Page 1 1 State of Ohio,)) SS: 2 County of Cuyahoga. 3 IN THE COURT OF COMMON PLEAS 4 5 б Nola Vargo, Admx., et al.,) 7 Plaintiffs,) 8) vs. Case No. 447160 9 The Cleveland Clinic) Foundation, et al., 10) Defendants. 11) 12 13 DEPOSITION OF PATRICK WHELAN, M.B. 14 WEDNESDAY, APRIL 7, 2004 15 The deposition of PATRICK WHELAN, M.B., called by the 16 Plaintiffs for examination under the Ohio Rules of Civil 17 Procedure, taken before me, Ivy J. Gantverg, Registered 18 Professional Reporter and Notary Public in and for the 19 State of Ohio, by agreement of counsel and without further 20 notice or other legal formalities, at the offices of 21 Reminger & Reminger, 1400 Midland Building, Cleveland, 22 Ohio, commencing at 10:50 a.m., on the day and date above 23 24 set forth. 25

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 APPEARANCES: On Behalf of the Plaintiffs: John F. Norton, Esq. Cambridge Square Building - Suite 204 8251 Mayfield Road Chesterland, Ohio 44026 On Behalf of Defendant Cleveland Clinic Foundation: Jeffrey M. Whitesell, Esq. Tucker, Ellis & West 1150 Huntington Building Cleveland, Ohio 44115 On Behalf of Kaiser Permanente: Marc W. Groedel, Esq. Reminger & Reminger 1400 Midland Building Cleveland, Ohio 44115 Suite 204 Cleveland, Ohio 44115 Cleveland, Ohio 44115 	 A No. Q Are there any explanations that you intend to make later on A No. Q of answers you gave in the deposition? MR. GROEDEL: Objection. I think that's a vague question, but you can answer the question to the extent you know. A I will answer your questions. I have nothing to change at this point. Q But do you intend to explain any of your answers? MR. GROEDEL: Objection. It depends upon who is asking the question, obviously. But go ahead, you can answer. A It is a question and answer session, Mr. Norton, and I will answer your questions. Q Do you intend to qualify at trial any of the answers you gave in your deposition? MR. GROEDEL: Objection. A I haven't thought about that, no. Q You are Board certified in pulmonary medicine. What was the length of your pulmonary Fellowship? A Three years. To be more specific, I did a pulmonary/critical care combined Fellowship which was
 Page 3 PATRICK WHELAN, M.B. the deponent herein, called for examination under the Rules, having been first duly sworn, as hereinafter certified, was deposed and said as follows: CROSS EXAMINATION BY MR. NORTON: Q Tell me your full name, please. A Patrick Noel Joseph Whelan. Q And do you still reside at 21521 Lake Road? A Yes, I do. Q Doctor, thank you for making yourself available a second time to be deposed in this case, I appreciate it. You are licensed in Ohio? A Correct. Q And you are Board certified in pulmonary medicine? A Correct. Q Have you had an opportunity to read the deposition that was taken before? A Yes, I have. Q Are there any changes you would like to make in that deposition? A At this point, no. Q Are there any additions or corrections? 	 Page 5 1 Q Now, that three years of training, is that some classwork and some hands-on, or how does that break down? 3 Are you in a classroom setting for part of that? 4 A No, it is mostly direct clinical experience. 5 People have the option of doing research or taking 6 elective time as part of that period of time. 7 Q And what did you do? 8 A Mostly clinical work. 9 Q And by clinical work, you mean actually taking care 10 of patients? 11 A Correct. 12 Q And those would be patients with pulmonary 13 problems? 14 A Pulmonary consults and critical care consults. 15 They don't always have to have pulmonary problems. 16 Q Right. 17 So you were either taking care of critical care 18 patients or patients with pulmonary problems? 19 A Predominantly pulmonary disease, correct. 20 Q Now, are there any basic texts on pulmonary 11 medicine? 22 A Fraser and Pare. 23 Q Any others? 24 A Not that I can think of off the top of my head. 25 Q Have you ever heard of a textbook of respiratory

1	Page 6	1	Page 8
	medicine, Murray and Nadel?		frequently look at them myself. But I don't read them
23	A Yes, I have.	2 3	formally in the legal sense.
Ι.	Q In pulmonary medicine, is the chest x-ray a primary diagnostic tool?		Q Okay. But when you look at them, do you look at them in
45	•	4	But when you look at them, do you look at them in
I .	A Most of the time, yes.Q Are there other diagnostic tools in primary	5	association with the radiologist, or you just look at them independently? Or is there any
67	medicine pulmonary medicine, rather?	6 7	A There is no particular pattern. I would frequently
