State of Ohio, 1 ss:) 2 County of Cuyahoga. 3 IN THE COURT OF COMMON PLEAS 4 5 6 Loretta Buxton, Adminstratrix 7 of the Estate of Beulah Willabor, Plaintiff, 8)Case No. 98-358-043 9 vs .)Kathleen S. Craig, J. Indian Hills Nursing Center, et al, 10 11 Defendants. 12 13 Deposition of Robert Whitehouse, M.D., a witness 14 15 herein, called by the defendants for oral examination, 16 pursuant to the Ohio Rules of Civil Procedure, taken before Luanne K. Howe, Court Reporter and Notary 17 18 Public in and for the State of Ohio, at the office of Robert Whitehouse, M.D., 36001 Euclid Avenue, Suite B-15, 19 Willoughby, Ohio 44094, on Tuesday, April 27, 1999, 20 commencing at 1:00 p.m. 21 22 23 24 25

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1 **APPEARANCES:** On behalf of the Plaintiff: 2 John S. Chapman, Esq. 3 2010 Huntington Building 925 Euclid Avenue 4 Cleveland, Ohio 44115 5 Calvin F. Hurd, Esq. 6 1750 Standard Building 1370 Ontario Street Cleveland, Ohio 44113 7 On behalf of the Defendants: 8 9 Ronald Mingus, Esq, Reminger & Reminger 10 113 St. Clair Building, Suite 700 Cleveland, Ohio 44114 11 Daniel Clevenger, Esq. 12 Harry A. Tipping Co., L.P.A. One Cascade Plaza, Suite 2200 13 Akron, Ohio 44308 14 On behalf of Robert Whitehouse, M.D.: 15 Stephen Crandall, Esq, Reminger & Reminger 113 St. Clair Building, Suite 700 16 Cleveland, Ohio 44114 17 18 19 20 21 22 23 24 25

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1		ROBERT WHITEHOUSE, M.D.
2	of law	ful age, being first duly sworn, as hereinafter
3	certif	ied, was examined and testified as follows:
4		DIRECT EXAMINATION
5	By Mr.	Mingus:
6	Q	Dr. Whitehouse, my name is Ron Mingus, and I
7		represent Indian Hills Nursing Center in a lawsuit
а		that was filed by the estate of Beulah Willabor.
9		And I'm going to be asking you some questions about
10		your treatment of Beulah Willabor.
11		You've had your deposition taken before, I
12		take it?
13	A	Yes.
14	Q	So you're familiar with the procedure?
15	A	Yes.
16	Q 1	Doctor, first of all, do you have any records which
17		are separate and apart from the records which were
18	ז	maintained at Indian Hills Nursing Center?
19	A 1	No, 1 do not.
20	Q Z	And I note that you do have a copy of the
21		Indian Hills records in front of you, and please
22	:	refer to those whenever you need to to answer my
23		questions. What was your involvement in
24]]	Beulah Willabor's care?
25	А	I took care of her from the period beginning

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1		December 31st, 1996 through the time of her death in
2		July of 1997.
3	Q	And where did you take care of her at?
4	A	At the nursing home called Indian Hills,
5	Q	Are you an employee of Indian Hills Nursing Center?
6	A	No.
7	Q	From December 31st, 1996 through Mrs. Willabor's
8		death in July of 1997, did you see her on a regular
9		basis?
10	A	Yes.
11	Q	Could you tell me about her condition when
12		Mrs. Willabor entered Indian Hills Nursing Center in
13		December of 1996?
14	A	Debilitated.
15	Q	Can you tell me about any ailments, medical problems
16		that she had at that point?
17	А	She had something wrong with every part of her body.
18	Q	Can you tell me about some of the ailments that she
19		had?
20	A	The term that's used in the medical literature to
21		refer to her condition is called adult failure to
22		thrive syndrome, which refers to multisystem
23		failure, everything wearing down.
24	Q	She was approximately 96 years old at that time?
25	A	Yes, indeed.

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1	Q	I noted from the record she had atrial fibrillation;
2		is that correct?
3	A	Yes.
4	Q	What is atrial fibrillation?
5	A	It's an irregular heartbeat.
6	Q	She also had congestive heart failure; is that
7		correct?
8	A	Yes.
9	Q	What is congestive heart failure?
10	A	The heart muscle is wearing out and can't pump the
11		blood very effectively.
12	Q	She also had Paget's disease upon her admission; is
13		that correct?
14	A	Yes. There are different kinds of Paget's disease.
15		This is Paget's disease of the bone.
16	Q	Could you describe that in Mrs. Willabor's case?
17	A	It's a finding on the X-rays that has to do with an
18		abnormality of the remodeling of bone.
19	Q	She also had chronic obstructive pulmonary disease;
20		is that correct?
2 1	A	Yes.
22	Q	What does that mean, Doctor?
23	A	Those are changes that are like emphysema where the
24		total lung volume goes down. The ability to move
25		the air in and out of the lung goes down.

1	Q	She also had X-rays which were consistent with old
2		granulomatous disease; is that correct?
3	A	That's correct.
4	Q	What is that?
5	А	She means she was exposed to TB at one time, and
6		it's considered inactive at this point.
7	Q	She also had coronary artery disease; is that
8		correct?
9	А	Right.
10	Q	What is that?
11	А	Hardening of the arteries, of those arteries that
12		supply the heart muscle itself.
13	Q	She also had atherosclerotic cardiovascular disease;
14		is that correct?
15	А	No. Cerebrovascular disease.
16	Q	What is that, Doctor?
17	А	That's hardening of the arteries in those arteries
18		that supply the vein.
19	Q	She also had glaucoma; is that correct?
20	А	That diagnosis was listed on the information which
21		came in with her into the nursing home, but I don't
22		personally diagnose glaucoma.
23	Q	Doctor, I see you have your chart open to a certain
24		page. What page is that?
25	А	It's called a "History and Physical Record."

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Q	Could you tell me about your history that you took
	when you first saw the patient?
A	Yeah. As I mentioned, the term that's used to
	describe her overall condition is called adult
	failure to thrive syndrome. When physicians talk to
	each other about this, we sometimes use the more
	frivolous term, quote, total body failure, unquote.
	This means that she had something wrong with every
	part of her body, and it was globally failing.
Q	Do you have any opinions as to what her future
	prognosis was or what her life expectancy was?
	MR. CHAPMAN: At what point?
	MR. MINGUS: At the time of her
	admission.
А	At the time of her admission, her prognosis was
	somewhere between terrible and terminal. Her life
	expectancy is diminishingly small.
Q	What do you mean by "diminishingly small"?
A	She could die any time.
Q	What other strike that, please.
	Did she have any mental or psychological
	problems at the time of her initial admission?
A	She had severe dementia.
Q	What is that, Doctor?
А	Dementia means loss of intellectual faculties.
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1	Q	Did she have any other psychological problems at
2		that time?
3	A	I don't think she was really tested as such for
4		other psychiatric diagnoses like depression,
5		anxiety.
6	Q	I note from some of the records that she was
7		disoriented to place, time, and situation at the
8		time of her initial admission; is that correct,
9		Doctor?
10	A	You mean do I remember that, in fact, she was
11		disoriented in that way? I don't remember, but do
12		the records indicate that? Yes, they do,
13	Q	Doctor, at the time of her initial admission to
14		Indian Hills, there was an advanced directive that
15		was signed; is that correct?
16	А	Yes.
17	Q	Okay. Doctor, let me hand it to you. It's been
18		previously marked as Plaintiff's Exhibit 7. That's
19		a copy of an advanced directive that was signed at
20		the time of Mrs. Willabor's initial admission to
21		Indian Hills; is that correct?
22	А	Again, I wasn't personally there when they did this,
23		but does this resemble the form that we use in these
24		situations, and does it look like it's been formally
25		signed correctly? Yes, it does.

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1	Q	That's your signature on the bottom of the advanced
2		directive?
3	A	Yes.
4	Q	What is an advanced directive?
5	A	It's a directive on the part of the patient or their
б		guardian stating what level of aggressiveness is to
7		be undertaken should the patient's condition
8		deteriorate.
9	Q	And what did the advanced directive in
10		Mrs. Willabor's case provide?
11	А	The advanced directive states that we are not to
12		pound on the patient's chest or intubate her, or
13		place a tube through her nose into the stomach to
14		feed her.
15	Q	And that advanced directive is purportedly signed by
16		Mrs. Willabor's daughter, Loretta Buxton; is that
17		correct?
18	А	Anybody's guess on this one. I wouldn't go out on a
19		limb to say what that signature says there.
20		(Indicating.)
21	Q	When a patient's family signs an advanced directive
22		which prohibits the use of a feeding tube, how does
23		that affect the way that you can take care of a
24		patient's nutritional status?
25		MR. CHAPMAN: Objection. Go ahead.
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1	A	What it means is that we don't put a tube down to
2		feed the patient.
3	Q	In a situation where a patient is refusing to eat,
4		does an advanced directive which prohibits the use
5		of a feeding tube limit your options in terms of
6		taking care of a patient's nutritional status?
7	А	Yes.
8	Q	In what way?
9	А	Just in the obvious, specific way we've already
10		talked about, that you can't put a feeding tube
11		down.
12	Q	If a patient refuses to eat and the family prohibits
13		the use of a feeding tube, are there any long-term
14		ways in which you can take care of a patient's
15		nutritional status?
16	А	There's something called TPN, which means total
17		parenteral nutrition, where you can place a central
18		line in the chest cavity and put proteins and lipids
19		and the equivalent of sugar water and electrolytes
20		through the tube. This is not done in nursing
21		homes. It's only done in intensive care units in
22		the hospital.
23	Q	Is that a more extreme measure than the use of a
24		feeding tube?
25	A	Much more extreme.

