don't know. I
3	biopsy?	3	don't know.
4	A That's what I was being the patient was	4	THE WITNESS: There's a there
5	referred for, and I for that problem, and I	5	must be a conference right next door.
6	recommended a biopsy for them. Yes, that was	6	MR. TACKLA: Off the record.
7	documented.	7	and the second sec
8	Q Okay. Have you ever written a letter to a	8	(Discussion had off the record.)
9	fellow physician, either within this the	9	
10	Cleveland Clinic family or outside in the	10	BY MR. BECKER:
11	community, where their patient has been sent to	11	Q Let me just try that question again,
12	you for something and there was an incidental	12	Doctor.
13	finding and you recommend follow-up by that	13	Can we agree that a doctor, a surgeon
14	physician?	14	who becomes aware in an incidental manner of a
15	A Yes.	15	potentially life-threatening condition has a
16	Q Okay. Can you give me an example of that.	16	responsibility to ensure that the patient fully,
17	A I can't remember a specific example, but	17	completely and accurately understands the
18	chances are that if I found something in	.18	condition?
19	testing, that I might find something, and if I'm	19	MS. SANDACZ: Objection. Go
20	writing the letter, let's say, to give them	20	ahead.
21	follow-up on what they sent the patient for,	21	A Yes.
22	that I would, if I was already writing the	22	Q Can we agree, Doctor, that a surgeon who
23	letter, make a notation that such another	23	becomes aware in an incidental manner of a
24	incidental finding was found, yes. I can't	24	potentially life-threatening condition has a
25	think of a specific time that I did that, but	25	responsibility to ensure that the patient
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	18		20
1	18 Q Can we agree that an incidental finding of	1	20 understands the need for follow-up?
1 2		1 2	
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	Q Can we agree that an incidental finding of a spot or a lesion on the lung that is suspicious for cancer is certainly a potentially life-threatening condition? A Yes. Q Can we agree, Doctor, that a surgeon who becomes aware in an incidental manner of a potentially life-threatening condition has a responsibility to ensure that the patient fully, completely and accurately understands the condition? MS. SANDACZ: Objection to "ensure." Go ahead. A I think the patient needs to be told and be offered an opportunity to ask questions. If that satisfied being fully aware, I believe you said, of the of the problem, then, yes, I would agree with that. Q Well, let me just read the question A Okay.	2 3 4 5 6 7 8 9 10 11 12 .13 14 15 16 17 18 19 20	<pre>understands the need for follow-up?</pre>
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	Q Can we agree that an incidental finding of a spot or a lesion on the lung that is suspicious for cancer is certainly a potentially life-threatening condition? A Yes. Q Can we agree, Doctor, that a surgeon who becomes aware in an incidental manner of a potentially life-threatening condition has a responsibility to ensure that the patient fully, completely and accurately understands the condition? MS. SANDACZ: Objection to "ensure." Go ahead. A I think the patient needs to be told and be offered an opportunity to ask questions. If that satisfied being fully aware, I believe you said, of the of the problem, then, yes, I would agree with that. Q Well, let me just read the question A Okay. Q over again. A Go ahead.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	<pre>understands the need for follow-up?</pre>

### 6 (Pages 21 to 24)

	21	and the second	23
1	MS. SANDACZ: Objection.		A Yes.
2	Q Doctor, you are a Fellow of the American	2	Q And what that means, sir, is that that
3	College of Surgeons?	3	that a Fellow pledges to abide by, follow,
4	A Yes.	4	adhere to the principles and to the statements
5	Q And Dr. Elkhairi was a member of at	5	of the College, correct?
6	- least at the time he rendered care to	6	MS. SANDACZ: Objection.
7	Mrs. Richnafsky, of the American College of	7	A Yes, but that doesn't have anything to do
8	Surgeons.	8	with standard of care again.
9	A I don't know that	9	Q Okay. We're going to talk about standard
10	Q Is that your understanding?	10	of care.
11	A I don't know that for a fact, but	11	A And we're not talking about sainthood;
12	Q Okay.	12	either.
13	A I've never seen his CV.	13	Q We're not what?
14	Q Okay. For purposes of many of my questions	14	A Talking about sainthood. I mean, they're
15	that follow, I want you to assume as true that	15	not infallible.
16	he also is a is a Fellow of the American	16	Q Okay. Now, also there is a prerequisite to
17	College.	17	entry as a Fellow that the physician must pledge
18	Can we agree that the American College	18	to abide by the Code of Professional Conduct,
19	of Surgeons establish certain statements and	19	correct?
20	principles for their Fellows?	20	A Yes.
21	A They may.	21	Q And that Code of Professional Conduct
22	Q And can we agree that there is a preamble	22	- states that: We treasure the trust that
23	to the statements and principles and I have	23	patients have placed in us, because trust is
24	copies for you, if you'd like to look at one,	24	integral to the practice of surgery.
25	the preamble, which has been marked as	25	Did I read that right?
	22		24
1	Plaintiff's Exhibit 1.	1	A Yes.
2	A Okay. But I I don't think any of these	2	Q And would you agree with that concept about
3	principles necessarily apply to standard of	3	trust and why patients
4	care.	4	A Yes.
5	Q Okay. We'll talk about that in a moment,	5	Q place trust in their doctors?
6	but let's just deal with the preamble for a	6	A Yes, I certainly do.
7	moment, and it says here that it's founded to	7	Q It goes on to say: During the continuum of
8	provide opportunities for the continuing	8	pre, intra and postoperative care, we accept
9	education of surgeons. The American College of	9	responsibilíties to serve as effective advocates
10	Surgeons has a deep and effective concern for	10	of our patients' needs, be sensitive and
11	the improvement of patient care and for the	11	respectful of the patients' understanding, their
12	ethical practice of medicine.	12	vulnerability during the perioperative period
13	Is that what it says?	13	and fully disclose adverse events. Do you see
14	A That's what it says.	14	that?
15	Q And do you agree with that process?	15	A Yes.
16	A Yeah, that's fine. That's a preamble.	16	Q Do you agree with that concept?
17	Q Now, in fact, Doctor, there is a fellowship	17	A Yes.
18	pledge that each member, before he's inducted,	18	Q Now, there's a section thereunder relative
19	must swear to, and the fellowship pledge, which	19	to informed consent. I think it's on page 5.
20	is on the next two pages over on page 3 states	20	In that it says that the surgeon must fully
21		21	inform every patient about his or her illness
1	as follows: I hereby pledge myself, as a	S in m	THEOTH CVCLY PROLOGIC MDORC MED OF HOL TENNODO
22		22	and the proposed treatment, correct?
22 23	condition of fellowship in the College, to live		
23	condition of fellowship in the College, to live in strict accordance with the College's	22 23	and the proposed treatment, correct? A Correct.
	condition of fellowship in the College, to live	22	and the proposed treatment, correct?

7 (Pages 25 to 28)