8	A There are numbers, yes.	8	go to x-ray to look at the films myself. Occasionally we
9	Q Can you tell me what they are?	9	go to x-ray, and if there are radiologists there, you
10	A CAT scans of the chest, and there are different	10	would look at them in conjunction.
11	types of those, V/Q scans, occasionally PET scans.	11	Q And good patient care in pulmonary medicine would
12	You are just talking about radiological studies?	12	suggest, then, that you do take a look at chest x-rays
13	Q Well, any pulmonary study, test.	13	when there is something to be when you are checking for
14	A Pulmonary function tests, exercise tests, there are	14	some specific pulmonary manifestation?
15	a number of different things.	15	A Most of the time, if there is a specific concern,
16	Q So given that chest x-rays are a primary diagnostic	16	it is a good idea to look at the films, but I don't always
17	tool, as a part of your pulmonary training, do you gain	17	do so if the suspicion is not very high.
18	some familiarity with chest films?	18	Q Would you agree that without access to a radiology
19	A Yes, I do.	19	department for purposes of obtaining chest x-rays and
20	Q You acquire some basic understanding of a chest	20	other radiological films of the chest, that the practice
21	film?	21	of pulmonary medicine would be severely limited?
22	A How to interpret it, yes.	22	A Yes, it would be limited. I don't know if you
23	Q Does this mean you actually looked at the films?	23	could say it would be severely limited, but it would be
24	MR. GROEDEL: What are you talking about?	24	limited.
25	Looked at Mrs. Hasto's films?	25	Q Because the services performed in the radiology
	Page 7		Page 9
1	MR. NORTON: No, no, in training, the training	1	department in the filming of a patient's chest are of
2	aspect of pulmonary medicine.	2	considerable importance to a pulmonary specialist in
3	A We looked frequently at chest x-rays during the	3	caring, treating, and even diagnosing the patient's
4	course of my training, yes.	4	condition; isn't that correct?
5	Q And do you go over them with the radiologist, is	5	A That's correct.
6	that how you learn how to read them?	6	Q Doctor, I am handing you a document that's marked
7	A Not necessarily, but I would go over them with the	7	Plaintiffs' Exhibit 1, which is the V/Q scan taken of Nola
8	attendings that were training me in the Fellowship	8	Hasto in March, 2000 and interpreted by Dr. Neumann.
9	program, I would study textbooks how to read chest x-rays	9	When a pulmonary specialist requests a V/Q scan, is
10	and would just gain general hands-on experience.	10	it customary to provide the radiology department with
11	Q Do you sometimes do that in association with	11	some with the pertinent clinical history of the
12	radiologists?	12	patient?
13	A I would sometimes review a film with them, yes, but	13	A Usually some clinical history is provided, that's
14	it wouldn't necessarily be considered a formal learning	14	correct.
15	experience.	15	Q And is it also customary when requesting a V/Q scan
16	Q And as part of your training, then, you gained some	16	for a patient to indicate to the radiology department what
17	basic understanding of the radiological manifestations of	17	conditions you are concerned about, what you would like to
18	pulmonary disease?	18	have ruled out or excluded or included?
19	A Correct.	19	A In general with the V/Q scan, there is a particular
20	Q After your Fellowship and you were in practice	20	report given by the radiologist, and the general
21	taking care of patients with pulmonary problems who had	21	assumption is that pulmonary embolus is the reason one
22	chest x-rays, would you read the films yourself or read	22	is to rule out pulmonary embolus is the reason for
23	them in conjunction with the radiologist?	23	doing the scan. If one had another request, such as a
24	A I would let the radiologist read the films, because	24	split perfusion scan, which is a slightly different V/Q
25	they are the people who are experts in that, but I would	25	scan, one would make that clear to the radiologists. In
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	Page 10		Page 12
	this case, that split perfusion factor did not apply.	1	information that would be given in a history given to the
2	Q Have you just suggested there are two kinds of V/Q	2	radiology department?
3	scans?	3	A We use shortness of breath, pleuritic chest pain.
4	A There is another kind of V/Q scan that can be done	4	It would depend upon the context of the individual
5	in a circumstance different than this, that's true. But	5	circumstance of the patient.
6	it would have to be specifically ordered.	6	Q We are talking now in terms of PE.
7	Q Okay, what kind of a V/Q scan was ordered in this	7	A If that's the consideration, if that's the reason
8	case?	8	the V/Q is ordered. And that's mostly the reason for
9	A A standard V/Q scan.	9	doing this test, correct.
10	Q Standard V/Q.	10	Q Right, but I am saying, when you order it because
11	With reference to a standard V/Q scan, is it	11	of a concern about a PE, what is the most pertinent
12	customary for the pulmonary specialist to indicate to the	12	clinical information you would provide to radiology?
13	radiologist what specific condition is of concern to the	13	MR. GROEDEL: Objection, asked and answered.
14	pulmonary specialist?	14	Go ahead.