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1	Q	Did you have any discussions with Mrs. Willabor's
2		family about the use of a feeding tube?
3	А	Yes, I did.
4	Q	Could you tell me about those, please?
5	А	Well, my note of February 13th, 1997 states that I
б		did talk to the family and that they requested no
7		further aggressive interventions.
8	Q	Is it your practice to talk with the patient's
9		family about the use of a feeding tube in cases
10		where a patient is not eating?
11	А	I have the conversation three to four times a day
12		with different families.
13	Q	Could you tell me how that conversation usually
14		goes?
15		MR. CHAPMAN: Objection. Go ahead.
16	А	The conversation goes something like this: I'm
17		calling you about your mother or I'm talking to
18		about your mother or your dad, who's not eating well
19		and not taking enough fluids to sustain themselves.
20		Our choices are to let things keep going the way
21		they are, in which case, they could starve or
22		dehydrate, or to sustain them with some type of
23		artificial nutrition and hydration. That could
24		include intervenous fluids. It could include
25		passing a tube down the nose into the stomach. It

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can include placing an opening through the abdominal 1 2 wall into the stomach and feeding through the tube 3 that way. On February 13th, did you discuss with 4 Q Mrs. Willabor's family the fact that she was not 5 eating? б MR. CHAPMAN: Objection. Asked and 7 answered. 8 Α Okav. I have the conversation three to four times a 9 day with different family members, and this goes 10 back to 1997, so absolutely, positively I do not 11 remember, but, again, my note states that it was 12 discussed with the family and quote -- from my own 13 notes, quote, no further aggressive interventions, 14 15 unquote. Did you have any other discussions with the family 16 0 17 about Mrs. Willabor not eating and the use of a 18 feeding tube? Again, I don't remember because it's something that 19 Α I do many times in a day. There's nothing in my 20 progress notes indicating that I did or did not. Т 21 might add that it's very common for me to have these 22 conversations with family members here in the office 23 when I don't have access to the patient's chart, 24 which is at the nursing home, so I have a lot of 25

those kinds of conversations that don't get carried 1 over or written down into the patient's chart in the 2 nursing home because this is happening at two 3 different locations. 4 Other than yourself, are there other physicians who 5 0 see patients at Indian Hills Nursing Center? 6 7 Α Yes. 8 I want to talk to you about some of Mrs. Willabor's 0 other medical problems at the time of her initial 9 admission. She also had bronchitis at the time of 10 her initial admission; is that correct? Let me 11 reask the question, Doctor. 12 Yes, that's correct. 13 Α Could you read for me your history and physical 14 0 records which you took on December 31st, 1996? 15 Chief complaint: Failure to thrive. History of 15 Α 17 present illness: Patient is demented, living at home with her daughter, increased confusion, 18 inanition, i-n-a-n-i-t-i-o-n, decreased intake, 19 malnutrition, admitted for evaluation. That usually 20 means admitted to the hospital for evaluation. And 21 now here for rehab, meaning here at the nursing 22 home. 23 Review of systems: Patient unable to give 24 me meaningful information, depression, dementia, 25

1		congestive heart failure, arteriosclerotic heart
2		disease, arteriosclerotic cerebrovascular disease,
3		chronic atrial fibrillation, peripheral vascular
4		disease, osteoporosis, degenerative arthritis,
5		Paget's disease of the bone, anemia, hypertension,
6		bronchitis, folate deficiency, left ventricle
7		hypertrophy, glaucoma, old heart attack per EKG,
8		right lung nodule, early decubiti, cholelithiasis,
9		electrolyte imbalance, multiple nonspecific
10		laboratory abnormalities. Other per attached,
11		meaning records from the hospital.
12	Q	What is early decubiti?
13	А	Bedsores.
14	Q	She had bedsores at the time of her initial
15		admission?
16	А	According to my notes.
17	Q	That was located on the scapula?
18	А	Both scapulae.
19	Q	Where is the scapula located?
20	А	Back here. (Indicating.)
21	Q	You're pointing to the shoulder blade area?
22	А	Superior-posterior thoracic area.
23	Q	Your history also indicates a right lung nodule?
24	A	Correct.
25	Q	What was that, Doctor?

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1	А	It was never ultimately diagnosed. The patient was
2		seen by a specialist, who is Dr. Epstein, who said
3		if we were to evaluate it, the patient would need a
4		CAT scan of the chest. And, again, after some
5		discussion with Dr. Epstein and/or the family, we
6		decided that we wouldn't do anything about whatever
7		it was anyhow given her other multiple medical
8		problems. So it was ultimately decided not to get
9		the CAT scan <i>of</i> the chest.
10	Q	What is folate deficiency?
11	A	Folate is one of the B vitamins. It's in your diet.
12		Almost all folic deficiency in the United States is
13		due to malnutrition.
14	Q	Did she have signs of malnutrition at the time of
15		her initial admission?
16	А	Yes.
17	Q	Could you tell me about those, Doctor?
18	A	Well, you're mostly talking about how the patient
19		appears clinically, meaning that they look thin.
20		They look malnourished. They look chronically ill.
21		There are also some chemical indices that we use
22		like serum albumin and some vitamin levels, calcium
23		levels, and so on that are markers for nutrition.
24	Q	Would you describe her as being cachectic at the
25		time of her initial admission?

1	A	My notes don't show cachexia as such, so I'd have to
2		see a photograph of the patient before I could
3		answer that.
4	Q	Doctor, was she taking any medication at the time of
5		her initial admission?
6	A	I'm sure she was, and that would be on the
7		medication list, which I don't actually have here.
8		I'm sorry. We do have it. It's about a page and a
9		half of medications.
10	Q	Could you tell me what she was taking and what she
11		was taking it for?
12	А	Yes. She was on a folate supplement, which is a
13		vitamin supplement. She was on one baby aspirin a
14		day to help thin the blood out. She was on an
15		antidepressant called Zoloft. She was on a
16		nitroglycerin patch, which we use for coronary
17		artery disease. She was on a medicine called
18		Digoxin, which we use to regulate the heart beat.
19		She was on Lisinopril, which is a medication we use
20		for more than one thing. Probably in her case, it
2 1		was being used for the congestive heart failure and
22		possibly for hypertension.
23		She was on an inhaler to help keep her
24		breathing tubes open. She was on nutritional
25		supplements three times a day and a medicine as

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needed for constipation. Also, at one point, she 1 was on an antibiotic, and at one point, she was on a 2 medicine called Lasix, which is a diuretic we use 3 for heart failure. 4 Did you place her on Lasix during her stay? 5 0 She was on Lasix when she came in, I believe. б Α To be honest, I can't read about half of it. It's just a 7 poor quality copy, but it would make sense that she 8 probably was on Lasix when she came in, which is one 9 10 of the medicines they use for treating heart failure. 11 Doctor, I'd like to refer you to your physician's 12 Q orders. Do you have those in front of you? 13 Yes. Okay, yeah. Here, I can clarify this for you. 14 Α 15 The date is cut off on this, but, actually, January 21st of '97, the patient was started on 16 17 Lasix for some swelling of her lower extremities. I note from your order of January 27th of 1997 that 18 0 you started her on Rocephin; is that correct? 19 20 Α Yes. 21 What is Rocephin? 0 It's an antibiotic. 22 Α And on your order immediately before that dated 23 0 January 28th, 1997, Mrs. Willabor was transferred to 24 Room 404-A; is that correct? 25

1	A	I don't know. That's something you'd have to glean
2		from the nurses' notes. Yes. Yes, indeed.
3	Q	404-A, is that on the intermediate care floor?
4	A	You have to ask the nurses about that. I don't
5		know.
6	Q	When you first started seeing Mrs. Willabor, was she
7		in skilled care at Indian Hills?
8	A	You'd have to tell me the room number.
9	Q	The 500 hall.
10	A	500 hall is the skilled hall.
11	Q	Was she in the skilled hall?
12	А	You mean do I remember physically seeing her on the
13		skilled hall? No, I don't. But if the records
14		indicate she was on the skilled hall, then she was.
15	Q	At least the records indicate she was initially on
16		the skilled hall?
17	A	Again, you have to in the records as they're kept
18		by the physician, the room number isn't actually
19		written down here.
20	Q	Okay. It was your order on January 28th to transfer
21		her to Room 404-A?
22	A	Okay.
23	Q	And let me represent to you that Room 404-A is on
24		the intermediate hall.
25	А	Okay.

l	Q	Do you recall why it was that she had been
2		transferred to the intermediate hall?
3	A	Well, patients hit a plateau on the skilled floor,
4		and all the team members involved in taking care of
5		a patient make a recommendation to the physician
6		that the patient is not going to get any better or
7		benefit any further from ongoing high-intensity care
8		and that it's appropriate to transfer them to a
9		lower intensity of care for maintenance.
10	Q	A feeding tube was never used for Mrs. Willabor,
11		correct?
12	A	Well, again, I don't remember, but if one looks at
13		the records, 1 don't see any indication in here that
14		a feeding tube was ever ordered for the patient.
15	Q	Did you monitor Mrs. Willabor's weight throughout
16		her admission at Indian Hills?
17	A	The weight is routinely monitored on all patients in
18		the nursing home including presumably this patient,
19	Q	Okay. I take it, as your patient, you would have
20		been involved in helping to monitor Mrs. Willabor's
21		weight?
22	А	Yes. The physician doesn't physically weigh the
23		patient or necessarily review the weight records,
24		but there's a protocol in place at all nursing homes
25		if the patient's weight goes above or below certain

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parameters within a certain period of time, the 1 physician is to be notified. And I don't know those 2 specific parameters for this specific nursing home, 3 but they can tell you that. 4 Are you aware of Mrs. Willabor sustaining any 5 0 drastic loss in weight while she was at the nursing 6 7 home? You'd have to consult the weight records to document 8 Α that, but just looking over the notes, I'm going to 9 guess that she probably did lose weight because my 10 notes say she's not eating and not taking fluids 11 12 well, so it would be surprising if she didn't lose weight. 13 I take it it's to be expected when a patient doesn't 14 0 eat that the patient will lose weight? 15 Α Exactly. 16 What steps did you do -- strike that. 17 0 What steps did you take as Mrs. Willabor's 18 19 physician to see to it that she was receiving proper 20 nutrition? Well, again, this is embedded in the system that 21 Α 22 takes care of the patient, which includes monitoring of weight, ongoing nursing care. If appropriate, 23 24 ongoing laboratory monitoring. 25 Q Nutritional supplements, were those ordered for the

1 patient?

2 A Yes. Three times a day.

3 Q Given Mrs. Willabor's --

4 A Also, may I add also, as mentioned previously, she
5 was on a folate supplement.

6 Q What else was done to help Mrs. Willabor receive the7 proper amount of nutrition?

8 Well, that, again, just falls within the domain of Α 9 the nursing care. If you have a patient who's very slow to eat or doesn't like to eat, you assign 10 11 people to spend whatever time is necessary to try to 12 get the patient to eat. You sit with them. Sometimes you have the nutritionist, you know, try 13 different types of foods. Sometimes we have a 14 speech therapist see the patient to see if there's a 15 problem of swallowing, so it's different for each 16 patient. 17

And, again, on this particular patient, I don't know specifically what was done. You'd have to consult the nursing records and nutritionist's notes and if there's a special therapy note. You'd have to look at those notes.