1       appendicitis.       1       4       This was discovered before the surgical         2       Q       And it says: The information must be       3       C       Ext. it was discovered before the surgical         2       Q       And there's a section entitled Preoperative       4       Section 2014       A         4       A sys.       2       A       This was discovered before the surgical         5       A       Yes.       9       Right:       A         9       patient's safety, throughout the prooperative, and       9       A for.       8       Yes.         10       operative       9       Right:       8       Yes.         12       A Yes.       10       A for.       8       Yes.         13       Q       And there's a section entitled Continuity       16       0       In pet.         16       O       And there's a section entitled Continuity       16       0       In pet.         16       O       In pet.       17       A Yes.       19       A for.         17       A Yes.       10       No. SANMAC:       Chyperton.       10         17       A Yes.       10       No. SANMAC:       Chyperton.		25	1. Avenue (1. Avenue (	27
3       presented fairy, clearly, accurately, 4       3       0       But it was discovered in a preoperative assessment, sourcet?         4       comparison and Care, and it args that the surgeon 9 is responsible for the patient's eafety, the 9 patient's and the yargeoperative, and 11 postoperative, operative, and 12 postoperative period, correct?       0       N div's scenthing that the doctor.         10       oparative preoparative, operative, and 11 postoperative geniod, correct?       0       A div's scenthing that the doctor.         12       A Yes.       12       N Wes.       13       0       M div's combing that the doctor.         13       Q And you agree with that?       14       A Sure.       13       0       N dight?         14       A Sure.       13       0       N dight?       14       A Sure.         15       Q And that seas that if the patient is in 15       16       0       n part.       17         15       Q Add that seas that if the patient is in 16       10       New, sincovered during the surgical 17       12         16       Q May. New       23       A No. This was discovered during the surgical 20       23       24       3       10       10         14       A stapplet to the surgeon has a 21       22       30       23       10       10         2	1	appendicitis.	1	A This was discovered before the surgical
4       compassiontably, correct?       4       assessment, correct?         5       A       Yes.       5       A       This was discorred for Curing a workup         7       Diagnosis and Care, and it ergs that the surgeon       7       0       Right.         8       assessment, correct?       6       A       A is an approximate particle particle assetty, the         9       patient's safety, throughout the preoperative, and       9       2       And it's something that the doctor,         10       operative period, correct?       11       whether the patient is and you agree with that?       12       NS <sandac2:< td="">       Operation         12       A       Yes.       12       NS<sandac2:< td="">       Operation       14         14       A       Tr was, and there's a section that       16       0       In part.       16         13       O and you agree with that?       14       A       It was discovered in       16       0       In part.         14       A       Surgeon will ensure str?       16       0       In part.       17       NS       NS</sandac2:<></sandac2:<>	2	Q And it says: The information must be	2	care.
5       A       Yes.       5       A       This uss discovered for during a workup         6       Q       And there's a section entitled Prooperative,       0       of a copplaint that led to surgery.         7       Disgnosis and Care, and it says that the surgeoperative,       0       A dirts something that the doctor,         10       operative presporative, operative, and       0       A dirts something that the doctor,         10       operative presporative, operative, and       10       surgeon, ralied upon is his determination as to         11       protoparative presporative, system a section that       12       80. SANDACCI       Objection.         13       Q       And that sets a section metitled Continuity       14       A two system       15       Q       Not have share of what he used to nake the         15       Q       And that seas that if the patient is in       16       Q       In the preoperative testing, is it reasonable to         16       opsent.       21       responsibility to enume it?       22       No. subtoc:       Objection.         17       a X:st applies to the surgery.       22       Q       No. SUBCC:       Objection.         18       Q       Not that septemp of this evaluation?       19       No. This was indered this was discovered in	3	presented fairly, clearly, accurately,	3	Q But it was discovered in a preoperative
6       Q       And there's a section entitled Preoperative       6       of a complaint that led to surgery.         7       Disgnosis and Care, and it says that the surger,       7       Q       Right.         8       Patient's safety, throughout the preoperative,       9       Q       And it's consching that the doctor,         9       operative - preoperative, cand       10       grageon, railed upon in his determination as to         11       postoperative period, correct?       11       N       SANDACE: Objection.         12       A       Yes.       12       N       SANDACE: Objection.         13       Q       Add you agree with that?       13       Q       Right?         14       A       Surgeon, railed upon in his determination as to         15       Q chad thore's a section entitled Continuity       13       Q       Right?         16       Q C fare, where it says that a section that       16       Q       In part.         16       ocrect?       19       O Nor, Sinos it was it was discovered in         17       correct?       19       Q       Nork sinos it was it was discovered in         18       Q Nork, Sinos it was it was discovered in       10       Q         19       A dot that mean	4	compassionately, correct?	4	assessment, correct?
7       Diagnosis and Care, and it says that the surgeon       9       0       Right.         8       a resh.       9       A first         9       patient's asfety, throughout the preseparative, operative, o	5	A Yes.	5	A This was discovered for during a workup
8       is responsible for the patient's safety, the       9       A       Yesh.         9       patient's safety, throughout the preoperative, and       0       And it's comething that the doctor,         10       postoperative pariod, correct?       10       whether the patient meeded surgery.         14       A       Surce.       20       Ad there's a section entitled Continuity         16       0       And there's a section entitled Continuity       13       0       Right?         15       0       Ad there's a section entitled Continuity       16       0       Image: State and the section and the surgery.         16       Of Care, where it says that a section that       16       0       Image: State and the section and the patient is in         17       A       Yes.       20       Now, since it was it was discovered in         19       correct?       20       Now, since it was it was discovered in         10       0       A yes.       21       Now, since it was it was discovered in         19       responsibility to ensure it?       22       Now, since it was discovered during the surgical         20       A it applies to the surgery.       25       Now, Since it was discovered during the surgical         21       MR. BCIERR:       Off the reco	6	Q And there's a section entitled Preoperative	6	of a complaint that led to surgery.
<ul> <li>patient's safety, throughout the preseparative, operative preseparative operative, oper</li></ul>	7	Diagnosis and Care, and it says that the surgeon	7	Q Right.
10       operative preoperative, operative, and       10       surgeon, relied upon in his determination as to         11       postoperative period, correct?       11       whether the patient meeded surgery.         13       Q       And you agrees with that?       13       Q       Night?         14       A       Surgeon, relied upon in his determination as to         15       Q       And there's a section entitled Continuity       14       A       If was part of what he used to make the         15       Q       And there's a section entitled Continuity       16       Q       In part.         17       asys a surgeon will ensure appropriate       16       Q       In part.         18       Q       Now, since it was it was discovered in       17       X         19       correct?       19       the preoperative testing, is it reasonable to         20       Say that that is a potential continuing       prebles       20         21       Q       A stit applies to the surgery.       21       No. This was done prior to         21       ME. BECKER:       Off the record.       2       1         21       ME. BECKER:       Off the record.       3       2       1         22       A soft applies in find	8	is responsible for the patient's safety, the	8	A Yeah.
11postoperative period, correct?11whether the patient needed surgery.12A Yes.12MS. SANDACI:Objection.13Q And you agree with that?13Q Rught?1414A Surc.14A It was part of what he used to make the15Q and there's a section that aurgical patient,16G Ta part.17says a surgeon will ensure appropriate17A Yes.18continuity of care of that surgical patient,13Q Now, since it was it was discovered in19the preoperative testing, is it reasonable to20A Yes.20A Yes.20Say that that is a potential continuing21Q And that means that if the patient is in21mos SANDAC2:24A Sit tapplies to the surgery.22224A Sit tapplies to the surgery.22225Q Okay. Now262826281part of his evaluation. This was done prior to2Discussion had off the record.3Q Incidentily, have you looked at the3SECKER:Off the record.444(Discussion had off the record.)5A Ko, I have not.7MR. SECKER:Off the secusion6A Ko, I have not.7Wes.2Doctor, I forgot to ask you a question616A Yes.11talks about Statement for Avicey Council.17A ves.10O Cay.Showing you Statement 6, and it1	9	patient's safety, throughout the preoperative,	9	Q And it's something that the doctor,
12       M. Yes.       12       M.S. SANDAC2: Objection.         13       Q. And you agree with that?       13       Q. Kight?         14       A. Sure.       13       Q. Kight?         15       Q. And there's a section entilled Continuity       16       G. Kight?         16       Of Care, where it says that a section that       16       Q. In part.         17       asy as surgeon will ensure appropriate       16       Q. In part.         18       containity of care of that surgical patient,       16       Q. In part.         19       operative tasting, is it reasonable to       28         21       Q. And that means that if the patient is in       19       the preoperative tasting, is it reasonable to         23       responsibility to ensure it?       23       Q that was discovered during the surgical         24       A. S it applies to the surgery.       26       28         25       Q. Okay, Now       25       A. No. This was done prior to         26	10	operative preoperative, operative, and	10	surgeon, relied upon in his determination as to
<ul> <li>13 Q And you agree with that?</li> <li>14 A Sure.</li> <li>14 A It was part of what he used to make the</li> <li>15 Q And there's a section entitled Continuity</li> <li>16 of Care, whare it says that a section that</li> <li>17 says a surgeon will ensure appropriate</li> <li>18 continuity of care of that surgical patient.</li> <li>19 correct?</li> <li>10 A that means that if the patient is in</li> <li>19 need of further care, that surgeon has a</li> <li>10 a A that means that if the patient is in</li> <li>19 responsibility to ensure it?</li> <li>20 A Yes.</li> <li>21 A A it applies to the surgery.</li> <li>22 A No. This was ordered this wasn't even</li> <li>26 27 X. SubMAC: Objection.</li> <li>20 A No. This was ordered this wasn't even</li> <li>26 28 A No. This was ordered this wasn't even</li> <li>27 A No. This was ordered this wasn't even</li> <li>28 A No. This was ordered this wasn't even</li> <li>29 Okay. Now</li> <li>26 A No. This was ordered this wasn't even</li> <li>20 Incidentally, have you looked at the</li> <li>4 (Discussion had off the record.</li> <li>3</li></ul>	11	postoperative period, correct?	11	whether the patient needed surgery.
14       A       Sure.         14       A       It was part of what he used to make the         15       Q       And there's a section that       15         15       of Correct, where it says that a section that       16       Q       In part.         17       says a surgeon will ensure appropriate       17       A. Yes.         18       continuity of care of that surgical patient,       19       Q       Now, since it was it was discovered in         19       correct?       19       the properative testing, is it reasonable to         20       aresponsibility to ensure it?       20       say that that is a potential continuing         21       Q       And that means that if the patient is in       11       problem         23       responsibility to ensure it?       23       Q       that was discovered during the surgical         24       A is it applies to the surgery.       25       A       No. This was ordered this wesn't even.         26        28       1       part of his evaluation. This was done prior to         2       moment.        2       1       part of his evaluation. This was done prior to         2       moment.        1       part of his evaluation. Th	12	A Yes.	12	MS. SANDACZ: Objection.
15       Q       And there's a section entitled Continuity       15       decision.         16       of Care, where it says that a section that       16       Q       In part.         18       continuity of care of that surgical patient,       17       A       Yes.         19       correct?       18       Q       Now, since it was it was discovered in         19       correct?       19       the preoperative testing, is it reasonable to         20       And that means that if the patient is in       19       the preoperative testing, is it reasonable to         21       Q       And that means that if the patient is in       19       the preoperative testing, is it reasonable to         24       A it applies to the surgery.       20        Has a bit applies to the surgery.       21         25       Q       OKay. Now       26       28         26        26       28         2       MR. BECKER:       Off the record a       1       part of his evaluation. This was done prior to         2       Decision.       Forecord.       9       No. I have not.       7         3        6       A No. I have not.       7       9       A I can asy serial years.       10	13	Q And you agree with that?	13	Q Right?
16       of Care, where it says that a section that       16       Q       In part.         17       says a surgeon will ensure appropriate       17       A       Yes.         18       continuity of care of that surgical patient,       18       Q       Now, since it was it was discovered in         19       the preoperative testing, is it reasonable to       2       say that that is a potential continuing         20       A       Yes.       2       say that that is a potential continuing         21       Q       And that means that if the patient is in       2       say that that is a potential continuing         21       need of further care, that surgeon has a       2       NS. SANDAC2:       Objection.         23       Q        26       28         24       A       As it applies to the surgery.       26       28         2       noment.       26       28         3        26       28         1       MR. BECKER:       Off the record.)       5          6       MR. BECKER:       Id's go back on       7       Q       Undentally, have you looked at the         8       statement of the College recently in       5       preparation for totay's depos	14	A Sure.	14	A It was part of what he used to make the
17       says a surgeon will ensure appropriate       17       A       Yes.         18       continuity of care of that surgical patient,       19       Q       Now, since it was it was discovered in         19       correct?       10       A       Yes.       10       Say that is a potential continuing         21       Q       And that means that if the patient is in       19       the preoperative testing, is it reasonable to         22       A       Yes.       21       Preschemente of the surgers       22       NS. SANDACE:       Objection.         24       A       As it applies to the surgery.       22       A       NS. SANDACE:       Objection.         25       Q       Okay. Now       26       28         26	15	Q And there's a section entitled Continuity	15	decision.
<ul> <li>18 continuity of care of that surgical patient,</li> <li>19 contenct?</li> <li>19 correct?</li> <li>19 the preoperative testing, is it reasonable to</li> <li>20 A yes.</li> <li>20 And that means that if the patient is in</li> <li>19 need of further care, that surgeon has a</li> <li>20 And that means that if the patient is in</li> <li>19 responsibility to ensure it?</li> <li>20 And that means that if the patient is in</li> <li>19 responsibility to ensure it?</li> <li>20 And that means that if the patient is in</li> <li>19 responsibility to ensure it?</li> <li>20 And that means that if the patient is in</li> <li>10 and alto up the surgery.</li> <li>21 MR. EECKER: Diff the record a</li> <li>10 moment.</li> <li>21 med. A get it is go back on</li> <li>22 ms. EECKER: Let's go back on</li> <li>23 the record.</li> <li>24 A yes.</li> <li>25 A No. I have not.</li> <li>26 A yes.</li> <li>27 Okay. Showing you Statement for Advisory Council,</li> <li>29 And although an incidental finding is</li> <li>20 And although an incidental finding is</li> <li>21 the the new finding, since it was discovered in</li> <li>29 And although an incidental finding is</li> <li>20 And although an incidental finding is</li> <li>21 that the new finding, since it was discovered</li> <li>21 the the new finding, since it was discovered</li> <li>22 Is that fair?</li> <li>24 A Not necessarily, no. This lung nodule</li> <li>25 A Not necessarily, no. This lung nodule</li> <li>26 A which is Statement on Principles Number ST-25,</li> </ul>	16	of Care, where it says that a section that	16	Q In part.
19       correct?       19       the preoperative testing, is it reasonable to         20       A Yes.       20       and that means that if the patient is in       21       problem         21       Q And that means that if the patient is in       21       problem       22         21       need of further care, that surgeon has a       22       MS. SNDACZ: Objection.         23       responsibility to ensure it?       23       Q that was discovered during the surgical         24       A ha it applies to the surgery.       25       A No. This was ordered this wasn't even         26       28         1       MR. BECKER: Off the record a       1       part of his evaluation. This was done prior to         2       Discussion had off the record.       3       Q Incidentally, have you looked at the         3        4       Statement of the Colleger recently in         5        6       A No, I have not.         7       the record.       7       Q When was the last time you looked at the         8       statement of the Colleger?       9       A I can say several years.         10       about incidental findings.       10       Q Okay. Showing you Statement 6, and it         11       talks about Statement for	17	says a surgeon will ensure appropriate	17	A Yes.
20       A       Yes.         21       Q       And that means that if the patient is in       20       say that that is a potential continuing         22       MR. SANDACZ:       Objection.         23       responsibility to ensure it?       23       Q          24       A as it applies to the surgery.       23       Q        23       Q	18	continuity of care of that surgical patient,	18	Q Now, since it was it was discovered in
21       Q       And that means that if the patient is in       21       problem         22       NS. SANDAC2:       Objection.         23       responsibility to ensure it?       Q          24       A sit applies to the surgery.       23       Q          25       Q       Okay. Now       26       28         1       MR. BECKER:       Off the record a       1       part of his evaluation. This was done prior to         2       MR. BECKER:       Off the record.       3       Q       Incidentally, have you looked at the         3        4       (Discussion had off the record.)       5       preparation for today's deposition?         6       MR. BECKER:       Let's go back on       6       A No. I have not.         7       the record.       7       Q       When was the last time you looked at the         8       statement of the College?       9       A I can say several years.       0         10       about incidental finding.       11       talks about Statement for Advisory Council,       12         12       Q       And although an incidental finding is       12       there's just one line I want to ask you about.         13       unrealsted to the actu	19	correct?	19	the preoperative testing, is it reasonable to
22       need of further care, that surgeon has a       22       MS. SANDACZ: Objection.         23       responsibility to ensure it?       23       Q       that was discovered during the surgical         24       A as it applies to the surgery.       24       consultation?       25       A       No. This was ordered this wasn't even         26       26       28         1       MR. BECKER: Off the record a       1       part of his evaluation. This was done prior to       28         3        26       28         4       (Discussion had off the record.)       5        5       preparation for today's deposition?         6       MR. BECKER: Let's go back on       7       Q       When was the last time you looked at the         8       BY MR. BECKER:       9       Q       Doctor, I forgot to ask you a question       10       Q       Okay. Showing you Statement for Advisory Council,         12       Q       And although an incidental finding is       11       talks about Statement for Advisory Council,         13       unrelated to the actual surgery, we can agree       14       specialist engaged in comprehensive care means complete care         15       pre in preoperative testing, can be deemed a       15       surgical patient, 20	20	A Yes.	20	say that that is a potential continuing
23       responsibility to ensure it?       23       Q that was discovered during the surgical         24       A As it applies to the surgery.       25       Q       Okay. Now       26       28         26       26       28       28         1       MR. BECKER: Off the record a       1       part of his evaluation. This was one prior to       28         2        26       28         3        20       Incidentally, have you looked at the         4       (Discussion had off the record.)       5          6       MR. BECKER: Let's go back on       7       Q       When was the last time you looked at the         8       Statements of the College recently in       5       preparation for today's deposition?         6       MR. BECKER:       9       A I can say several years.       10         10       Q       Not have not.       10       Q       A is a say several years.       11         11       A Yes.       10       Q okay. Showing you Statement 6, and it       11         12       A additough an incidental finding is       13       13       14       specialist engaged in comprehensive care of a         13       pre in preoperative testing, can be deemed a	1	· · · · · · · · · · · · · · · · · · ·		-
24       A has it applies to the surgery.       24       consultation?         25       Q       Okay. Now       25       A No. This was ordered this wasn't even         26       28         1       MR. BECKER:       Off the record a       1       part of his evaluation. This was done prior to         2       moment.       2       0       Laidentally, have you looked at the         3        3       Q       Theidentally, have you looked at the         4       (Discussion had off the record.)       5        5         5        5       preparation for today's deposition?         6       MR. BECKER:       Let's go back on       6       A No, I have not.         7       the record.       7       Q       When was the last time you looked at the         8       BY MR. BECKER:       Let's go back on       6       A No, I have not.         10       Q       Dottor, I forgot to ask you a question       9       A I can say several years.         10       a dat although an incidental finding is       11       talks about Statement of Advisory Council.         12       When last the general surgeon is the surgical       specialist engaged in comprehensive care of a         13 <td>1</td> <td>_</td> <td>1</td> <td></td>	1	_	1	
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2       moment.       2       being consulted.         3        3       Q       Incidentally, have you looked at the         4       (Discussion had off the record.)        4       statements of the College recently in         5        5       preparation for today's deposition?         6       MR. BECKER:       Let's go back on       6       A       No, I have not.         7       the record.       7       Q       When was the last time you looked at the         8       BY MR. BECKER:       8       statement of the College?         9       Q       Doctor, I forgot to ask you a question       9       A       I can say several years.         10       about incidental findings.       10       Q       Okay. Showing you Statement 6, and it         11       A       Yes.       11       talks about Statement for Advisory Council,         12       Q       And although an incidental finding is       11       talks about statement for ask you about.         13       unrelated to the actual surgery, we can agree       13       It says that the general surgeon is the surgical         14       that the new finding, since it was discovered       14       specialist engaged in comprehensive care means complete care <td></td> <td>26</td> <td></td> <td>28</td>		26		28
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124 O But if something was discovered in the 124 it states it's entitled Statement on	1	- · · · · ·		— · · · · · · · · · · · · · · · · · · ·
		Q But if something was discovered in the	24	it states it's entitled Statement on
25     course of the patient's surgical care     25     Principles Underlying Perioperative	L 25	course of the patient's surgical care	25	rrinciples Underlying Perioperative