15	MR. GROEDEL: Objection, asked and answered. Go ahead.	15	A Some basic history about the patient.
16 17		16 17	Q I know, but what would that history include?
1	A Not always. There is usually some clinical history provided but a V/Q scap can be interpreted by a		A Shortness of breath, symptoms.
18 19	provided, but a V/Q scan can be interpreted by a radiologist without input from anyone on the clinical	18 19	Q What kind of symptoms?A Shortness of breath, just like I said.
20	team, if necessary.	20	Q Anything else?
$\frac{20}{21}$	Q Is it your testimony that when a radiologist gets a	20	A Pleuritic chest pain, if it were present. Some
22	request for a V/Q scan, that it is generally assumed by	22	other information about the patient. But typically just
23	the radiologist that they are looking for a pulmonary	23	the immediate presenting complaint.
24	embolus?	23	Q This patient, Nola Hasto, didn't have any pleuritic
25	A Most of the time, yes.	25	chest pain.
25	Tr most of the time, yes.		enest pant.
	Page 11		Page 13
1	Q So is a V/Q scan, in terms of the clinical history	1	A That's correct.
12	that's provided to radiology, an exception to the general	$\begin{vmatrix} 1 \\ 2 \end{vmatrix}$	
$\begin{vmatrix} 2\\ 3 \end{vmatrix}$	rule, that some indication of what the pulmonary	$\frac{2}{3}$	Q The only chest pain she had was chest pain associated with her unstable angina; is that correct?
4	specialist is looking for is not indicated necessarily?	4	MR. GROEDEL: Objection.
5	A No, we provide information to the radiologist, but	5	You may answer.
6	we don't always necessarily say, rule out pulmonary	6	A We don't know exactly what the cause of her chest
7	embolus. We give them a history which they use to help		pain was. We postulated initially that it was a result of
8	them with the general situation.	8	her previous cardiac disease. But then the cardiac
9	Q And when a pulmonary specialist is requesting a V/Q	9	catheterization did not show significant progression of
10	scan of the chest of the lungs, rather, because the	10	her disease to the point of intervention being necessary,
11	specialist is concerned about a pulmonary embolus, what	11	so then other causes for the chest pain and her other
12	would be the customary history that would be given?	12	complaints needed to be looked at.
13	A Give some basic information about the patient on	13	Q But isn't it true that in the case of Nola Hasto,
14	the req.	14	the complaints of chest pain pretty much resolved after
15	Q Pardon?	15	the catheterization of March 7th?
16	A Put some history about the patient on the	16	MR. GROEDEL: Objection to pretty much
17	requisition.	17	resolved.
18	Q And what would that history be?	18	You may answer.
19	A In this case, it said chest pain and shortness of	19	A I would need to review the records to answer that
1	breath.	20	question.
20		21	\dot{Q} Any particular part of the record you need to
20 21	Q I am not asking what that said. I am asking what	<u>~1</u>	
1	Q I am not asking what that said. I am asking what the customary information would be to give to a	22	review?
21			
21 22	the customary information would be to give to a	22	review?
21 22 23	the customary information would be to give to a radiologist?	22 23	review? A Well, I do not recall exactly when the cath was

4 (Pages 10 to 13)

	Page 14		Page 16
1	A On the 12th, in this note here, there is a comment	1	were going to question Dr. Whelan about.
2	from Dr. Boyle that anterior chest wall is sore to cough	2	This is Dr. Whelan's second deposition. You
3	and deep inspiration.	3	had ample opportunity to ask him these questions at
4	Q Does that equate to chest pain?	4	the first deposition. For whatever reason, you
5	A I think so, yes.	5	didn't do so.
6	Q What other evidence do you have after the 7th of	6	I am going to give you some leeway, but I am
7	chest pain?	7	going to shut it down pretty soon.
8	A Other than what I just referred to?	8	Let the record show that the doctor is
9	Q Other than what you just read.	9	reviewing some nursing notes. Whether they are the
10	I am talking, Doctor, up to the date of the 13th.	10	complete nursing notes from March 12th remains to
11	You are beyond that, I believe.	11	be seen.
12	A So just no, I don't see any further reference of	12	MR. NORTON: And the notes he is reviewing are
13	chest pain in the record.	13	counsel's notes.
14	MR. GROEDEL: Just so the record is clear, you	14	MR. GROEDEL: No, they are not counsel's
15	have looked at the progress notes, you haven't	15	notes. They are notes from the Cleveland Clinic
16	looked at any nursing notes, correct?	16	chart, a copy of it.
17	THE WITNESS: Correct.	17	MR. NORTON: Provided by you, Marc, to the
18	BY MR. NORTON:	18	witness. Otherwise, I will provide my copy of the
19	Q Now, in terms of the nursing notes let's see	19	notes and represent that they are the complete
20	here, Doctor, I am handing you a document that's marked	20	nursing notes for the 12th.