23 Q Do you have any criticisms of the nursing care that24 was administered to Mrs. Willabor?

25 A Not off the top of my head, but you have to break it

down into specifics because the statement is so 1 broad. 2 Doctor, I'd like to take you back to your 3 0 physician's notes, if you could take me through 4 those, please. First of all, starting with your 5 December 31st, 1996 note -б 7 MR. CHAPMAN: Excuse me. I'm not sure I'm referring to the same thing you are. Is that 8 marked as an exhibit? 9 MR. MINGUS: No. 10 THE WITNESS: 11 Do you want to see it? 12 MR. CHAPMAN: Can I get a quick copy? How about if I do this. 13 THE WITNESS: We've got a copy machine here, but in order to 14 answer his question, I have to have this. 15 MR. CRANDALL: 16 Do you want a copy of all of them? You don't have any of them? 17 I have them somewhere. 18 MR. CHAPMAN: 19 For some reason, they are not in my exhibit notebook. 20 21 THE WITNESS: Can I answer his 22 question first? 23 MR. CHAPMAN: Yeah, why don't you do that, and we can go off the record for a minute. 24 25 Coming back to your question now, on Α

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December 31st of 1996, my entry says, "Per the 1 history and physical -- " that means refer to the 2 page that we previously discussed called the 3 "History and Physical Records," and then in quotes 4 it says, "partial measures," unquote. What that is 5 is a clarification of what the patient's advanced 6 directive is, and in this case, it's not, quote, 7 full measures, which means do everything possible. 8 And it's not, quote, an actual DNR, which means 9 don't do any aggressive measures. It was kind of in 10 11 the gray area in between as specified on the 12 advanced directive, which we've already discussed as well in some detail, so that's what that entry 13 refers to. Shall I keep going? 14 Well, why don't we stop, and you can get John a 15 Q 16 COPY. 17 MR. CHAPMAN: Thank you. (Discussion off the record.) 18 19 Why don't you walk me through your 0 January 18th, 1997 progress note? 20 21 Α Sure. The progress note of January 18th of 1997 22 states that the patient didn't have any apparent complaints. She was confused, but pleasant. Her 23 temperature was okay. Her vital signs were okay. 24 She was not eating well. 25

Lab work was reviewed and was found to be 1 2 okay at that time. The chest X-ray showed the chronic granulomatous disease, which we already 3 referred to, which in my opinion does not need 4 treatment, as my note states, and that we were 5 monitoring blood levels of some of the medicines. 6 Why did her chronic granulomatous disease not 7 0 require treatment? а

9 A The reason in this patient why you would not treat
10 this is because it's old. It just refers to the
11 patient having been exposed at one time to TB, and
12 it's not active.

Could you go on to your February 13th note, please? 13 0 14 Α Yes. This is the note we referred to previously. The patient continues to globally decline. 15 Ι discussed with family. No further aggressive 16 interventions. Multiple lab abnormalities now, 17 which are consistent with dehydration and her poor 18 19 intake, which is to be expected, of course. What ways are there to treat dehydration? 20 0 We've already discussed that before. It includes 21 Α passing a tube down from the nose into the stomach, 22 creating an opening in the abdominal wall and 23 passing a tube through there and feeding through 24 that tube, intravenous fluids, and then the 25

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previously mentioned TPN, total parenteral
 nutrition, involving the placing of a central line
 in the chest cavity.

And can you tell me why none of those particular 4 0 5 measures were taken to treat her dehydration? Α Because I discussed it with the family, and they 6 didn't want anything further done. I might add that 7 intravenous fluids are not a permanent solution. 8 You could use those for a few days, but you can't 9 keep IVs in forever. They have to be changed every 10 three days so that the lines don't become infected. 11 What would be the permanent solution or the more 12 0 13 long-term solution to treating dehydration? Would that be the feeding tube? 14

15 A The feeding tube, yes. And even the tube that goes
16 from the nose into the stomach is not considered
17 permanent. You can use that up to a month or two,
18 but that causes complications too, so the only
19 permanent one would be the tube that goes right
20 through the abdominal wall into the stomach, which
21 is called a PEG tube, P-E-G.

22 Q I take it then, Doctor, that you determined that 23 using intravenous fluids would not have been a 24 solution to Mrs. Willabor's dehydration problems? 25 A It would have been a short-term solution -- or shall

1		we say like putting a finger in the dike type of
2		solution, but it wouldn't solve the underlying
3		problem.
4	Q	And was that the reason why no intravenous fluids
5		were administered to Mrs. Willabor after this time,
6		which was February 13th?
7		MR. CHAPMAN: Objection.
а	A	The answer is I can't remember because, as I
9		mentioned previously, I have this conversation three
10		or four times a day with different family members,
11		and to ask about a conversation like this in 1997,
12		it's impossible to remember. But I can answer it
13		indirectly. If the family had decided they wanted
14		an IV, an IV would have been placed, if their
15		response had been they wanted an IV.
16	Q	On February 13th, when you talked with the family,
17		would you have discussed with them the option of
18		using intravenous fluids for Mrs. Willabor`s
19		dehydration problems?
20		MR. CHAPMAN: Objection.
21	A	The answer to the question is yes, although let me
22		caution that even though this entry is made on
23		February 13th, again, more often than not, this
24		conversation was actually probably held at a
25		different place and time, and this was my first

chance to document it in the patient record when I 1 2 was there in the nursing home. So let us not make the assumption that I was at the nursing home on 3 February 13th having the conversation with the 4 family at that time because that would be the 5 exception rather than the rule. 6 But based upon your February 13th note, would it be 7 0 fair to say that you would have discussed with 8 9 Mrs. Willabor's family the option of intravenous fluids being used for dehydration? 10 Yes. 11 Α MR. CHAPMAN: Objection. 12 13 Α Absolutely. That would be routine. Could you please read your March 6th note, please, 14 0 Doctor? 15 It says, "Patient is resting comfortably in bed. 16 Α 17 She has a coccyx, " referring to the tailbone area, "which is being treated at that time. 18 Her temperature is okay. Her vital signs are okay. 19 She continues to decline overall, and again multiple lab 20 21 abnormalities are noted." And now it says, "Comfort measures only." 22 What did you mean by "comfort measures only"? 23 Q This is a concept similar to that which you see with 24 Α hospice patients where you agree the patient is not 25

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1 going to get better and you're not going to do a lot of aggressive interventions and run around and do a 2 lot of tests or subject the patient to a lot of 3 4 procedures, and you just go for comfort measures. When a patient is given comfort measures only, what 5 0 sort of treatment would that rule out that you would 6 not perform? 7 А You would not pound on their chest if their heart 8 stopped. You would not hook them up to a 9 ventilator. You would not stick tubes in various 10 11 orifices, including feeding tubes. You would not do 12 surgery. You would not subject the patient to any tests that would give you results that wouldn't 13 change what you would do with the patient. 14 Do you have any opinions as to why her overall 15 0 condition continued to decline? 16 MR. CHAPMAN: 17 Objection. The patient is 96 years old and has -- as I 18 Α Yes. mentioned in a somewhat jocular manner earlier, 19 20 she's suffering from total body failure. Do you believe it was inevitable that her overall 21 0 condition would continue to decline? 22 MR. CHAPMAN: Objection. 23 24 Yes, I do. Α Is that to a reasonable degree of medical certainty 25 0

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-		that were hald that an initian?
1		that you hold that opinion?
2		MR. CHAPMAN: Objection.
3	A	Yes, I do.
4	Q	Could you please read your what looks to be a
5		March 28th note?
6	A	Yes. "At this point, the patient is developing more
7		and more decubiti, " which are bedsores, "which is
8		not healing." And I'm writing my opinion that it's
9		because of hardening of the arteries as opposed to
10		negligent nursing care.
11	Q	Mrs. Willabor did have some sores that developed
12		during her admission; is that correct?,
13	A	Yes.
14	Q	And do you have an opinion as to the cause of those
15		sores?
16		MR. CHAPMAN: Objection.
17	A	As I just stated, because of hardening of the
18		arteries, which is here listed as peripheral
19		vascular disease, and that in combination with her
20		bed-bound status and poor nutrition.
21	Q	I believe you said that in your opinion, the sores
22		were not the result of improper nursing care; is
23		that fair?
24	A	That's correct.
25	Q	And is that your opinion to a reasonable degree of
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medical certainty? 1 MR. CHAPMAN: Objection. 2 Yes, it is. 3 Α 4 Could you read your March 24th note, please, 0 5 Doctor -- I'm sorry -- your April 24th note? At this point, the patient was evaluated in some way 6 Α 7 by Dr. Epstein, who as I mentioned previously is the 8 lung specialist, and who at that point had said a CAT scan of the chest would have to be done to 9 evaluate the nodule, so my note indicates CAT scan 10 of chest pending, meaning further pulmonary 11 follow-up. 12 Do you know if the CAT scan of the chest was ever 13 0 taken? 14 As my notes indicate -- again, I'm reading between Α 15 the lines here, it was eventually decided not to do 16 the CAT scan for the reason we talked about 17 previously, which is that the patient was to be 18 comfort measures only, so even if we did the 19 CAT scan and it was abnormal, it would give us 20 21 information that wouldn't change what we would do with the patient. 22 Doctor, could you read your next note, please? 23 0 Α Yeah. In fact, that's what the next note says, "Do 24 not feel CAT scan of the chest should be pursued 25

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further." And my memory of this is that I talked to 1 Dr. Epstein during that time, and that was what we 2 decided between the two of us. And I think we have 3 a note from Dr. Epstein somewhere that probably 4 5 indicates that. And at that point too, we're doing cultures on the wounds to see what kind of bugs grow б 7 out. Did you refer Mrs. Willabor to Dr. Epstein? ₿ 0 Yeah. Dr. Epstein's note is from May 6th of 1997. 9 Α And at that point too, she had pneumonia. 10 Would it be appropriate for me to quote from 11 his notes? 12 13 Sure. 0 Quote, "In view of general health and age, do not 14 Α feel FOB is warranted." There's another word I 15 can't read. "Evaluate with diagnostic workup as 16 above." And I do recall talking to Dr. Epstein at 17 this time since I see him almost every day, and I'm 18 99 percent sure that our mutual decision was that we 19 shouldn't, as we say, "drag this lady through any 20 21 more tests, " unquote, is how we would have said it to each other because it wouldn't change our 22 23 management. Could you read your next note, please, Doctor? 24 Q Α We are up to June now. "Ongoing RX," meaning 25