	29		31
1	Responsibility, correct? Is that the title?	1	to have it done. I leave it up to them.
2	A Yes.	2	Q When
3	Q And it states: When the time comes that	3	A So.
4	the surgeon will no longer be involved in the	4	Q Would you repeat that? I'm having trouble
5	follow-up of the patient, he or she is	5	hearing you.
6	responsible for ensuring appropriate long-term	6	A I'm sorry. So if I advise a
7	follow-up for continuing problems.	7	recommendation, I don't twist a patient's arm,
8	A It says associated with the	8	if I let's say I advise that a biopsy be
9	Q Associated with the	9	performed, I leave it up to the patient to call
10	A patient's surgical care.	10	me back to get it scheduled, if they want to
11	Q patient's surgical care.	11	consider it. I leave it I make sure that
12	A So that applies only to the surgery, in	12	they're well-informed of why I think they should
13	this case the appendectomy.	13	follow up, but I will not I specifically do
14	Q So it's your position, you're making the	14	not call them to hound them to have something
15	distinction saying because this was discovered	15	done.
16	preoperatively, although a bases for the	16	Q Well, if you see a patient and you see them
17	decision, that is the study, the CT scan, was a	17	for one reason but see a suspicious lesion or a
18	bases for the decision to proceed with surgery,	18	spot on the lung, would you normally order a
19	that's and a problem was noted in that test,	19	chest CT yourself?
20	that's not considered part of the patient's	20	A It depends on the situation. If I'm
21	surgical care, that finding?	21	again, if I'm involved in the reason it's
22	A No.	22	important in whatever evaluation I'm performing,
23	Q So would it be fair for since it's not	23	then, yes, perhaps I will order the CAT scan,
24	part of the patient's surgical care, would it be	24	and depending on of the lung, and depending
25	reasonable for Dr. Elkhairi to ignore it?	25	on what that shows, I might do additional
~ >	reasonable for br. himaili to ignore it.	1	on mate chief bhowby I magne de daakeronar
	30		32
1	30 A I didn't say ignore it. I said inform the	1	32 referrals.
1 2		1	
	A I didn't say ignore it. I said inform the		referrals.
2	A I didn't say ignore it. I said inform the patient of the problem that he's that's his	2	referrals. Q Okay. If you were not seeing the patient
2 3	A I didn't say ignore it. I said inform the patient of the problem that he's that's his responsibility.	2 3	referrals. Q Okay. If you were not seeing the patient primarily for that reason, a cancer reason, and
2 3 4	<ul> <li>A I didn't say ignore it. I said inform the patient of the problem that he's that's his responsibility.</li> <li>Q Okay.</li> </ul>	2 3 4	referrals. Q Okay. If you were not seeing the patient primarily for that reason, a cancer reason, and you would send this patient for make a
2 3 4 5	<ul> <li>A I didn't say ignore it. I said inform the patient of the problem that he's that's his responsibility.</li> <li>Q Okay.</li> <li>A I didn't say ignore it. But it's not</li> </ul>	2 3 4 5	referrals. Q Okay. If you were not seeing the patient primarily for that reason, a cancer reason, and you would send this patient for make a referral, do you make your referrals in writing?
2 3 4 5 6	<ul> <li>A I didn't say ignore it. I said inform the patient of the problem that he's that's his responsibility.</li> <li>Q Okay.</li> <li>A I didn't say ignore it. But it's not directly related to his surgical care.</li> </ul>	2 3 4 5 6	referrals. Q Okay. If you were not seeing the patient primarily for that reason, a cancer reason, and you would send this patient for make a referral, do you make your referrals in writing? A Not necessarily. If it's if it's advice
2 3 4 5 6 7	<ul> <li>A I didn't say ignore it. I said inform the patient of the problem that he's that's his responsibility.</li> <li>Q Okay.</li> <li>A I didn't say ignore it. But it's not directly related to his surgical care.</li> <li>Q Is it indirectly related to his surgical</li> </ul>	2 3 4 5 6 7	referrals. Q Okay. If you were not seeing the patient primarily for that reason, a cancer reason, and you would send this patient for make a referral, do you make your referrals in writing? A Not necessarily. If it's if it's advice for a medical problem that I want them to follow
2 3 4 5 6 7 8	<ul> <li>A I didn't say ignore it. I said inform the patient of the problem that he's that's his responsibility.</li> <li>Q Okay.</li> <li>A I didn't say ignore it. But it's not directly related to his surgical care.</li> <li>Q Is it indirectly related to his surgical care?</li> </ul>	2 3 4 5 6 7 8	referrals. Q Okay. If you were not seeing the patient primarily for that reason, a cancer reason, and you would send this patient for make a referral, do you make your referrals in writing? A Not necessarily. If it's if it's advice for a medical problem that I want them to follow up on, I may just verbally tell them.
2 3 4 5 6 7 8 9	<ul> <li>A I didn't say ignore it. I said inform the patient of the problem that he's that's his responsibility.</li> <li>Q Okay.</li> <li>A I didn't say ignore it. But it's not directly related to his surgical care.</li> <li>Q Is it indirectly related to his surgical care?</li> <li>A No. It has nothing to do with the surgery</li> </ul>	2 3 4 5 6 7 8 9	referrals. Q Okay. If you were not seeing the patient primarily for that reason, a cancer reason, and you would send this patient for make a referral, do you make your referrals in writing? A Not necessarily. If it's if it's advice for a medical problem that I want them to follow up on, I may just verbally tell them. Q Have you ever made your referral in
2 3 4 5 6 7 8 9 10	<ul> <li>A I didn't say ignore it. I said inform the patient of the problem that he's that's his responsibility.</li> <li>Q Okay.</li> <li>A I didn't say ignore it. But it's not directly related to his surgical care.</li> <li>Q Is it indirectly related to his surgical care?</li> <li>A No. It has nothing to do with the surgery that he did.</li> </ul>	2 3 4 5 6 7 8 9 10	<pre>referrals. Q Okay. If you were not seeing the patient primarily for that reason, a cancer reason, and you would send this patient for make a referral, do you make your referrals in writing? A Not necessarily. If it's if it's advice for a medical problem that I want them to follow up on, I may just verbally tell them. Q Have you ever made your referral in writing?</pre>
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9 (Pages 33 to 36)