21	Plaintiffs' Exhibit 10, which is the entire nursing note	21	A I can just tell you, Mr. Norton, on the notes you
22	from March 13th. That was the day after, I think, you	22	have provided me, I see no evidence of chest pain being
23 24	ordered the V/Q scan.	23	recorded. Q Thank you.
24	And on the narrative of that note, which is on Bates numbered Page 141, the top of the page, the 9:00	24 25	Q Thank you. Now, with reference to Plaintiffs' Exhibit 1, the
23	Dates numbered 1 age 141, the top of the page, the 9.00	2.5	Now, while reference to Frammins Exhibit 1, the
	Page 15		Page 17
1			
1	o'clock nursing note, patient denies complaint of chest	1	V/Q scan, did you provide the clinical history that is
2	pain or shortness of breath; do you see that?	1 2	V/Q scan, did you provide the clinical history that is reflected in the note?
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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 23 24	 pain or shortness of breath; do you see that? A Yes, I do. Q So the nurses notes, as of the 13th, were not reflecting chest pain or shortness of breath; is that correct? A On this particular note in question, yes. It is just one moment in time. Q Okay. And do you have the nurses notes for the 12th in front of you? A No, I don't. I can look for them. Q Do you have them, Doctor? A I am looking for them. I do. Q I wasn't able to find any note in the nursing any of the nursing notes on the 12th where the patient was complaining of shortness of breath or chest pain, and of course that may be because I couldn't read the writing. Maybe you can review it and tell me if you find any? MR. GROEDEL: Objection. John, I want you to know that I am allowing this questioning only to a limited degree, because it goes beyond the extent of the parameters of your 	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	 V/Q scan, did you provide the clinical history that is reflected in the note? A Probably not. Q Who would have? A Either one of the residents or one of the interns. Q Now, did you speak with Dr. Neumann about this particular V/Q scan? A I do not recall doing so, but there is clearly a note here stating that he discussed the case with me. Q In the V/Q scan itself? A Correct. Q But you don't have any specific recall of having spoken with him? A I cannot remember at this point. It is almost I believe it is more than four years ago. Q Do you know whether you went to the radiology department to review the films? A I do not recall. Q As a pulmonary specialist, do you engage sometimes in a risk/benefit analysis when considering a treatment to be given to a patient? A Yes. Q And where the treatment itself has some potential risk of harm, are you concerned that the risk of harm to
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	 pain or shortness of breath; do you see that? A Yes, I do. Q So the nurses notes, as of the 13th, were not reflecting chest pain or shortness of breath; is that correct? A On this particular note in question, yes. It is just one moment in time. Q Okay. And do you have the nurses notes for the 12th in front of you? A No, I don't. I can look for them. Q Do you have them, Doctor? A I am looking for them. I do. Q I wasn't able to find any note in the nursing any of the nursing notes on the 12th where the patient was complaining of shortness of breath or chest pain, and of course that may be because I couldn't read the writing. Maybe you can review it and tell me if you find any? MR. GROEDEL: Objection. John, I want you to know that I am allowing this questioning only to a limited degree, because 	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	 V/Q scan, did you provide the clinical history that is reflected in the note? A Probably not. Q Who would have? A Either one of the residents or one of the interns. Q Now, did you speak with Dr. Neumann about this particular V/Q scan? A I do not recall doing so, but there is clearly a note here stating that he discussed the case with me. Q In the V/Q scan itself? A Correct. Q But you don't have any specific recall of having spoken with him? A I cannot remember at this point. It is almost I believe it is more than four years ago. Q Do you know whether you went to the radiology department to review the films? A I do not recall. Q As a pulmonary specialist, do you engage sometimes in a risk/benefit analysis when considering a treatment to be given to a patient? A Yes. Q And where the treatment itself has some potential

	Page 18		Page 20
1		1	
	risk of harm to the patient from non-treatment?	1	A Let me just verify the other date. Yes.
23	A Risk/benefit analysis is always considered when		
	giving most therapies. Ω	3	Q And you knew that she had fallen?
4	Q So the risk of non-treatment would have to be	4	A I was aware of that, yes.
5	greater than the risk of the treatment?	5	Q And you knew she had a hematoma on her left
67	A Correct.Q And similarly where the treatment presents some	6 7	parietal area? A She had a hematoma on her head, yes.
8	risk, would you want to have an appropriate confidence	8	Q And I am handing you you have these
9	level in the diagnosis for which the treatment is being	9	Plaintiffs' Exhibit 3, that's a photo of the face of Nola
10	ordered?	10	Hasto taken at the coroner's autopsy. Do you see the
11	A One would have to think hard about it, yes.	11	hematoma on the forehead?
12	Q By think hard, do you mean that he would want to	12	A Yes, I do.
13	have a fairly confident level or a fairly high level of	13	Q Do you remember seeing that while you were taking
14	confidence in your diagnosis?	14	care of her?