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treatment, "to various areas per nursing notes." 1 This refers to the patient's multiple bedsores, and 2 3 at this point, I discussed with Dr. Niemczura, who's a vascular specialist, to see if anything could be 4 done to improve the blood supply to these areas that 5 aren't healing. And, in fact, Dr. Niemczura's note 6 is dated nine days previous to that, so he had 7 obviously seen her in the meantime. 8 And, again, would it be appropriate for me 9 to quote from Dr. Niemczura's notes? 10 11 Sure. 0 А In essence, what the note says is the patient has no 12 13 blood supply to any of these areas and they are not 14 going to heal, and he's recommending amputation. And, again, it's very likely I talked to 15 Dr. Niemczura personally at the time because that's 16 17 my practice to do that. 18 MR. CHAPMAN: Objection. 19 Α And we agreed that she was never going to get better. 20 What role did the lack of blood supply have in the 21 0 development of Mrs. Willabor's sores? 22 23 MR. CHAPMAN: Objection. 24 Α Major. Could you explain, please? 25 Q

1 Α Any part of the body that doesn't get a blood supply dies, including areas of skin, which is called a 2 bedsore. 3 Mrs. Willabor had sores on her right foot and ankle; 4 Q is that correct? 5 I'd have to look -- I know she had multiple 6 Α In fact, I've got pictures here, and the 7 decubiti. pictures are labeled as right foot. Yes, right foot 8 and ankle, but also the right scalp. 9 To a reasonable degree of medical certainty, is it 10 0 your opinion that the lack of blood supply was a 11 cause of sores on Mrs. Willabor's right foot and 12 ankle? 13 Objection. 14 MR. CHAPMAN: It was a major cause. And also the right buttocks 15 Α is listed too, so the scalp, the buttocks, right 16 17 foot, right ankle. She had multiple sites. What was done to treat Mrs. Willabor's sores? 18 0 She was receiving ongoing topical treatment of one Α 19 20 sort or another and also antibiotics intermittently. What do you mean by topical treatment? 21 0 22 Α This is one where you have to consult the nursing notes to see what she was getting, and probably she 23 was getting different treatments to different sites 24 at different times. I can tell you the types of 25

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things that we do to treat these in general. 1 2 Sure. What sort of things do you do to treat sores? 0 Sometimes we use dry dressings, just keep the area 3 Α clean and dry. Sometimes we use what we call wet to 4 dry dressings, which is applying a wet dressing, 5 letting it dry out and pull it off. We use various б topical antibiotics, including Bacitracin and 7 Bactroban and other different topical antibiotics 8 There are other preparations like that we use. 9 Duoderm, which are put on for 48 to 72 hours and 10 then removed and artificial skin and things like 11 that. But, again, you'd have to consult the nursing 12 notes for the specifics of what was done on this 13 14 patient. Would you take a look at your orders and tell me 15 0 whether you ordered anything to be done to take care 16 of Mrs. Willabor's sores? 17 Okay. There's a special mattress called a Α 18 19 Geo-Mattress, which is designed to take pressure off of bony prominences. There's something called a 20

Spanco boot, which, again, is just a device designed
to take pressure off of, in this case, the heel.
Patient was receiving nutritional supplements,
folate supplements.

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What else? She was on antibiotics

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intermittently. When her lower extremities were 1 swollen, on one occasion, we used some special 2 elastic stockings that are called surgical 3 stockings. And here are some dry dressings. Here 4 are some normal saline dressings, Here's a product 5 called Duoderm, which is the one I mentioned that 6 7 you put over the open area and remove every 72 8 hours. Here are some saline irrigations, some more antibiotics. And there are some here I just can't 9 read. 10 Those are all measures which you ordered to take 11 0 care of Mrs. Willabor's wounds? 12 13 Right. Here's another one calle Dakins so ution, a which is sometimes used, D-a-k-i-n-s. 14 15 Do you have any opinions as to whether or not a Mrs. Willabor's sores were avoidable or unavoidable? 16 17 It's an ultimately unanswerable question, but I a believe that all reasonable measures were taken in 18 this patient to avoid them. 19 20 MR. CHAPMAN: Objection. Now, I will add if the patient had received a 21 Α feeding tube in here, this would not have progressed 22 as rapidly as it did, but the family decided against 23 the feeding tube. 24 25 How common is it for patients at nursing homes to 0

-		receive feeding tubes?
1	_	
2	A	I don't know the answer to that question.
3		If you can be a little bit more specific, I can
4		maybe answer it.
5	Q	For your patients at nursing homes, how common. is it
6		for them to receive feeding tubes
7		MR. CHAPMAN: Objection.
8	Q	when they are not eating?
9	A	I will tell you the majority of the time, the family
10		decides against the feeding tube. But a significant
11		minority of the time, they do ask for a feeding
12		tube, but I can't give you a number. Did I answer
13		your question?
14	Q	Yes. Do persons have a tendency to bruise more
15		easily as they get older?
16	A	Yes.
17	Q	Why is that?
18	А	It's a really long story. Really, it is. It has to
19		do with the fact that there's less fat under your
20		skin to cushion you. There's a redistribution of
21		fat from the extremities to the central part of the
22		body. There's an increased tendency to fall down
23		and bang yourself, to be less coordinated.
24		Balance when you get up too quickly out of a
25		chair or out of bed, you don't get as good a blood

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supply to your head. 1 As a 96-year-old woman, do you believe Mrs. Willabor 2 0 had a greater tendency to bruise than perhaps people 3 of younger age? 4 Of course. 5 А б MR. CHAPMAN: Objection. 7 Are you aware of any improper actions of anyone at 0 Indian Hills Nursing Center which led to any bruises 8 in Mrs. Willabor? 9 10 MR. CHAPMAN: Objection. Nothing that was ever called to my attention. 11 А 12 I'm going to take a MR. MINGUS: little break here. Doctor, I think I'm just about 13 done. 14 (Recess taken.) 15 By Mr. Mingus: 16 Doctor, do you believe Mrs. Willabor had anything 17 0 about her that made her more prone to falling down 18 than other people? 19 All the things we've talked about since we started 20 А here today, advanced age, frailty, inanition. 21 22 Are you aware of any staff at Indian Hills doing 0 23 anything negligent in terms of doing what they could to prevent Mrs. Willabor from falling? 24 25 Objection. Go ahead. MR. CHAPMAN:

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I don't know how to answer the question because I 1 Α don't know what the legal definition of "negligent" 2 is. I assume -- that's not a medical word. It`s a 3 legal word, and I don't know what it means. 4 Okay. Do you have any opinions as to whether or not 5 0 anything else could have been done to prevent -- let 6 7 me rephrase that. Why do you believe Mrs. Willabor was more prone to fall than perhaps other people? 8 9 MR. CHAPMAN: Objection. Just what I just said. You know, just advanced age, 10 Α frailty, total body failure. 11 12 MR. MINGUS: Doctor, I don't have anything else for you right now. Thank you very 13 much for your time. 14 CROSS-EXAMINATION 15 16 By Mr. Chapman: Doctor, my name is John Chapman. 17 0 I'm the attorney along with Cal Hurd, the gentleman to my left, the 18 attorney for the Beulah Willabor family. I have 19 20 some questions for you as well. 21 Sure. Α Before coming to today's deposition, sir, did you 22 Q review any papers? 23 Wherever I got this pile of papers from was reviewed 24 Α 25 by me.

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1	Q	Okay. And that comprises the complete chart?
2	A	(Indicating)
3	Q	You're pointing out two additional documents to me.
4		So there's a notebook in front of you, and you
5		reviewed that prior to today. You also reviewed
6		those photographs. And what's the other document?
7	A	The document is not labeled. My guess is that this
8		is copies of the nursing notes.
9	Q	May I see it, please?
10	A	(Witness complies.) Since it's about half legible,
11		I'm not completely sure.
12	Q	Doctor, during your testimony, you referred to notes
13		from Dr. Niemczura?
14	А	Niemczura.
15	Q	Niemczura?
16	A	Yes.
17	Q	And also Dr. Epstein?
18	A	Yes.
19	Q	Could you point those out to me?
20	A	I'm holding them in my hand right now.
21	Q	May I see those two pages, please?
22	А	(Witness complies.)
23	Q	Thank you. Doctor, you're a medical doctor?
24	A	Yes.
25	Q	Where did you get your license?

1	A	University of Wisconsin.
2	Q	When?
3	A	I'm sorry. When you say "license," do you mean my
4		medical degree?
5	Q	Yes.
6	A	Graduated in 1974.
7	Q	Okay. Are you board certified in any area?
8	A	I'm board certified in family practice, and I have a
9		fellowship in geriatrics.
10	Q	Would you basically describe for me your current
11		practice?
12	А	Solo family practice with an emphasis on geriatrics.
13	Q	How long have you practiced in that fashion?
14		MR. CRANDALL: Go ahead and answer the
15		question, then make copies.
16	А	How long have I been in practice?
17	Q	How long have you been a solo family practitioner
18		with an emphasis in geriatrics?
19	А	Intermittently since 1977.
20	Q	Do you have staff privileges at any hospitals?
21	А	Yes. Lake Hospital Systems East, Lake Hospital
22		Systems West, Laurelwood, Mount Sinai East,
23		Meridia Euclid, Hospice House, and teaching staff at
24		Case Western.
25	Q	Did you talk to anybody other than your attorney in