	33		35
1	but certainly potentially life-threatening. How	1	A That would be the most common
2	would you advise your patient and how would you	2	documentation.
3	engage in a referral and what documentation	3	Q Okay.
4	would you generally engage in?	4	A But I wouldn't have said in there, I told
5	MS. SANDACZ: I'm going to object	5	the patient I wouldn't have documented that
6	to the compound question, but go ahead and	6	necessarily.
7	answer if you can answer all of his questions.	7	Q Okay. But under some circumstances, based
8	A I would inform the patient what was found	8	on a previous answer ten minutes ago, you
9	and that I would advise that they follow up with	9	under some circumstances you would document that
10	their primary care physician, because at that	10	you told the patient?
11	point we don't know what it is, and I may or may	11	A No, I don't ever remember
12	not have a written documentation of that.	12	Q Explained to the patient
13	Q So you may have a written documentation	13	A saying that I would document that
14	that you inform the patient of what was found,	14	somewhere necessarily. That wouldn't
15	and you may have written documentation by memo	1.5	necessarily be a common practice.
16	or letter to the to either the patient and/or	16	Q I didn't say "necessarily," Doctor.
17	the PCP for follow-up?	17	A All right.
18	MS. SANDACZ: Objection. Go	18	Q I just want to say under what circumstances
19	ahead.	19	would you document that you discussed this
20	A Well, the most common documentation of that	20	incidental potentially life-threatening
21	would be, in my practice, sending the referring	21	condition with the patient?
22	doctor a note of the surgery with the pathology,	22	A Okay. We went to the specific case of this
23	and as part of that, mentioning a the	23	appendicitis, right?
24	incidental finding.	24	Q I'm not talking about we're talking in
25	Q To the referring physician?	25	generalities right now.
			36
1	A Yes. That would be typic that would be	1	A Oh, okay. So we switched back. So it
2	common.	2	depends on the situation again. It depends what
3		- 44	
2		2	
1		3	I'm seeing the patient for and what was found.
4	your finding and discussion with the patient?	4	I'm seeing the patient for and what was found. Q Okay.
5	your finding and discussion with the patient? A I may not at all, but I may in the letter	4 5	<pre>I'm seeing the patient for and what was found. Q Okay. A And so I might document that.</pre>
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5 6 7 8	<pre>your finding and discussion with the patient? A I may not at all, but I may in the letter have said that I mentioned to the patient, but that wouldn't be typical. Q I thought you just told me that you may</pre>	4 5 7 8	<pre>I'm seeing the patient for and what was found. Q Okay. A And so I might document that. Q Okay. Why would you when you might document it, you told the patient this, why would you do it? Why would you make that</pre>
5 6 7 8 9	<pre>your finding and discussion with the patient? A I may not at all, but I may in the letter have said that I mentioned to the patient, but that wouldn't be typical. Q I thought you just told me that you may document that you in fact informed the patient</pre>	4 5 6 7 8 9	<pre>I'm seeing the patient for and what was found. Q Okay. A And so I might document that. Q Okay. Why would you when you might document it, you told the patient this, why would you do it? Why would you make that documentation?</pre>
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5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	<pre>your finding and discussion with the patient? A I may not at all, but I may in the letter have said that I mentioned to the patient, but that wouldn't be typical. Q I thought you just told me that you may document that you in fact informed the patient and you also may document or send a letter to the PCP. If you document A Let me clarify. So the most common thing would be that written the written documentation would be that I dictate a letter to the primary care physician that I have operated on the patient for acute appendicitis and that here is the pathology report, it showed acute appendicitis, she recovered well, but she incidentally was found to have this lung mass and she's going to come back to see you for that. That would Q See "you," the referring physician, for</pre>	4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	<pre>I'm seeing the patient for and what was found. Q Okay. A And so I might document that. Q Okay. Why would you when you might document it, you told the patient this, why would you do it? Why would you make that documentation? A Because usually I will document it if it has something specific to what the patient was referred to me for. Q So in the documentation you would say, patient referred for a in your chart you would say, patient referred for an appendectomy. A No. The common scenario would be patient referred for a pancreatic mass and incidentally found to have a lung mass, because it's more directly related to that. That's what they came I did the CT scan for the pancreatic mass. That would be the more common scenario. Q Right. I got that.</pre>