15	A One would have to have a reasonable level of	15	A I remember seeing a hematoma, but obviously we are
16	confidence. I think what we are discussing here is	16	talking a number of days later, so I can't compare it.
17	relative, sir, so it is hard to be precise.	17	Q I am handing you what has been marked as coroner's
18	Q A reasonable level of confidence?	18	photograph Exhibit Number 5, rather, Plaintiffs'
19	A Yes.	19	Exhibit Number 5, the coroner's photograph of Nola Hasto's
20	Q Would your personal review of the V/Q scans have	20	left breast and torso, trunk. Do you see the ecchymotic
21	enabled you, as a pulmonary specialist, to improve your	21	areas shown?
22	level of confidence in the diagnosis of pulmonary	22	A Yes, I do.
23	embolism?	23	Q Do you recall that she had ecchymosis on her body?
24	A I don't think so.	24	A I recall reading it in Dr. Boyle's notes, yes. I
25	Q You don't think so?	25	do not remember specifically remembering myself that she
			1 , 6 ,
	Page 19		Page 21
1	A No.	1	had an ecchymosis.
2	Q Because why?	2	Q And similarly, Plaintiffs' Exhibit 5, a coroner's
3	A Because a properly trained nuclear medicine	3	photograph of Nola Hasto showing, again, the
4	radiologist would definitely be in a better position to	4	posterolateral aspect of her trunk on the left. Do you
5	interpret a V/Q scan than I would.	5	recall seeing that, or you just recall reading about it?
6	Q Would it be fair to say that in this case that you	6	A I do not recall seeing it. I need to refer to the
7	relied on Dr. Neumann's interpretation of the V/Q scan in	7	notes to see if there is any mention of it in the notes.
8	reaching the conclusion that Nola Hasto would benefit from	8	Q By notes, you mean nursing notes or doctors notes?
9	anticoagulant therapy, specifically a Heparin IV bolus	9	A Doctors notes.
10	followed by IV infusions?	10	Q If it was in the nursing notes, would you have
11	A His reading of the V/Q scan was an important	11	noted it? I mean, is it something a treating physician
12	determinant in making that decision, yes.	12	becomes aware of when the nurses chart a condition of the
13	Q In fact, if the scan had been read as low	13	patient?
14	probability, rather than high probability, would you have	14	A Generally if there is a concern from the nurses,
15	ordered an IV Heparin bolus of 6,000 units?	15	they will verbally inform me. But I do not read the
16	MR. GROEDEL: Objection.	16	nursing notes always.
17	You may answer.	17	Q Did you ever consider infection as a cause of any
18	A Most likely not.	18	of this woman's problems when you were taking care of her?
19	Q You saw Nola Hasto every day from March 2nd	19	A It was lower down the possibility. We were mostly
20	through, I think, the 15th; is that correct?	20	concerned with what we thought was her pulmonary embolus
21	A Let me review my notes.	21	at the time, and then her need for blood transfusion, and then there was a possibility of a CI blood toward the and
1 1 1	I cannot absolutely tell you I saw this lady on the	22 23	then there was a possibility of a GI bleed towards the end
23	2nd, but I definitely started seeing her on the 3rd. She	1	of her hospital stay. Ω Was that suggesting infection to you, her GI bleed?
23 24	2nd, but I definitely started seeing her on the 3rd. She may have come in later in the day.	24	Q Was that suggesting infection to you, her GI bleed?