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1		preparation for today's deposition?
2	A	No. You know what? I did get a phone call from
3		can you excuse me for one second? Let me get
4		another piece of paper.
5		(Witness was temporarily excused.)
6	A	I actually got a letter from I said phone call.
7		That was incorrect. A letter from Loretta Buxton
8		that was dated March 22nd, and I did call her back
9		to address the concerns in the letter.
10		(Indicating)
11	Q	My question was whether or not you talked with
12		anybody other than your attorney, who's here today,
13		about
14	А	Yeah, I spoke with Loretta Buxton.
15	Q	You spoke with Miss Buxton. What did you discuss
16		with Miss Buxton?
17	А	Boy, I would have addressed whatever she is asking
18		about in her letter. And, basically, the letter
19		says, would you talk to Mr. Chapman.
20	Q	Is that what you discussed with her?
21	A	Yes.
22	Q	How did you respond to that question?
23	А	I said that we had already set up an interview to
24		talk to somebody, and then I received a phone call
25		from somebody else saying, no, no, no, don't talk to

that person without having lawyers representing you 1 present -- I'm paraphrasing -- something on that 2 order. 3 4 So lawyers are pretty much telling you you're sort Q of a pawn in all of this? 5 I'm getting moved back and forth from one Yeah. 6 Α side of the board to another. 7 Have you been asked to serve as an expert witness in 8 0 the litigation that's going on between the Willabor 9 family and Indian Hills? 10 If you actually read the substance of Ms. Buxton's 11 А letter, essentially, it looks like that's what she's 12 asking me to do, but did I agree that I would do 13 that with her? No, I didn't. 14 Could I see that letter 15 MR. MINGUS: and get a copy of that? 16 17 MR. CRANDALL: 1'llpass it to you. MR. CHAPMAN: Okay. Thanks. 18 Prior to today's deposition, did you review the 19 0 20 reports of any medical experts or nursing experts? You mean have I looked at anything outside of these 21 Α documents in front of me? 22 Right. 23 Q No, I haven't. But the documents in front of me 24 Α contain what we call a consult, the consultant's 25

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1		notes from Dr. Epstein and Dr. Niemczura.
2	Q	I think you testified in response to one of
3		Mr. Mingus's questions that you began treating
4		Mrs. Willabor while she was at Indian Hills,
5		correct?
6	A	Correct.
7	Q	And your notes reflect that she would have become a
8		resident at Indian Hills sometime in the very end of
9		December of 1996?
10	A	My first note is December 31st of 1996.
11	Q	Now, did you have a relationship with Mrs. Willabor
12		prior to December 31st
13	А	Not that I know of.
14	Q	One of the keys to deposition testimony is if you
15		let me finish my question and then give an answer,
16		we'll get both question and answer down and get a
17		clean transcript.
18		Did you have any kind of a relationship with
19		the Willabor family or with Mrs. Willabor prior to
20		December 31st of 1996?
21	А	Not that I know of,
22	Q	How was it that you came to become Mrs. Willabor's
23		physician?
24	А	There's some process by which the admissions people
25		at the nursing home assign incoming patients to

47 physicians on the staff. I don't know what the 1 process is. 2 So then you are on the staff at Indian Hills? 3 0 4 MR. MINGUS: Objection. 5 Correct. Α How long have you been on the staff at Indian Hills? б 0 7 MR. MINGUS: Objection. Go ahead. Since the mid-1980s. 8 Α So it's fair to say then that it was not a matter of 9 0 the Willabor family or Mrs. Willabor meeting with 10 11 you to determine whether or not you would be their physician? 12 That sometimes happens, and I cannot tell you that 13 Α 14 that did or did not happen with this particular patient. The information probably would be on the 15 16 intake sheet, though. 17 As you sit here today, Doctor, do you recall any 0 specific conversation that you ever had with 18 Beulah Willabor other than the one that you just 19 referenced? 20 Do you mean with Miss Buxton? 21 Α 22 With Miss Buxton. 0 23 THE WITNESS: I'm sorry. Can I see the letter again? 24 25 MR. MINGUS: Yes.

Going back to my progress note of February 13th, it 3 Α says, "discussed with family." Okay. 2 It's not stated who that is. It's likely that that was Loretta Buxton, but it could have been somebody 4 5 else. Other than that conversation that you noted, you 6 Q 7 don't specifically remember that conversation? А As I mentioned, it's a conversation I have 8 No. three or four times a day with different family 9 10 members, so there's no way I would remember that. Do you recall or have you found in the notes that 11 0 you reviewed prior to today's deposition any other 12 13 conversations with any member of the Willabor family? 14 Do I recall any? No. 15 А And you see no reference to any other conversations 16 0 with anybody in the Willabor family? 17 18 А That's correct. Now, is it your practice to maintain a file here in 19 0 your office for patients whose care has been 20 assigned to you that are staying at Indian Hills? 21 No, it is not. 22 А 23 a Can you describe for me then the mechanism by which you maintain a chart or records for your care of the 24 residents who are at Indian Hills? 25

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It's called the chart, and it's at the nursing 1 Α Yes. 2 home. And I'm holding a copy or what is alleged to be a complete copy of the patient's chart in my 3 hands at this time. (Indicating.) 4 So did you make entries into the charts at 5 0 Indian Hills during visits to Indian Hills? 6 The answer is it's done differently on different 7 Α patients at different times depending on what's 8 happening. But in general, every patient would have 9 a monthly progress note. If there's something else 10 going on above and beyond the average monthly visit, 11 then additional notes are made. 12 13 And by the way, the documentation of conversations with physician and family members also 14 occurs in the nursing notes and sometimes in the 15 social service notes and other places too, so I'm 16 referring now strictly to the physician progress 17 18 notes. If Mrs. Willabor or a member of her family wanted to 19 Q contact you regarding the care that Mrs. Willabor 20 was receiving at Indian Hills, what would be the 21 normal mechanism for them to get in touch with you? 22 Call the office, Now, sometimes family members will 23 A leave messages actually at the nursing home. 24 There's a folder for each physician on each one of 25

the nursing units. And I go to the nursing home 1 three times a week, and I check each folder on each 2 nursing unit. And I make sure it's clean by the 3 time I leave. Occasionally, you'll have a message 4 in the folder saying the family of so and so wants 5 to talk to you about their mother or whatever. 6 7 Is it your practice to wear a white coat when you're 0 making the rounds at Indian Hills? 8 I never wear a white coat. It's scares the 9 А 10 patients. Now, from time to time, do you call -- I think you 11 0 12 indicated that you called upon physicians in other specialties --13 That's correct. 14 Α -- to assist you when a particular problem came up? 15 0 That's correct. 16 Α 17 And you referenced already Dr. Epstein and Dr. --0 Α Niemczura. 18 -- Niemczura. Are Dr. Epstein and Dr. Niemczura 19 Q also on staff at Indian Hills? 20 Not that I know of. It's very unusual to have a 21 Α 22 specialist come into nursing homes. It happens 23 occasionally. 24 Why is that? Q They just don't do it. 25 А

1	Q	You can't get them to come in?
2	A	That's correct.
3	Q	Why are they reluctant to come in?
4	A	You'd have to ask them that.
5	Q	What is this specialty that you have in it's
6		family medicine and geriatrics. Are you e sentially
7		an internist?
8	А	No. There are two separate things. One is I dic
9		a three-year residency in family practice, and I'm
10		board certified in family practice. Our
11		organization is the American Academy of Family
12		Physicians, so I'm a fellow of the AAFP. I'm board
13		certified in family practice.
14		As a separate specialty, I have a fellowshir
15		in geriatrics, and I'm, therefore, also a fellow of
16		the American Geriatric Society. So that makes me a
17		FAGS, F-A-G-S , and a FAAFP, F-A-A-F-P. They are d
18		separate fellowships, though.
19	Q	Okay. Is a specialty in geriatrics exactly what
20		is it that you're able to do? Is it diagnosing
21		infirmities of the aged, or can you treat a wide
22		variety of infirmities of the aged?
23	А	That's correct.
24	Q	Do you have staff privileges at any nursing homes
25		other than Indian Hills?

1 A 25. It's actually more.

2 Q How many patients do you have who are residents in
3 nursing homes at any given time?

4 A I think it's in the hundreds. 1 don't know the
5 exact number. My billing lady could give you an
6 up-to-date, exact number.

So you visit 25 nursing homes three times a week? 7 Q The nursing homes that I visit three times a 8 А No. week are just my real busy, larger nursing homes 9 because there's so much work to do. I have to go in 10 three times a week to get all the work done. But 11 other nursing homes, I may only have one or two 12 I go in once a month and just as needed 13 patients. if they get sick or something. 14

Doctor, I served a subpoena on you at the end of 15 0 last week requesting that you produce certain 16 documents that I could refer to during the 17 deposition. One of them was any documents that 18 evidence, relate, or pertain in any way to the 19 manner in which Beulah Willabor's medical care was 20 assigned or referred to you. Do you remember that 21 22 request?

23 A As you're reading it now, yes.

24 0 Okay. Do you possess any such documents?

25 A The only documents I know of relevant to this

1		patient's case are sitting right here in front of $\mathfrak{m}\epsilon$
2		right now.
3	Q	So the answer is if they're not in the file, then
4		there is nothing indicating how you came to be the
5		physician for Beulah Willabor?
6	A	That's correct.
7	Q	Who at Indian Hills would know whether or not
8		Beulah Willabor's care was assigned to you? Who
9		assigns residents to be cared for by you?
10	A	The admitting office.
11	Q	Who at the admitting office?
12	A	There's been a turnover of people in the admitting
13		office, and I'm almost positive that whoever was
14		there in early 1997 is different than whoever is
15		there right now. And if you said a name, I might be
16		able to remember that's who it was, but I can't tell
17		you.
18	Q	But you did not receive a paper from Indian Hills
19		that says you are now the physician in charge of
20		Beulah Willabor?
21	A	That's correct, there's no such paper.
22	Q	This information is given to you over the phone?
23	А	Right, exactly.
24	Q	Another request that I had was a listing of nursing
25		homes where you were affiliated or on staff.