1	37		39
, r			
1	A that something else was found.	1	physician and not tell the patient at all
2	Q you told the patient. And you told the	2	A No.
3 4	patient.	3	Q about this?
5	A I would say it's uncommon that I'm going to	4	A That's not what I said. I said I would
6	document that I specifically told the patient that I found that, because to me that's implied,	6	tell the patient. I it is not necessarily true that I documented that I talked to the
7	because I'm going to discuss the results with	7	patient about that problem, but that I told them
8	the patient.	8	to follow up with their primary care physician.
9	Q Well, would you	9	Q Did you see any indication in this chart
10	A I wouldn't say: And I discussed this	10	where there's an entry by Dr. Elkhairi that the
11	incidental finding with the patient. It's I	11	test results were discussed with the patient?
12	would say it's rare that that's going to be	12	A No.
13	that sentence is going to be there.	13	Q Would you have expected to see some
14	Q Would the sentence be that I discussed my	14	indication in the chart I'm not talking about
15	findings?	15	standard of care now. I know you want to talk
16	A I would say the test results were	16	to me about the standard of care
17	discussed.	17	A Right.
18	Q Okay.	18	Q and we'll get to that. Hang on, okay?
19	A Something like that.	19	Did you see any indication would
20	Q Would that normally be documented, the test	20	you have expected Dr. Elkhairi to have
21	results were discussed with the patient?	21	documented, quote, test results doc discussed
22	A I would say commonly in my practice, yes.	22	with the patient?
23	Q When you document test results discussed	23	A No.
24	with patient, here is my question: Why do you	24	Q Why?
25	do it? Why do you write: Test results	25	A Because that's not necessarily standard of
<b> </b>			
	38		10
_	38		40
e-f	documented with patient?	1	care.
2	documented with patient? A Because I'm writing a note and I'm	2	care. Q Okay.
2	<pre>documented with patient? A Because I'm writing a note and I'm discussing a problem and that's part of the</pre>	2 3	care. <b>Q Okay.</b> A It's not
2 3 4	<pre>documented with patient? A Because I'm writing a note and I'm discussing a problem and that's part of the problem.</pre>	2 3 4	care. Q Okay. A It's not Q Now is your time
N N T	<pre>documented with patient? A Because I'm writing a note and I'm discussing a problem and that's part of the problem. Q So it is part of the problem, that</pre>	2 3 4 5	care. Q Okay. A It's not Q Now is your time A related to appendicitis.
N N T 10	<pre>documented with patient? A Because I'm writing a note and I'm discussing a problem and that's part of the problem. Q So it is part of the problem, that incidental finding?</pre>	2 3 4 5 6	<pre>care. Q Okay. A It's not Q Now is your time A related to appendicitis. Q to tell me what your definition of</pre>
2 3 <del>4</del> 5 6 7	<pre>documented with patient? A Because I'm writing a note and I'm discussing a problem and that's part of the problem. Q So it is part of the problem, that incidental finding? MS. SANDACZ: Objection.</pre>	2 3 4 5 6 7	<pre>care. Q Okay. A It's not Q Now is your time A related to appendicitis. Q to tell me what your definition of standard of care is.</pre>
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11 (Pages 41 to 44)