23	2nd, but I definitely started seeing her on the 3rd. She	1	

<u> </u>			D - 24
$ \begin{array}{c} 1\\2\\3\\4\\5\\6\\7\\8\\9\\10\\11\\12\\13\\14\\15\\16\\17\\18\\19\\20\\21\\22\\23\\24\end{array} $	 Page 22 Q There is an item in the lab work, handing you what's been marked for identification as Plaintiffs' Exhibit 8, which is the laboratory work for Nola Hasto, I am interested in this glucose reading of 388 [sic] on March 10th. What do you attribute that to? I mean, it is a big increase in her glucose. A You mean 338 on March 10th? Q Yes, 338, right. A I wouldn't call it a very big increase from the previous result which was 265, but it is an increase, I agree. Q What would you attribute that to? A Poor glycemic control. Q Due to what? A There are many, many possible causes, dietary noncompliance. I believe she had been getting steroids at some point, but I do not recall when they were started. Q And similarly, on the 10th, there is an increase in her BUN to 53. What do you attribute that to? A I do know that we were concerned that she had some dye from the cardiac catheterization, and that is mentioned in Dr. Boyle's note. There are many potential explanations for this, renal problems, catabolic state. There are a number of things to consider here. 	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	 Page 24 expiratory flow rates, which are also known as peak flows. Q As what? A Flows. Q Flows. Now, you reviewed this pulmonary function test? A Correct. Q And in your note, I believe it was the 11th or 12th, your note of the 11th or 12th, you make a reference to your review of the pulmonary function test. I think it is your note of the 11th, Doctor. As a matter of fact, I have got it right here, it is Plaintiffs' Exhibit 16. A Okay. Q You refer to the results of the test as relatively normal. A Correct. Q What did you mean by qualifying the word normal with the word relatively? A No test to be totally normal, you would have to hit the hundred percent of the predicted of everything, but there are some parameters for interpreting pulmonary function tests. And by my way of looking, this is within the variabilities of the test, they seem to be within the normal range, as best as I could tell. And this is
$\begin{array}{c} 25\\ 1\\ 2\\ 3\\ 4\\ 5\\ 6\\ 7\\ 8\\ 9\\ 10\\ 11\\ 12\\ 13\\ 14\\ 15\\ 16\\ 17\\ 18\\ 19\\ 20\\ 21\\ 22\\ 23\\ 24\\ 25\\ \end{array}$	 Q Now, I am not sure if you answered this question, I Page 23 got sort of lost earlier, so I am going to repeat it. But between, say, the 10th and the 15th, which was your last day, I guess, were you ever concerned about infection in this patient? MR. GROEDEL: Objection, asked and answered. Go ahead. A Possibility, but it was lower down my list. Q I have a question about the pulmonary function test, which is Plaintiffs' Exhibit 17. But before I ask the question, Doctor, I want to ask you, do you recall that Dr. Boyle who was a resident working under your supervision, I understand? A Correct. Q She had a note, I think in her March 12th clinical sheet, which states that questionable it is a question mark, I read that as questionable PFTs recorded. Were you aware of that? A Not right now, I am not, but I am going to review the note. Q I am not sure what date it is. A I see the note to which you refer from March 12th, yes. Q Do you have any idea what she meant by that? A You would have to ask Dr. Boyle directly, but one of the concerns is whether she is talking about peak 	25 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	 corroborated by the report that I see in front of me. Page 25 Q Yes. The report states that the spirograms were normal, but there is a qualifying comment by the interpreter. A That's correct. Q And it is that qualifying comment that is of interest to me. A Okay. Q And I believe what it says is that the possibility of air flow obstruction could not be excluded because the expiratory time exceeded six seconds; do you see that? A It did not exceed, it was less. Q It was less than six seconds. A Yes, I do see that. Q And so I take it from that, that the validity diagnostic validity of the pulmonary function test depends to some extent on an element of time? A It depends on how long the patient exhales, that's correct. Q Does the patient have to exhale all of the patient's lung capacity within a certain time frame in order to get a reasonably accurate result? A Ideally, it should be for six seconds. But ideally, we are talking about. Q And if it is less than six seconds, that would that limited duration or that lesser duration of exhale

7 (Pages 22 to 25)

	Page 26		Page 28
1	time would suggest that it is being influenced by other	1	A Yes.
2	factors in the patient?	2	Q Have you ever seen the V/Q scans in this case?
3	A It is hard to say what's influencing the patient.	3	A I do not recall seeing them.
4	Q But there would be some factors that	4	Q Handing you Plaintiffs' Exhibits 2 and 3 marked in
5	A Either patient cooperation I really would have	5	Dr. Neumann's deposition, Doctor, a person with a
6	to speculate here, Mr. Norton.	6	pulmonary embolism would be classified as somebody having
7	Q Right.	7	a vascular occlusive state, right?
8	A All I can tell you is, it is ideal for people to	8	A Yes.
9	exhale for at least six seconds during this test.	9	Q And in the vascular occlusive state, ventilation is
10	Q But the act of exhaling, in terms of patient	10	preserved in the region of pulmonary vascular abnormality;
11	cooperation, requires the ability to properly flex the	11	is that correct?
12	chest muscles?	12	A That's not always true. There may be other
13	A I mean, exhaling is a complicated activity, and the	13	confounding factors. But it is true that the pulmonary
14	chest muscles are a part of the process.	14	embolus predominantly affects the vascular system, that's
15	Q And there are conditions of the lung which would	15	correct.
16	the lung itself that would influence the duration of the	16	Q And in your review of Plaintiffs' Exhibits 2 and 3,
17	exhale time?	17	do you see any impairment
18	A It would make it more difficult to exhale, yes.	18	MR. GROEDEL: Objection.
19	But I think you are asking me to be very general here, so	19	I am sorry, go ahead.
20	it is very difficult for me to do that.	20	A I have to tell you
21	Q An important element of the pulmonary function test	21	MR. GROEDEL: Hold on, let him finish his
22	is the ratio between forced expiratory ventilation and	22	question.