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Yeah, we can give you a list of that. It's quite Α 1 long. And also my curriculum vitae, which is over 2 three pages long, is not up to date, but we can give 3 you what we have. I don't know where it is. It's 4 here somewhere. 5 So then I take it you have not assembled the things 6 Q that comply with the subpoena? 7 That's right. I wish we had grabbed Anita before 8 Α she left the office because she could have gotten 9 that stuff for you. I apologize, but we can get it 10 11 for you. There's another request for documents that relate in 12 0 any way to any business, professional, or 13 contractual relationship between yourself and, first 14 of all, a company called Integrated Health Services, 15 Inc. 16 There are no documents. 17 Α Indian Hills Nursing Center? 18 0 There are no documents. Α 19 Health Care Corporation? 20 0 There are no documents. 21 Α I also requested billing records including Medicare, 22 0 Medicaid records. 23 Α Yes. And, again, we can get that for you. My 24 billing lady is gone for the day, but we can get 25

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those. 1 Do you typically provide residents who are placed 2 0 under your care with a calling card? 3 The answer is that I do if the patient is alert 4 Α enough to be able to use the information, 5 Do you know whether or not you provided Mr. Willabor б 0 with a calling card? 7 No, I don't. Α a Have you ever served as an expert witness in any 9 0 10 kind of litigation before? No. 11 Α 12 0 Have you ever --May I clarify? I don't consider myself functioning 13 Α as an expert witness right now. I'm functioning as 14 15 a material witness. That's my opinion. Have you ever been a defendant in a lawsuit in which 16 0 17 you were alleged to have committed malpractice? 18 MR. MINGUS: Objection. MR. CRANDALL: Objection. Go ahead and 19 20 answer. I don't know. We've got -- there's a total of three 21 Α 22 cases, and I'm not completely sure -- can I ask a question off the record? I can answer your question 23 better if you can answer something for me. 24 25 Sure. But so the record is clear, you can just kind 0

1 of ignore the fact she's taking this down. 2 A couple years ago, for example, there was a patient Α 3 at another nursing home where they sued over 30 4 people involved in the patient's care, and they named everybody. And I was on that list, but I was 5 dropped, so I don't know what you call something б like that. And there was another one that is 7 current right now where I was listed along with a а zillion other people. Probably nothing is going to 9 come of it, so I don't know if that is included in 10 the question that you asked me. If it is, then the 11 12 answer is yes. You can think of those two instances? 13 0 As the kind of thing that you have in mind? 14 Α Right. 15 0 Then the answer is yes. 16 Α 17 0 So there's been two to your knowledge? MR. MINGUS: Objection. 18 19 Α I can't give the correct number. I'd have to Yes. 20 look through my file. More than two? 21 0 Objection. 2.2 MR. MINGUS: Possibly, yeah. 23 Α The period of time that I want to focus in on, 24 0 Dr. Whitehouse, is the period of time during which 25

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1		Beulah Willabor was a resident at Indian Hills, and
2		we established that that was sometime towards the
3		very end of December 1996, and we have also
4		established that she died in July of 1997. So do
5		you have that period of time in mind?
6	A	I sure do.
7	Q	Okay. Is it your testimony that you made rounds at
8		Indian Hills about three times a week?
9	A	Yes, absolutely.
10	Q	Okay. When you made rounds, did you make notations
11		as to each and every resident who was under your
12		care?
13	A	Absolutely not.
14	Q	Why is that?
15	A	It would be incredibly time consuming, and it's not
16		necessary for patient care.
17	Q	So you had to budget your time among all the
18		residents who were under your care at any of the
19		given nursing homes?
20	А	I completely disagree with the statement as you made
21		it. The way it works is any patient on a skilled
22		unit has to be seen once a month according to
23		federal and state regulations, and an entry has to
24		be made in the patient's chart once a month.
25		Patients on intermediate care only have to have an

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entry every two months. Those are the regulations, and the paperwork as it is in front of me meets those regulations, and that's why these are written this way, to meet those regulations.

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That is not, however, a reflection of the 5 actual time and energy I spend in the nursing home 6 with an individual patient. The answer to that is I 7 spend whatever time is necessary to take care of the а 9 patient. And that may mean phone calls to family members from here in the office that don't even get 10 documented in the records. It may mean hallway 11 consultations with other physicians at the hospital, 12 as it did in this case. 13

Many things are not reflected in the records, so I very, very strongly disagree with the term "budget my time." The correct wording would be I spend whatever time is necessary to make sure the patients' needs are met. And, yes, we all budget our time in one way or another.

20 Q Sure. When you do visit a resident, is it your 21 practice **to** make some chart notation?

22 A Part of the time, that is done, and there are other
23 times when the resident is seen and no notation is
24 made by me in the chart, but it may be made by
25 nursing staff.

1	Q	Is it proper practice every time the attending
2		physician looks in on the resident for somebody to
3		make a note of that?
4	А	I'd say that happens most of the time, but not all
5		of the time.
6	Q	Mr. Mingus asked you some questions about some
7		documents, which I actually saw for the first time
8		today in the physician's notes for Beulah Willabor.
9		What I'd like to do is mark them and ask you a
10		couple questions about them.
11		MR. MINGUS: Note an objection to the
12		previous question.
13 14		(Plaintiff'sExhibit 45 marked for identification.)
15	Q	The two pages that I just marked as Exhibit 45, both
16		of those are in your handwriting, correct?
17	А	That's correct.
18	Q	And those comprise all of the physician's notes for
19		Beulah Willabor?
20	A	I didn't personally copy the patient's chart, so I
21		don't know the answer to the question.
22	Q	All of the handwritten notes that you wrote for
23		Beulah Willabor during the period of time that I'm
24		asking about are on those two pages?
25		MR. MINGUS: Objection.

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1	A	I don't know because I didn't copy the patient's
2		chart myself.
3	Q	So there may be additional notes that you made in
4		the chart that haven't been brought to your
5		attention?
6	A	Is that possible? Yes.
7	Q	I don't know. I'm not the one who's providing you
8		with documents.
9		MR. CRANDALL: I think that's his
10		point. Neither does he.
11	А	I didn't personally copy the chart, so I don't know
12		the answer to the question.
13	Q	Okay. I just noticed from the entries on those two
14		forms that you seem to pretty much span the period
15		of time that Mrs. Willabor was there. Would that be
16		fair?
17	А	Oh, yes.
18	Q	So, normally, you would expect that there wouldn't
19		be any notations in between the times that are noted
20		there. They would be out of sequence or would be
2 1		found somewhere else. That's a really bad question.
22		If you can answer it, my hat is off to you.
23	А	I'm lost in the labyrinth of the dependent clauses.
24	Q	Let's strike it and try again.
25		Your physician's notes are kept in the

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1 patient chart?

2 A That's correct.

3 Q Is it your practice when you are making rounds to 4 check patient charts?

5 A As needed to take care of the patient.

6 Q Okay. Again, many patients' charts are voluminous.
7 You don't check them all, so I assume you prioritize
a them?

If you want to know how it works, I show up on the 9 Α nursing unit, and I go through my folder. And 1 10 talk to the nurses, and I say, "What do you need 11 12 taken care of today while I'm here?" And that could include a new patient such as when Mrs. Willabor 13 came in on December 31st. It could include an 14 15 established patient with some ongoing problem that needs to be addressed. The majority of the time, 16 whatever I do does not get written down as a 17 progress note like this. The majority does not get 18 19 written down.

20 Q Okay. Mr. Mingus asked you a question about
21 Beulah Willabor's care, and he asked you whether or
22 not you were aware if she had lost weight during the
23 time of her residency at Indian Hills.

24 A Okay.

25 0 Do you remember that question?

1 A Yes, I do.

2 Q I believe your answer was that you assumed that she 3 did?

4 A Correct.

5 Q If she lost weight, would that be of concern to you?

6 A Of course.

7 Q Okay. How would you normally obtain that8 information?

As I mentioned previously, at any given nursing 9 Α home, there's a system in place whereby weight gain 10 or weight loss of more than a specified amount 11 within a specified amount of time sets off an alarm, 12 and there's a protocol. that the nurses follow. 13 Sometimes it's done by the nutritionist, whereby 14 15 they alert the physician to the weight loss or 16 weight gain.

17 Q So there's a certain level if you go above or
18 beyond, a red flag goes up. Would that be correct?
19 A Correct.

20 Q Can you tell me what those parameters are?

A No. Because they are different for each nursing
home, and they change over time, and they change for
an individual patient over time.

Q Okay. Let me put it in these terms. A resident
who's under your care, what kind of weight loss do

1		you want brought to your attention? Any weight
2		loss? A pound? More than a pound?
3	A	There isn't any one-size-fits-all number. If you're
4		starting out with a 250-pound person and they lose 5
5		pounds, that's a vastly different issue than an
6		80-pound, debilitated, 96-year-old lady who loses 5
7		pounds. Vastly different implications even though
8		the number is the same.
9	Q	Let's talk about Beulah Willabor, and I could direct
10		your attention to a document which I previously
11		marked as Exhibit 13. Can you tell me what that
12		document is ?
13	A	This is part of the nursing notes, and I'm not a
14		nurse. I`m a medical doctor, and I'm not an expert
15		and qualified to answer the question. But I will
16		give you my best guess.
17	Q	That's fine.
18	A	This appears to be a form filled out by the nursing
19		staff when the patient comes into the nursing home,
20		documenting findings on physical exam, what we call
21		the vital signs, meaning the height and weight and
22		blood pressure and so on.
23	Q	Okay. That's not a document that you typically
24		refer to when you're caring for a resident?
25	А	I won't say I never refer to this, but I can't

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1		remember ever referring to it.
2	Q	What's the date on that document?
3	₽ A	12-31-96.
4	Q	And does it indicate Mrs. Willabor's weight and
5	z	height?
6	A	The weight indicated is 110. The height is
7		5 foot 0.
8	Q	Does it indicate any diagnoses?
9	A	No words appear on this sheet of paper that I would
10		call a diagnosis, no.
11	Q	Is there a notation as to what Mrs. Willabor's ideal
12		weight is?
13		MR. MINGUS: Objection. Go ahead.
14	A	I don't see anything.
15	Q	With the information that you have about this
16		resident, do you have an opinion as to what her
17		ideal weight would be?
18		MR. MINGUS: Objection.
19	А	There's incomplete information to answer that
20		question.
21	Q	Let me put in front of you what I marked previously
22		as Exhibit 16. This would be a nutritional
23		supplement?
24		MR. CRANDALL: Nutritional assessment,
25		you mean?