41	43
1 and diligent surgeon to document test results	1 cancer that spreads to the pancreas, at least in
2 discussed with patient?	2 your experience, is kidney cancer; is that what
3 MS. SANDACZ: Objection. Go	3 you're saying?
4 ahead.	4 A Pretty much. There aren't yes.
5 A Not necessarily. It depends on the	5 Q Okay. What about lung cancer?
6 circumstance, I would say.	6 A What about lung cancer?
7 Q Have you ever had any of your patients	7 Q Can it spread to the pancreas?
8 where there's been an incidental finding on a	8 A Not that I know of.
9 chest film of a of a spot or a one or two	9 Q What is the survival rate of pancreatic
10 centimeter cancerous lesion diagnosed	10 cancer?
11 inadvertently or incidentally?	11 MS. SANDACZ: Objection. Go
12 MS. SANDACZ: Objection. Asked	12 ahead.
13 and answered. Go ahead,	13 A With or without resection?
14 A Yes.	14 Q Well, give me both. Just give me a
15 Q Okay. And	15 ballpark on both.
16 A I think.	16 A Well
17 Q And is it those patients that are subject	17 MS. SANDACZ: Objection. Go
18 to a resection, based on your knowledge of the	18 ahead.
19 medicine?	19 A The average length of life for people with
20 A I don't know. I refer them to the people	20 pancreatic cancer is under around six months;
21 who do that.	21 but if they're resected, their median survival
22 Q Any of those patients have a resection of	22 is about 24 months. That's median survival.
23 the lung, to your knowledge?	23 Q And when you say when they're resected,
24 MS. SANDACZ: Objection.	24 that is the cancer is
25 Q Can you think of any of your patients?	25 A Removed.
42	4 4
1 A I yes, I'm sure some have. I hope they	1 Q surgically removed.
2 have.	2 A Um-hum. Yes.
3 Q Okay. Any of those patients actually have	3 Q So without resection, six months; with
4 a cancer diagnosed. Obviously, I guess they	4 resection
5 they would have a biopsy confirming the cancer	5 A Yeah, most are found in the late stage.
6 before they would have the resection; is that	6 Q Okay. Where there is not amenable to
7 safe?	7 resection?
8 MS. SANDACZ: Objection. Go	8 A Yes.
9 ahead.	9 Q Have you ever written or done lung cancer
10 A I don't know, actually. I don't	10 surgery, written on lung cancer surgery
11 Q Okay.	11 A No.
12 A I don't treat that, so I don't know if they	12 Q or
13 all get biopsies or	13 A No.
14 Q Okay. Do you treat you treat primary	14 Q engaged in lung cancer surgery?
15 pancreatic cancer, you do not treat metastatic	15 A Not as a on staff, no. Not since I
16 pancreatic cancer, that is where there's a	16 finished my
17 primary source and it's spread to the pancreas,	17 Q Training?
18 or do you treat both?	18 A traininġ. Um-hum.
19 A I treat both. The latter is highly un	19 Q Would you agree with this general
20 unusual. Usually unusual.	20 principle, that with lung cancer, the earlier
21 Q How unusual?	21 it's diagnosed, the greater the chance of cure?
22 A Well, there you know, autopsy series are	22 MS. SANDACZ: Objection.
23 somewhat high, but the only practical tumors	23 A Well, I'm not an expert in the area, but I
24 that go to the pancreas are from the kidney.	24 would seem I would think that I would hope
25 Q So to your knowledge the only primary	is would seem i would chilly char i would hope

### 12 (Pages 45 to 48)

	45	A CO MARCON CON MIL	47
1	Q Is it true, Doctor, that, to your	1	can just to recap this, there's nothing
2	knowledge, that cancer, if permitted, if	2	documented that Dr. Elkhairi told either Richard
3	unaddressed, will ultimately spread to other	3	or Susan Richnafsky about this suspicious
4	parts of the body?	4	potentially life-threatening lesion in her right
5	A Typically, yes.	5	lower lung, correct?
6	Q And the longer it's permitted to stay	6	MS. SANDACZ: Objection.
7	unaddressed, the more harmful it may become in	7	A He did not discuss the incidental finding
8	one's body?	8	on the CT scan, that is not documented.
9	MS. SANDACZ: Objection. If you	9	Q And there's nothing documented that
10	know.	10	evidenced that Dr. Elkhairi took steps to insure
11	A Yes.	11	that the patient the patient understood the
12	Q To your knowledge, Doctor, would a 19 month	12	need to follow up on this potentially
13	delay in diagnosing lung cancer likely be	13	life-threatening spot on her right lower lung,
14	harmful to a patient?	14	correct?
15	MS. SANDACZ: Objection.	15	MS. SANDACZ: Objection. I
16	A I would say any delay of any cancer is	16	didn't hear the full question. Could you
17	harmful.	17	repeat it?
18	Q We can agree, Doctor, that, moving on to	18	THE WITNESS: Could you I
19	Susan Richnafsky and the care rendered by	19	would benefit from that, the question.
20	Dr. Elkhairi, that he clearly had multiple	20	Q You need the question again?
21	opportunities to sit down with her and explain	21	A Please.
22	this incidental finding that was suspicious and	22	Q There's nothing documented to evidence that
23	potentially life-threatening, correct?	23	Dr. Elkhairi took steps to ensure follow-up on
24	A I don't know how many opportunities he had,	24	this potentially life-threatening spot?
25	truly. I know he looked at the report, it's	25	A No. Yes, that's correct.
		* frankrowenske fra	
	46		. 48
Ť		1	
1	initialed, so the most likely op single	1	Q And there's nothing documented that
2	initialed, so the most likely op single opportunity would have been in the post-op	2	Q And there's nothing documented that Dr. Elkhairi made it clear to the patient her
2 3	initialed, so the most likely op single opportunity would have been in the post-op recovery visit.	2 3	Q And there's nothing documented that Dr. Elkhairi made it clear to the patient her need to follow up on this potentially
2 3 4	<pre>initialed, so the most likely op single opportunity would have been in the post-op recovery visit. Q Okay. At least a emergency room physician</pre>	2 3 4	Q And there's nothing documented that Dr. Elkhairi made it clear to the patient her need to follow up on this potentially life-threatening spot in her lower lung,
2 3 4 5	<pre>initialed, so the most likely op single opportunity would have been in the post-op recovery visit. Q Okay. At least a emergency room physician has given sworn testimony, told Dr. Elkhairi</pre>	2 3	Q And there's nothing documented that Dr. Elkhairi made it clear to the patient her need to follow up on this potentially
2 3 4	<pre>initialed, so the most likely op single opportunity would have been in the post-op recovery visit. Q Okay. At least a emergency room physician has given sworn testimony, told Dr. Elkhairi about it before surgery.</pre>	2 3 4 5	Q And there's nothing documented that Dr. Elkhairi made it clear to the patient her need to follow up on this potentially life-threatening spot in her lower lung, correct? A Correct. At the time it is an incidental
2 3 4 5 6 7	<pre>initialed, so the most likely op single opportunity would have been in the post-op recovery visit. Q Okay. At least a emergency room physician has given sworn testimony, told Dr. Elkhairi about it before surgery. A And that's a follow-up was arranged for</pre>	23456	Q And there's nothing documented that Dr. Elkhairi made it clear to the patient her need to follow up on this potentially life-threatening spot in her lower lung, correct?
2 3 4 5 6 7 8	<pre>initialed, so the most likely op single opportunity would have been in the post-op recovery visit. Q Okay. At least a emergency room physician has given sworn testimony, told Dr. Elkhairi about it before surgery. A And that's a follow-up was arranged for it. Correct.</pre>	2 3 4 5 6 7	Q And there's nothing documented that Dr. Elkhairi made it clear to the patient her need to follow up on this potentially life-threatening spot in her lower lung, correct? A Correct. At the time it is an incidental finding. We don't know if it's life-threatening or not at the time. Could be.
2 3 4 5 6 7 8 9	<pre>initialed, so the most likely op single opportunity would have been in the post-op recovery visit. Q Okay. At least a emergency room physician has given sworn testimony, told Dr. Elkhairi about it before surgery. A And that's a follow-up was arranged for it. Correct. Q Okay. And so if Dr. Elkhairi knew about it</pre>	2 3 4 5 6 7 8	Q And there's nothing documented that Dr. Elkhairi made it clear to the patient her need to follow up on this potentially life-threatening spot in her lower lung, correct? A Correct. At the time it is an incidental finding. We don't know if it's life-threatening or not at the time. Could be.
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	<pre>initialed, so the most likely op single opportunity would have been in the post-op recovery visit. Q Okay. At least a emergency room physician has given sworn testimony, told Dr. Elkhairi about it before surgery. A And that's a follow-up was arranged for it. Correct. Q Okay. And so if Dr. Elkhairi knew about it before surgery, he had an opportunity to talk to the patient pre-op, post-op, post-op day one, post-op day two, correct? A Well, he the oppor he might view the opportunity as inopportune if the patient was under duress or inappropriately sedated or otherwise recovering, so that might not be an opportunity. Q Absolutely. Probably the most humane and</pre>	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	Q And there's nothing documented that Dr. Elkhairi made it clear to the patient her need to follow up on this potentially life-threatening spot in her lower lung, correct? A Correct. At the time it is an incidental finding. We don't know if it's life-threatening or not at the time. Could be. Q Could be. A Could be. Q Right. I mean, one of the general principles in the statement of the College is you want to be treated as if you were the patient; treat the patient as if you were the patient, the same way that you would want to be treated. That's one of the principles I read about. A I think it's a golden rule. Q Okay. It's a great rule.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	<pre>initialed, so the most likely op single opportunity would have been in the post-op recovery visit. Q Okay. At least a emergency room physician has given sworn testimony, told Dr. Elkhairi about it before surgery. A And that's a follow-up was arranged for it. Correct. Q Okay. And so if Dr. Elkhairi knew about it before surgery, he had an opportunity to talk to the patient pre-op, post-op, post-op day one, post-op day two, correct? A Well, he the oppor he might view the opportunity as inopportune if the patient was under duress or inappropriately sedated or otherwise recovering, so that might not be an opportunity. Q Absolutely. Probably the most humane and most considerate opportunity to broach this may</pre>	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	Q And there's nothing documented that Dr. Elkhairi made it clear to the patient her need to follow up on this potentially life-threatening spot in her lower lung, correct? A Correct. At the time it is an incidental finding. We don't know if it's life-threatening or not at the time. Could be. Q Could be. A Could be. Q Could be. Q Right. I mean, one of the general principles in the statement of the College is you want to be treated as if you were the patient; treat the patient as if you were the patient, the same way that you would want to be treated. That's one of the principles I read about. A I think it's a golden rule. Q Okay. It's a great rule. So, Doctor, if you or your loved one
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	<pre>initialed, so the most likely op single opportunity would have been in the post-op recovery visit. Q Okay. At least a emergency room physician has given sworn testimony, told Dr. Elkhairi about it before surgery. A And that's a follow-up was arranged for it. Correct. Q Okay. And so if Dr. Elkhairi knew about it before surgery, he had an opportunity to talk to the patient pre-op, post-op, post-op day one, post-op day two, correct? A Well, he the oppor he might view the opportunity as inopportune if the patient was under duress or inappropriately sedated or otherwise recovering, so that might not be an opportunity. Q Absolutely. Probably the most humane and most considerate opportunity to broach this may be in that office visit</pre>	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	Q And there's nothing documented that Dr. Elkhairi made it clear to the patient her need to follow up on this potentially life-threatening spot in her lower lung, correct? A Correct. At the time it is an incidental finding. We don't know if it's life-threatening or not at the time. Could be. Q Could be. A Could be. Q Could be. Q Right. I mean, one of the general principles in the statement of the College is you want to be treated as if you were the patient; treat the patient as if you were the patient, the same way that you would want to be treated. That's one of the principles I read about. A I think it's a golden rule. Q Okay. It's a great rule. So, Doctor, if you or your loved one had a potentially life-threatening lesion in
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	<pre>initialed, so the most likely op single opportunity would have been in the post-op recovery visit. Q Okay. At least a emergency room physician has given sworn testimony, told Dr. Elkhairi about it before surgery. A And that's a follow-up was arranged for it. Correct. Q Okay. And so if Dr. Elkhairi knew about it before surgery, he had an opportunity to talk to the patient pre-op, post-op, post-op day one, post-op day two, correct? A Well, he the oppor he might view the opportunity as inopportune if the patient was under duress or inappropriately sedated or otherwise recovering, so that might not be an opportunity. Q Absolutely. Probably the most humane and most considerate opportunity to broach this may be in that office visit A That would be</pre>	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	Q And there's nothing documented that Dr. Elkhairi made it clear to the patient her need to follow up on this potentially life-threatening spot in her lower lung, correct? A Correct. At the time it is an incidental finding. We don't know if it's life-threatening or not at the time. Could be. Q Could be. A Could be. Q Right. I mean, one of the general principles in the statement of the College is you want to be treated as if you were the patient; treat the patient as if you were the patient, the same way that you would want to be treated. That's one of the principles I read about. A I think it's a golden rule. Q Okay. It's a great rule. So, Doctor, if you or your loved one had a potentially life-threatening lesion in or spot in her lung, you would want to know