23	forced vital capacity, right?	23 24	 Q of the vascular system of the lung? MR. GROEDEL: Objection. This doctor is not
24 25	A Between FEV1 and FVC, that's correct.Q And when the ratio between those two numbers is	24	an expert in interpreting these films.
23	Q And when the ratio between those two numbers is	25	an expert in interpreting these mins.
	Page 27		Page 29
1	decreased, that would indicate airway obstruction?	1	A I completely concur with Mr. Groedel, I have only
2	A It is suggestive of it, yes.	2	had limited training in interpretation of V/Q scans. I
3	Q And that's often expressed as a percentage,	3	can tell you the general principles, but I would never,
4	correct?	4	ever interpret a V/Q scan without a radiologist.
5	A The ratio?	5	Q I understand that.
6	Q The ratio.	6	MR. GROEDEL: And that's why he is not going
7	A Yes, it is.	7	to give you any testimony regarding the V/Q scan.
8	Q And what was her percentage?	8	MR. NORTON: Marc, in all fairness, he studies
9	A According to what I read here let me just double	9	them in pulmonary medicine, he reviews them.
10	check these numbers 86 percent, 86.5 percent.	10	MR. GROEDEL: No, he doesn't.
11	Q And how did you regard that?	11	A I would like to
12	A It is a little elevated, as you can see by the	12	Q Let me say, I only covered that aspect of your
13	percentage here to the right of it, which says	13	training in terms of chest x-rays.
14	118 percent.	14	A Mr. Norton, if I read a legal textbook, would that
15	Q 118 is the predicted value?	15	make me an attorney?
16	A No, it is the percentage above in other words,	16 17	Q No, but it would give you some good legal
17	it is 118 the 86.5 percent calculated for Mrs. Hasto, based on her body size and a number of other factors, the	17	knowledge. A That's the answer to the question.
18	predicted was 73.5, as far as I can tell here.	18	Q So I am not asking you to give me any answers based
$\frac{19}{20}$	Q Okay.	20	on your expertise as a radiologist, all right?
$ \frac{20}{21} $	So the ratio itself, on this report, would not	20	MR. GROEDEL: He is not a radiologist, we
$ ^{21}_{22}$	suggest obstruction?	22	agree with that. And because he is not a
23	A Correct.	23	radiologist, he is not going to testify about what
24	Q But that ratio, because it is time dependent, is	24	these films show.
25	also affected by a limited expiratory time, correct?	25	MR. NORTON: I am not asking him to testify as
	· · · ·		Ç , ,

1 a radiologist. 2 MR. GROEDEL: You are asking him to testify as to what these flivs show. And because he is not a radiologist, he is not going to testify about what these flivs show. And because he is not a radiologist, he is not going to testify about what these flivs show. And because he is not a radiologist. It is beyond your competence to answer that question; is that correct? 4 C. (Continuing) Let me go back, then. 5 Doctor, in pulmonary medicine, familiarize yourself 10 Q. by ou, in pulmonary medicine, familiarize yourself 11 Q. Doyou, in pulmonary medicine? 12 M. The general principles of them, yes. 13 A. The general principles of them, yes. 14 Q. And di you review (V) G cans during the period of the source and ability to do it so. I do a locad. 14 A. M. ROROTON: Yes, review was the word. 15 your training in pulmonary medicine? 16 M. ROROTON: Yes, review was the word. 17 M. ROROTON: Yes, review was the word. 18 A. Hadependently. 21 A. Independently. 22 Independently. 23 A. Generally ant accurate? 24 Charta stage onthin the stresofthis the all. 2		Page 30		Page 32
2 MR. ČRVEDEL: You are asking him to testify as 2 A Because 1	1		1	
3 to what these films show. 3 Q Wait. It is beyond your competence to answer that 4 4 radiologist, he is not some of the go back, then. 5 A To compare these two films legally and accurately, 4 5 Q (Continuing) Let me go back, then. 7 O No, that's not what I asked. I am asking you 8 important diagnostic tool in the management of people with 9 whether it is beyond your competence to answer that 4 10 A Yes, it is. 7 No, that's not what I asked. I am asking you 11 A The general principles of them, yes. 11 11 13 A The general principles of them, yes. 14 A 14 Q And didy ou as review W/Q scans during the period of 15 your training in pulmonary medicine.? 14 A 16 M. R. NORTON: Yes, review was the word. 18 A I hadependently. 20 Now, the person with emphysema or asktma, which are 19 wanted to know. 10 A Independently. 20 Independently. 21 A Independently.			2	