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1		MR. CHAPMAN: Nutritional assessment.
2	A	Yes, it's labeled a nutritional assessment.
3	Q	Is that a document that you refer to when you're
4		monitoring the status of your patient?
5	A	No, it is not.
6	Q	Do you make then, your own nutritional assessments
7		for residents?
8	A	My nutritional assessment of the residents is based
9		upon what I'm told by the nursing staff.
10	Q	In December of 1996, when Beulah Willabor became
11		your patient, were you concerned about her weight?
12	А	My history and physical on the patient lists the
13		main diagnosis as failure to thrive. Failure to
14		thrive includes malnutrition and concerns about
15		weight.
16	Q	Okay. So the short answer is, yes, you were?
17	А	Yes.
18	Q	You wanted to monitor the weight?
19	А	It doesn't follow that one would monitor the weight
20		unless you were going to pursue full measures upon
21		the patient. Some patients get admitted to the
22		nursing home merely for comfort measures, and you're
23		not going to monitor that.
24	Q	Was it your understanding that I want to make
25		sure I understand your testimony here, Doctor. Was

Mrs. Willabor -- was maintaining Mrs. Willabor's 1 2 weight a concern while she was under your care? The answer to the question is it depends on who 3 Α you're talking about. If the expectation is that 4 5 the patient is going to get better and we are going 6 to do everything possible, the answer would be yes. If the expectation was the patient was being 7 admitted for comfort measures or for what we call 8 maintenance, the answer would be varying degrees of 9 yes and no. So in other words, it depends what your 10 qoal is. 11 What was your goal for Beulah Willabor? 12 0 Α The goal is whatever the family directs us to do. 13 What did the family direct you to do? 14 0 As my notes state on March 6th of 1997, "comfort Α 15 measures only." 16 Is maintaining nutritional status a part of a 17 0 18 comfort measure? That's completely arbitrary. If you talk to ten 19 Α different people, they'll give you ten different 20 answers. So the answer is whatever the family 21 2.2 decides. And, again, to quote from my own progress notes here, this time February 13th of 1997, 23 "Discussed with family, no further aggressive 24 interventions." 25

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1	Q	What aggressive interventions had you done up to
2		that date?
3		MR. MINGUS: To what date?
4		MR. CHAPMAN: He read a note
5		indicating no further aggressive interventions, so
6		I'm asking what interventions had preceded that.
7	А	All the medical nursing care which the patient had
8		received up to that point, which is embodied in the
9		physicians' orders and the nurses' progress notes
10		and nursing notes.
11	Q	So all the care she received at Indian Hills was
12		aggressive and should be discontinued?
13		MR. MINGUS: Objection.
14	Q	Is that your testimony?
15	A	No, no, no.
16	Q	I want to understand about Beulah Willabor. That's
17		what I'm asking about right now.
18	A	The answer to your question is no.
19	Q	There's reference to "further aggressive actions."
20		My question is whether or not there were any
21		previous aggressive actions taken with respect to
22		her care.
23	A	The answer to the question is it depends on who's
24		defining the word "aggressive."
25	Q	I'm just asking you with respect to Mrs. Willabor.

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She was your resident. You've got her chart in 1 2 front of you, and I'm asking a question about her. The answer to the question is, it depends on who's 3 Α 4 defining the word "aggressive." My own personal definition may be different than, for example, 5 Loretta Buxton's definition of the term. б Well, Doctor, it's your term used in the entry, so I 7 0 want to understand what you meant when you made that 8 9 entry. Okay. What I mean when I write that is it is an 10 Α outcome of my conversation with the family and what 11 12 they mean by it, so the answer is it means different things on different patients at different times when 13 I made that entry. It doesn't mean the same thing, 14 and I'm not saying that to give you a hard time. 15 Did you have an understanding of what the term 16 0 17 "aggressive actions" meant when you wrote it down in your chart? 18 Yes, I did. 19 Α What was that understanding? 20 0 Feeding tubes. 21 Α No feeding tubes? 22 0 Α Right. An aggressive measure would be a feeding 23 It also would be intubation. It also would tube. 24 25 be pounding on the chest in case the heart stops.

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1	Q	You responded to one of Mr. Mingus's questions by
2		indicating that many families choose not to go with
3		feeding tubes?
4	А	That's correct.
5	Q	Do you have an understanding as to why they may
6		decide against them?
7	А	Each case is individual, but more often than not,
8		the decision gets made on the basis of patients'
9		prior stated preferences and wishes, as in an
10		advanced directive, for example.
11	Q	What are the criteria, just from a purely medical
12		standpoint, that would lead you to recommend that a
13		feeding tube be used?
14	А	If it's been called to my attention that the
15		patient is not eating well and losing weight.
16	Q	If a resident is capable of swallowing and is
17		actually asking for hydration per mouth, is that
18		resident a good candidate for a feeding tube?
19	А	Each resident is different, and it depends on
20		whether they are, first of all, willing to eat and,
21		secondly, capable of eating. Under capable of
22		eating, you have a very complex set of interventions
23		and diagnostic maneuvers, which can include
24		evaluation by a speech therapist, what we call a
25		modified barium swallow, referral to an ear, nose,
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and throat specialist to do indirect 1 2 nasopharyngoscopy, evaluation by a 3 gastroenterologist to evaluate the esophagus and stomach. 4 5 As you sit here today, do you know whether or not Q there was ever a determination made as to whether or 6 not Mrs. Willabor was capable of eating? 7 The way the question is asked can't be answered, but Α 8 9 by way of clarifying, let me say that there isn't any difference between can't eat and won't eat on a 10 practical basis. 11 Well, you were giving me a lengthy description of 12 0 13 techniques that could be used to determine whether or not a resident is capable of eating, physically 14 capable. My question is whether or not you know 15 whether or not such an ascertainment was ever made 16 as to Mrs. Willabor. Can you answer that question? 17 18 Okay. When you say "such an ascertainment," you Α have to break it down into the individual things I 19 listed. 20 Modified barium swallow was not done on this 21 patient to the best of my knowledge. Referral to a 22 23 gastroenterologist was not done to the best of my knowledge. Referral to an ear, nose, and throat 24 25 specialist was not done to the best of my knowledge.

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Whether a speech therapy evaluation was done is not 1 known to me, but the information would be 2 retrievable from the chart. And then you have your 3 nursing assessment of how well the patient is 4 eating, and that would also be embodied in the 5 nursing notes. If the nutritionist is making some 6 kind of notation about this, I assume that would be 7 in the nutrition notes too. 8 Do I understand your testimony correctly that you 9 0 don't know whether or not it was ever determined if 10 Mrs. Willabor was capable of eating during the time 11 she was at Indian Hills? 12 13 MR. MINGUS: Objection. What I know about it is what's contained in the 14 Α areas that I just referred to. In other words, one 15 would have to consult the nutritionist's notes, the 16 nurses' notes, to answer the question. And do I 17 have that information at my fingertips? No, I 18 Is it embodied in the patient's chart don't. 19 somewhere? Yes, it is. 20 I guess the answer would be that you don't know 21 Q then? Would that be fair? 22 That I don't know what? 23 Α 24 That you don't know whether or not she was capable 0 25 of eating during the time she was at Indian Hills.

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1		MR. MINGUS: Objection.
2	А	That I don't know whether she was capable of eating?
3		The only answer I can give to that is on a practical
4		basis, the difference between won't eat and can't
5		eat amounts to the same thing, so all I need to hear
6		from the nurses is the patient either won't eat or
7		can't eat. And that sets in motion the discussion
8		with the family about feeding tubes. So I think the
9		answer to your question is that I don't
10		differentiate between won't eat and can't eat, but I
11		don't know if that answers your question.
12	Q	Doctor, you responded to one of Mr. Mingus's
13		questions regarding the development of ulcers,
14		ulcerations, on Mrs. Willabor's body, by indicating
15		that a feeding tube might have alleviated that
16		problem or might have kept it from progressing as
17		quickly as it did. Do you recall that testimony?
18	А	Yes, I do.
19	Q	Can you explain that?
20	А	Okay. In a case such as this one, if a feeding tube
21		had been placed, one would have expected the
22		progression of her decubiti, which are bedsores, to
23		have been slower, but nonetheless relentless.
24	Q	Can you explain to me why the placement of a feeding
25		tube would have slowed the development of decubiti?

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A Malnutrition or poor nutrition or undernutrition is
 one of the contributing factors to the development
 of decubiti.

Regarding the failure to thrive diagnosis, is that a 4 Q physical condition, failure to thrive, like 5 tuberculosis or pneumonia, or what is that exactly? 6 The term "failure to thrive" comes from the 7 Α pediatric literature, and it refers to babies who 8 don't feed well and who don't develop and grow well 9 and just don't do well. They're runty r-u-n-t-y. 10 11 They're runts.

You can see this again on the other end of 12 life with frail, little old ladies that kind of are 13 globally failing. They can't do things for 14 themselves. They don't eat well. They are getting 15 weaker, more prone to accidents. They do less of 16 their ADLs, activities of daily living, just things 17 that we all do to take care of ourselves. 18 Intellectual decline, decreased problem-solving 19 ability, decreased ability to respond to the 20 environment, sensory deprivation and decline, 21 meaning you don't see as well, you don't hear as 22 well, you don't taste as well, you don't swallow as 23 24 well.

Q Can the global failure that attends a failure to

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1 thrive be related to nutrition?

2 A Yes.

3 Q What's that relationship?

4 A Cause and effect. Poor nutrition can cause failure
5 to thrive, and failure to thrive can cause
6 nutritional problems.

7 Q I would expect that in the case of an infant, that 8 the failure to thrive designation would require that 9 such an infant receive more care, rather than less, 10 than a baby who's doing fine?

A Again, the answer depends completely on what your
expectation and what your goal is. If your goal is
to make the patient better and prolong life, life
expectancy, then you would be more interventional.
If the goal is comfort measures and not to prolong
the life expectancy, then you would not necessarily
do anything differently at all.

18 0 What does the phrase "comfort measures" mean?

19AIt means keep the patient comfortable and don't do20anything more than that.

21 Q For somebody like Mrs. Willabor with multisymptoms 22 that you've already testified about, what steps do 23 you take to keep such a person comfortable?

24AAgain, the answer is in the nursing notes, all the25things that nurses do to keep patients comfortable

in a nursing home. 1 So "comfort measures" is really a nursing term more 2 0 than a doctor's term? Would that be accurate? 3 It's really both. 4 Α What does it mean to you as a physician? 5 0 It means different things on different patients at - 6 Α 7 different times in different contexts. What does it mean to you as to Mrs. Willabor? 8 0 Again, it depends on what the family decided. 9 Α And as I mentioned earlier, I have these conversations 10 three or four times a day with different family 11 12 members, so I can't directly remember on this particular case. 13 14 Okay. You have indicated that families make 0 health-care decisions or certainly participate in 15 health-care decisions? 16 That's correct. 17 Α And in the context of comfort measures, you would 18 0 turn to the family for guidance as to what measures 19 to provide and what measures not to provide. Would 20 that be accurate? 21 That's correct. 22 Α What about selection of a nutritional supplement if 23 0 there's a range of nutritional supplements 24 25 available, is that a decision that's made by the

family?