13 (Pages 49 to 52)

	49	-	51
1	yes.	1	MR. BECKER: You're lucky I'm
2	Q And if in fact there was any possibility	2	not talking about vaginal prolapses, so
3	that there was a misunderstanding about the	3	THE WITNESS: They're on the
4	significance of it, you would want the attending	4	ovaries now.
5	physician to either contact or write your	5	MR. BECKER: consider
6	referring physician or write you outlining the	6	yourself lucky.
7	significance of the same?	. 7	BY MR. BECKER:
8	MS. SANDACZ: Objection. Go	8	Q Assuming it's true that Dr. Elkhairi failed
9	ahead.	9	to make Susan Richnafsky fully aware of this
10	A Not necessarily. I just I would want to	10	potentially life-threatening condition in her
11	know about it.	11	lower lung and to ensure that she appreciated
12	Q Okay.	12	the need for follow-up, can we agree that that
13	A As long as I knew about it, whichever way	13	failure, with that failure, Doctor, assuming
14	it's delivered, as long as I was comfortable	14	it's true, Dr. Elkhairi deviated from the
15	with that	15	appropriate standard of care?
16	Q Okay. You're not making any rendering	16	A If he failed yes, if that assumption is
17	any opinion as to whether she was told or not	1.7	correct.
18	told about factually in this case, that is,	18	Q Okay. Continuing with that assumption,
19	"she" being Mrs. Richnafsky?	19	okay, assuming that he failed in that duty, can
20	A I am saying I don't have documentation that	20	we agree that Susan Richnafsky's lung cancer
21	she was.	21	went 19 months without a diagnosis?
22	Q Okay. And Dr. Elkhairi has no specific	22	MS. SANDACZ: Objection. If you
23	recollection that he told her, does he?	23	know, based upon the medical records and
. 24	A That's true.	24	everything that you have in front of you.
25	Q Can we agree, Doctor, that based on	25	A Yeah, I I can't say that for sure. It's
	50		52
1	50 assuming it's true, based on all the material	1	an assumption. That's another assumption.
1 2		1 2	
	assuming it's true, based on all the material	1	an assumption. That's another assumption.
2	assuming it's true, based on all the material you have reviewed, that Dr. Elkhairi failed to	2	an assumption. That's another assumption. Q The assumption is that that spot was in
2 3	assuming it's true, based on all the material you have reviewed, that Dr. Elkhairi failed to inform Susan Richnafsky of this potentially	2 3	an assumption. That's another assumption. Q The assumption is that that spot was in fact cancerous?
2 3 4	assuming it's true, based on all the material you have reviewed, that Dr. Elkhairi failed to inform Susan Richnafsky of this potentially life-threatening condition and failed to ensure	2 3 4	an assumption. That's another assumption. Q The assumption is that that spot was in fact cancerous? A Yes. Exactly.
2 3 4 5	assuming it's true, based on all the material you have reviewed, that Dr. Elkhairi failed to inform Susan Richnafsky of this potentially life-threatening condition and failed to ensure that she understood the need for follow-up, that	2 3 4 5	<pre>an assumption. That's another assumption. Q The assumption is that that spot was in fact cancerous? A Yes. Exactly. Q Okay. Let's assume that that</pre>
2 3 4 5 6	assuming it's true, based on all the material you have reviewed, that Dr. Elkhairi failed to inform Susan Richnafsky of this potentially life-threatening condition and failed to ensure that she understood the need for follow-up, that Dr. Elkhairi's failures permitted Susan	2 3 4 5 6	<pre>an assumption. That's another assumption. Q The assumption is that that spot was in fact cancerous? A Yes. Exactly. Q Okay. Let's assume that that A Okay.</pre>
2 4 5 6 7	assuming it's true, based on all the material you have reviewed, that Dr. Elkhairi failed to inform Susan Richnafsky of this potentially life-threatening condition and failed to ensure that she understood the need for follow-up, that Dr. Elkhairi's failures permitted Susan Richnafsky's lung cancer to go 19 months without	2 3 4 5 6 7	<pre>an assumption. That's another assumption. Q The assumption is that that spot was in fact cancerous? A Yes. Exactly. Q Okay. Let's assume that that A Okay. Q spot was in fact cancerous, as the</pre>
2 3 4 5 6 7 8	assuming it's true, based on all the material you have reviewed, that Dr. Elkhairi failed to inform Susan Richnafsky of this potentially life-threatening condition and failed to ensure that she understood the need for follow-up, that Dr. Elkhairi's failures permitted Susan Richnafsky's lung cancer to go 19 months without a diagnosis?	2345678	<pre>an assumption. That's another assumption. Q The assumption is that that spot was in fact cancerous? A Yes. Exactly. Q Okay. Let's assume that that A Okay. Q spot was in fact cancerous, as the defense causation expert will concede. Assuming</pre>
2 3 4 5 6 7 8 9	assuming it's true, based on all the material you have reviewed, that Dr. Elkhairi failed to inform Susan Richnafsky of this potentially life-threatening condition and failed to ensure that she understood the need for follow-up, that Dr. Elkhairi's failures permitted Susan Richnafsky's lung cancer to go 19 months without a diagnosis? MS. SANDACZ: Objection. Go	2 3 4 5 6 7 8 9	<pre>an assumption. That's another assumption. Q The assumption is that that spot was in fact cancerous? A Yes. Exactly. Q Okay. Let's assume that that A Okay. Q spot was in fact cancerous, as the defense causation expert will concede. Assuming that that is true, that that one spot in the</pre>
2 3 4 5 6 7 8 9 10	assuming it's true, based on all the material you have reviewed, that Dr. Elkhairi failed to inform Susan Richnafsky of this potentially life-threatening condition and failed to ensure that she understood the need for follow-up, that Dr. Elkhairi's failures permitted Susan Richnafsky's lung cancer to go 19 months without a diagnosis? MS. SANDACZ: Objection. Go ahead.	2 3 4 5 6 7 8 9 10	<pre>an assumption. That's another assumption. Q The assumption is that that spot was in fact cancerous? A Yes. Exactly. Q Okay. Let's assume that that A Okay. Q spot was in fact cancerous, as the defense causation expert will concede. Assuming that that is true, that that one spot in the right lower lobe was in fact cancerous, assuming</pre>
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### 14 (Pages 53 to 56)