4 radiologist, he is not going to testify about what 4 question; is that correct? 5 Q Continuing) Let me go back, then. 5 A To compare these two films legally and accurately, 6 7 Doctor, in pulmonary medicine, is VQ scan an 7 Q No, that's not what 1 asked. 1 am asking you 8 important diagnostic tools in the management of people with VQ scans? 9 opinion whatsoever as to whether on to Plaintiff's 10 Q Do you, in pulmonary medicine, familiarize yourself 10 Exhibits 2 and 3 show my difference between perfusion and 11 Q Do you, in pulmonary medicine, familiarize yourself 11 Exhibits 2 and 3 show my difference between perfusion and 12 with VQ scans? 14 A The general principles of them, yes. 16 14 Q And did you review VQ scans during the period of 17 MR. GROEDEL: Does he interpret them? 15 yes. MR. GROEDEL: Does he interpret them? 17 manage with VQ scans, but in weight you an or the start and and you also review them yourself? 20 Q And da you also review them yourself? 18 A Independently. 23 A Generally not. <t< td=""><td>1</td><td></td><td></td><td></td></t<>	1			
5 A To compare these two films legally and accurately, 6 Q (Continuing) Let me go back, then. 7 Doctor, in pulmonary medicine, is V/Q scan an whether it is beyond your competence to express any 9 pulmonary disease? Q 10 A Yes, it is. Doctor, in pulmonary medicine, familiarize yourself. 12 with V/Q scans? Exhibits 2 and 3 show any difference between perfusion and 12 with V/Q scans? MR. GROEDEL: Objection, asked and answered. 13 A The general principles of them, yes. MR. GROEDEL: Objection, asked and answered. 14 A When expressing an opinion, Mr. Notton, one has to Is on tofe that 1 an expert encough of familiar 16 MR. ROEDEL: Objection, asked and answered. Is on tofe that 1 an expert encough of familiar 17 MR. ROEDEL: Objection, asked and answered. Is on the obstructive actions with emphysem or asthma, which are 18 A Inargiologist, yes. Imat's perfectly all right with me. That's all I 19 scan you tell me, just as a general wide range of mambers, whatever comes to your multind, how many times in 25 21 the course of your pulmonary medicine care Fellowskip you a fagure. It could be more, it could be nore, it c				
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$ \begin{array}{c} 1\\2\\3\\4\\5\\6\\7\\8\\9\\10\\11\\12\\13\\14\\15\\16\\17\\18\\19\\20\\21\\22\\23\\24\\25\end{array} $	 Q It would be a blood clot? A Typically a blood clot, yes. Q And this clot is made up of fibrin? A Fibrin, possibly platelets, but generally it is a clot. Q And in your experience as a pulmonary specialist, what is the likelihood of a person who has been on aspirin therapy for a considerable period of time, in this case, over ten days, developing a pulmonary embolus? A It is generally taught that aspirin is not a good prophylactic drug against pulmonary embolism, so I cannot give you an exact figure. But I do not think aspirin prevents significantly, if one is at risk from pulmonary embolus, from preventing significantly, it tends to decrease the likelihood? MR. GROEDEL: Objection. You may answer. I think you answered it already. A I can tell you, Mr. Norton, aspirin is not considered to be a good prophylactic drug. Q I understand that. And aspirin operates against what, antithrombin or something? A It works against platelets. Q Right. 	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	CERTIFICATE State of Ohio,)) SS: County of Cuyahoga.) I, Ivy J. Gantverg, Registered Professional Reporter and Notary Public in and for the State of Ohio, duly commissioned and qualified, do hereby certify that the above-named PATRICK WHELAN, M.B. was by me first duly sworn to testify to the truth, the whole truth, and nothing but the truth in the cause aforesaid; that the deposition as above set forth was reduced to writing by me by means of stenotype, and was later transcribed into typewriting under my direction by computer-aided transcription; that I am not a relative or attorney of either party or otherwise interested in the event of this action. IN WITNESS WHEREOF, I have hereunto set my hand and seal of office at Cleveland, Ohio, this 15th day of April, 2004. Ivy J. Gantverg, Notary Public in and for the State of Ohio, Registered Professional Reporter. My Commission Expires November 5, 2008.
$ \begin{array}{c} 1\\2\\3\\4\\5\\6\\7\\8\\9\\10\\11\\12\\13\\14\\15\\16\\17\\18\\19\\20\\21\\22\\23\\24\\25\end{array} $	Page 35 And it inhibits thrombin? A I do not know that specifically. Q And thrombin is the element that develops fibrin? A It is involved in it, yes. But this is not an area where I am an expert, I have to admit. MR. NORTON: Doctor, thank you very much. I don't have any further questions. MR. WHITESELL: I have nothing. MR. NORTON: Signature will not be waived, correct? MR. GROEDEL: Right. PATRICK WHELAN, M.B.		

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