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1	correct, one, that this family was never told	1	object. He just said he's not a lung cancer
2	about this condition; two, that that was a early	2	expert and therefore cannot even render an
3	cancer spot in her right lower lobe.	3	opinion whether or not what was diagnosed or
4	A Well, you're adding a third assumption now,	4	present in November of 2001 would have caused
5	that it was an early cancer.	5	her death regardless of whether or not there
6	Q Okay.	6	was a delay. So I think it's an unfair
7	A These are you're conceding these are	7	question of asking this expert, who has
8	assumptions that you want me to	8	clearly identified himself as not an expert in
9	Q Yes.	9	lung cancer. But go ahead, Doctor, and we'll
10	A Okay.	10	deal with it with the Court if need be.
11	Q Okay. Assume it's true that it was in	11	A I really can't comment on the cause of
12	fact let's start over. I'll remove the	12	death other than he prevented her from dying
13		13	from acute appendicitis.
	"early" assumption.		
14	Let's assume as true that this family	14	
15	was never ever told about this life-threatening	15	that he never told this family, which is borne
16	condition that Susan Richnafsky had; and assume	16	out by the chart because there's no
17	as true that that was in fact a cancerous	17	documentation of it; let's assume as true that
18	lesion, two centimeters, in her right lower	18	he never told the family about this
19	lobe; and assume as true that it wasn't her	19	life-threatening condition; that it was in fact
20	cancer wasn't diagnosed until 19 months later;	20	a cancerous lesion back in 2001; assume as true
21	that the failure of Dr. Elkhairi to advise this	21	that there was a 19 month delay because of the
22	family permitted the spread of her cancer and	22	failure to adhere to the standard of care and
23	reducing her chances of survival and cure.	23	inform the patient, there was a 19 month delay
24	MS. SANDACZ: I'm going to make	24	in diagnosing the cancer; and assume as true
25	an objection. He cannot possibly know anything	25	that that 19 month delay played a part in her
and and a second deferred	54		56
1	about this woman's cancer to render that; but	1	death. Assuming those four factors as true,
		1 -	
2	do ahead. Doctor, 11 you based upon all	2	-
2	go ahead, Doctor, if you based upon all	2	Doctor, you would agree with me that
3	those assumptions, in the absence of any	3	Doctor, you would agree with me that Dr. Elkhairi should then be held accountable for
3 4	those assumptions, in the absence of any information about the type of lung cancer,	3 4	Doctor, you would agree with me that Dr. Elkhairi should then be held accountable for this woman's death?
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15 (Pages 57 to 60)

59 57 1 MR. BECKER: So he's vounger 1 not what he said. 2 Assuming your assumptions; is that what Δ 2 than I thought. 3 you're saying? 3 0 Have you ever seen a condition in your. Yeah. ۵ career of 15 years where a patient was not told 4 0 of a -- made a claim that she was not told of a 5 No, I don't think he's -- he is not 5 Α responsible for that. He's responsible for the б life-threatening condition? 6 7 care that he was called to deliver, and that's 7 And didn't follow through? А 8 what he did. 8 MR. TACKLA: Off the record. 9 ----9 0 But he's -- let's go back to my question. MR. BECKER: 10 Off the record. 10 (Interruption in proceedings.) _ _ _ _ _ 11 11 12 (Discussion had off the record.) MR. BECKER: On the record. 12 13 ----13 BY MR. BECKER: (Question read as follows: We can agree that 14 14 0 Doctor, in your career have you ever Dr. Elkhairi should be held accountable if the 15 15 experienced the circumstance, the clinical jury concludes that, one, he never told this circumstance, where the patient claims that she 16 16 17 patient, never told this family about this 17 was never informed of a life-threatening potentially life-threatening condition; and if 18 condition? That's my first question. 18 19 the jury believes that there was a 19 month 19 I -- I don't know. Ά delay in diagnosis and that played a part in her 20 You can't think of one? 20 0 I --- I --- it's --- I don't --- I don't death; can we agree under those circumstances of 21 21 A 22 22 that question Dr. Elkhairi should be held remember. 23 23 accountable?) 0 Okav. I can't think of a circumstance like 24 24 Д 25 MS. SANDACZ: 25 Objection to the that --58 60 All right. hypothetical. Multiple assumptions. Go ahead, 1 Q 1 2 -- exactly. 2 Doctor. А We can agree that Dr. Elkhairi should be Yeah, so the multiple assumptions, I 3 3 A 0 held accountable if the jury concludes that, believe I said that there were people more 4 4 responsible for informing the patient. I've 5 one, he never told this patient, never told this 5 family about this potentially life-threatening said that he is responsible for telling the 6 6 7 condition; and if the jury believes that there 7 patient, and so you've of course made the 8 was a 19 month delay in diagnosis and that 8 assumption that he failed to do that; so he would be partly responsible if he failed to tell 9 played a part in her death; can we agree under 9 those circumstances of that question the patient. 10 1.0 Dr. Elkhairi should be held accountable? 11 Okav. 11 0 12 No. 1.2Okay? Ά Α 13 MS. SANDACZ: Objection. Go 13 MR. BECKER: Thank you. I'm 14 done. 14 ahead. We're done. Not he himself. There were plenty of MS. SANDACZ: 15 A 15 opportunities, including the ER physician, those 16 THE WITNESS: You're all done? 16 17 MS. SANDACZ: We're all done. 17 people that he communicated with, that could Okay. Fine. 18 have been responsible for those incidental 18 THE WITNESS: We'll read. You 19 findings and not for which Dr. Elkhairi was 19 MS. SANDACZ: can send it to me. I'll have the doctor review 20 20 consulted. 21 21 0 So is that a yes, that he should have been it. 22 held -- he should be held accountable, in 22 THE NOTARY: Do you waive 23 conjunction with other people? Is that what I 23 viewing of the videotape? MS. SANDACZ: heard? 24 24 Yeah, we don't need 25 MS. SANDACZ: Objection. That's 25 to view the videotape.

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1	nar ann 1000 Main	1	I do further certify that I am not a	
2	(Deposition concluded at 5:54 p.m.	2	relative, counsel or attorney for either party,	
3	Signature not waived.)	3	or otherwise interested in the outcome of this	
4		4	action.	
5		5		
ł		6		
6				
7		7	IN WITNESS WHEREOF, I have hereunto	
8	RICHARD MATTHEW WALSH, M.D.	8	set my hand and affixed my seal of office at	
9		9	Cleveland, Ohio, this 19th day of April, 2006.	
10		10		
11		11		
12		12	David J. Collier, RPR,	
13		13	Notary Public/State of Ohio.	
14		14	Commission expiration: April 26, 2006.	
15		15		
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1.	CERTIFICATE			
2				
3	The State of Ohio, )			
4	County of Cuyahoga. ) SS:			
5				
6	I, David J. Collier, Registered	-		
7	Professional Reporter, Notary Public within and			
8	for the State of Ohio, duly commissioned and			
9	qualified, do hereby certify that the within			
10	named witness, RICHARD MATTHEW WALSH, M.D., was			
11	by me first duly sworn to testify the truth, the	Same and the second		
12	whole truth and nothing but the truth in the			
13	cause aforesaid; that the testimony then given			
14 14	by the above-referenced witness was by me			
14		of the second		
ĺ	reduced to stenotypy in the presence of said			
16	witness; afterwards transcribed, and that the			
17	foregoing is a true and correct transcription of			
18	the testimony so given by the above-referenced			
19	witness.			
20				
21	I do further certify that this deposition	10.00		
22	was taken at the time and place as in the			
	-	£		
23	foregoing caption specified, and was completed			
	-			

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