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2	А	Okay. The selection of what nutritional supplement
3		used on a given patient at a given time is
4		determined by the recommendation of the nutritionist
5		or whoever is involved in making the recommendation
6		about the patient's nutrition, also the nurses who
7		have to actually feed the patient, and sometimes the
8		input from family members.
9		An example of that will be nutritionists
10		will recommend a certain thing. The nurses will
11		say, "She's not going to eat that. She will refuse
12		to eat that. Try something else," And then a
13		family member may chime in saying, "She loves
14		watermelon, but she won't eat ice cream." They'll
15		know food preferences, so it's a combination of all
16		those inputs.
17		So needless to say, that's different for
18		each patient at different contexts at different
19		times, and it may change as the patient becomes more
20		involuted. She may be able to safely eat something
21		at one point in time, which later on she may not be
22		able to safely take by mouth. So that too is
23		dynamic. It changes over time.
24	Q	Suffice it to say that it's important for the
25		nursing staff and the physician to keep in touch

with the family about the resident's nutritionalstatus?

3 A In some situations, it's very important, and other
4 situations, it's not important whatsoever.

5 Q Explain that distinction.

6 A If you have a patient who, no matter what you do, is
7 never going to get better, it becomes diminishingly
8 unimportant. If you have a patient for whom you
9 have an expectation that you are going to make them
10 better or they are going to walk out of the nursing
11 home and go back into the community, it's very
12 important.

What about providing pain medications, is that a 13 0 decision that's left up to the family? If the 14 15 medical ascertainment or diagnosis is that this is a person who's suffering pain, do you have to yield to 16 the family's directions as to whether or not to 17 provide or withhold pain medications? 18 Okay. The answer to the question about pain 19 Α medications is you give the patients whatever they 20 need regardless. If the family disagrees with your 21 judgment, then you have to discuss it with them and 22 sort it out and try to come to some kind of middle 23 24 ground, but the patients get whatever they need. And I will add it's very unusual for the family to 25

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1		disagree with whatever we decide to do to keep the
2		patient comfortable.
3	Q	Will I find in the chart notations as to the
4		family's input and the family's decisions and the
5		family's directives to Mrs. Willabor's health-care
6		providers at Indian Hills?
7	A	I don't know the answer to the question. I can only
8		address the part that's handled by the physician.
9	Q	What's the answer as to the physician?
10	A	Well, the answer is that I talk to the family
11		members on an as-needed basis if a decision needs to
12		be made, as in this case where we talked about not
13		introducing a feeding tube in February of 1997.
14	Q	I'm looking for your physician notes. Can you read
15		into the record the entry because I won't be able to
16		read them.
17	A	Yeah. I've got the one that we made this from.
18	Q	Can you read the entry regarding feeding tubes?
19		MR. CRANDALL: He already read all
20		these.
21	A	I'm referring to my entry of February 13th, 1997,
22		"no further aggressive interventions."
23	Q	Do you specifically recall them saying "no feeding
24		tubes"?
25	А	No, of course, I don't. As I mentioned many times,

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1		I have this conversation three or four times a day
2		with various family members. In fact, since we've
3		been sitting here, I've been paged four times, and I
4		will bet one of these four pages has to do with this
5		very issue about a patient in a nursing home at this
6		time.
7	Q	Mr. Mingus put in front of you something called an
8		advanced directive
9	A	Yes.
10	Q	which has been marked as Exhibit 7.
11	A	Yes. I've got a copy of that right here.
12	Q	Now, the top entry indicates that Mrs. Willabor does
13		want fluids for hydration?
14		MR. CRANDALL: IV fluids.
15	Q	IV fluids for hydration. Am I reading that
16		correctly?
17	A	Okay. The advanced directive is not signed by
18		Mrs. Willabor. It's initialed by someone
19		representing themselves as her legal guardian. And
20		the signature is really poor, but I believe it's
21		Mrs. Buxton's signature and her initials. And at
22		the top of the advanced directive, there's an X with
23		what I presume to be Mrs. Buxton's initial next to
24		the entry that says, "I do want IV fluids for
25		hydration."

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Q	Was it your understanding that the family had
	consented to provide Mrs. Willabor with IV fluids
	for hydration at the inception of her stay at
	Indian Hills?
А	That's correct.
Q	Okay. Did you determine at some point that she was
	dehydrated?
A	Yes. The patient was dehydrated and malnourished.
Q	Was there some reason that you didn't provide her
	with IV fluids for hydration?
A	This would have gone back to the note of
	February 13, 1997, where I discussed with the family
	now, and had outcome of the discussion been that the
	family wanted IV fluids, then they would have been
	started at that time.
Q	So it's your testimony then that IV fluids for
	hydration is an aggressive measure?
А	Well, again, the term "aggressive measure" and I
	said several times now means completely different
	things in different contexts. In this context, my
	use of the term "aggressive intervention" in my
	progress note of February 13, 1997 includes IV
	fluids.
2	That's specifically noted in your notes marked as
	Exhibit 45?
	A Q A Q A

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1 A No, it's not.

2 Q How do you know?

3 A How do I know what?

4 Q How do you know that aggressive measures meant IV 5 fluids?

Okay. Because as I mentioned several times, I have б Α 7 this conversation several times a day with different family members, and because of the way that 8 conversation is carried out routinely, the 9 conversation goes something like this -- again, I'm 10 paraphrasing -- your mother either can't eat or 11 won't eat. She's becoming dehydrated and 12 13 malnourished. Our choices are A, B, C, and D. And I need you to give me guidance as to where we should 14 go with your mother at this time. And the outcome 15 16 of that conversation is what gets recorded in the progress notes. And, very likely, the conversation 17 18 took place at a time and place different than when 19 this entry was made. 20 You don't have any specific recollection of that 0

21 conversation, though?

22 A No. As I said several times --

23 MR. CRANDALL: Just answer.
24 Q And you don't have to say it again. You could just
25 say no.

1	А	That's correct. I do not have a recol	lection of
2		whatever it is you just said.	
3	Q	But it's your understanding that when a	a family
4		indicates on an advanced directive what	t course of
5		treatment they want, that can change?	
6	A	It does change.	
7	Q	It's a matter of consulting with the fa	amily when
8		changes in status appear?	
9	A	That's exactly right.	
10	Q	So if the family had wanted indicate	ed on
11		Exhibit 7 that they do not want placeme	ent of tubes
12		for nutrition, that could have changed	as well?
13	А	It frequently does.	
14	Q	Thank you. Now, Doctor I want to go ba	ack to your
15		MR. MINGIJS: I have a ch	neck here
16		through 3:00.	
17		THE WITNESS: Okay.	
18		MR. CRANDALL: How much lo	onger are you
19		going to be?	
20		MR. CHAPMAN: I'm going t	to be a while.
21		MR. CRANDALL We've got t	to stop at
22		3:30.	
23		MR. CHAPMAN: Why?	
24		MR. CRANDALL: Because I h	have to go.
25		MR. CHAPMAN: That's fine	e. We're
	1		

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going to have to reconvene. 1 MR. CRANDALL: We can deal with that 2 later. 3 4 MR. CHAPMAN: We've got a trial coming up on June 17th. 5 That's fine. There's no MR. CRANDALL: 6 reason this depo should have taken this long. 7 MR. CHAPMAN: Pardon me? 8 MR. CRANDALL: I don't know what part 9 you didn't understand. 10 MR. CHAPMAN: My client is a woman who 11 died. I'm representing the family. 12 13 MR. CRANDALL: This isn't a wrongful death case against my client. This is a fact 14 witness. He's already given up two hours and ten 15 minutes of his time, and he's a professional. So if 16 you want to apply to the court for more time, then 17 qo ahead. 18 MR. CHAPMAN: I certainly will because 19 I have not been that long with this witness. 20 MR. CRANDALL: You have. He said, "I 21 told you before, " about 200 times, and you're asking 22 23 the same questions over and over. 24 MR. CHAPMAN: I'll tell you what, I'll try and zip it along. 25

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1 By Mr. Chapman:

2	Q	Doctor, can we go to Exhibit 41, which is the order
3		that you put on? Doctor, I'm referring you now to
4		the physician's telephone order dated January 21st.
5		There's reference to something called Lasix?
6	А	Correct.
7	Q	Is that something that you consulted with the family
8		about before putting her on?
9	А	No.
10	Q	Why did you put her on that?
11	A	I don't remember. I can give you my best educated
12		guess.
13	Q	I don't want you to guess. I want you to tell me
14		what you know.
15	A	Okay. I don't know.
16	Q	Lasix, you identified as a diuretic?
17	A	That's correct.
18	Q	Are you familiar with the properties of Lasix?
19	А	I couldn't practice medicine without being familiar
20		with the properties of Lasix.
21	Q	In a thumbnail, Doctor, what impact does Lasix have
22		on a resident's body?
23	A	Okay. It's a diuretic, which means that it removes
24		extra fluid from the body.
25	Q	Does the use of Lasix require careful medical

1		supervision?
2	A	In some situations.
3	Q	And require that dose and dose schedule be adjusted
4		to the individual patient's needs?
5	A	In some situations, it requires very, very, very,
6		very close supervision, and other situations, it
7		requires relatively less.
8	Q	In Mrs. Willabor's case on January 21st of 1997, did
9		it require close supervision?
10	A	It required the level of supervision which the
11		patient received at that time.
12	Q	What level
13	А	The level of supervision would be my physical
14		presence in the nursing home three times a week and
15		ongoing nursing care.
16	Q	Could you flip forward
17	А	I haven't finished. And a chest X-ray, which was
18		ordered at that time, to ascertain whether the
19		patient had fluid in her lungs.
20	Q	Would you flip forward two pages? There's an entry
21		of January 30th of 1997. Is that your entry in the
22		top there, sir?
23	А	I'm sorry. When you say my entry
24	Q	Your physician telephone order. Did you call that
25		in?

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1 A I don't remember.

2	Q	It says, "Please weigh resident QOD."	Does that
3		have any meaning to you?	

4 A Of course, it does.

5 0 What does it mean?

6 A It means weigh the patient every other day.

7 Q Do you recall -- is that unusually frequent, or is
a that customary, or do you recall the reasoning
9 behind putting that order in?

10 A Do I recall the reasoning? No. But I can deduce it
11 from looking at the chart.

12 0 What's your deduction?

13 A The patient is not eating well, and she's also on a
14 very low dose of a diuretic, so her weight needs to
15 be monitored fairly closely.

16 Q And the way the information regarding the weight17 comes to you is through the nurses?

18 A Correct. Now, I will say that occasionally if the
19 nutritionist stops me at the nursing home and will
20 share some nutritional concerns with me, I sometimes
21 will directly deal with it through the nutritionist
22 rather than the nursing staff.

23 Q But you expect through one vehicle or another for
24 the weekly weights or the every-other-day weights to
25 come to your attention in some form or another?

1	А	Again, as we talked about before, there are certain
2		alarm limits. If the weight goes up or down a
3		certain amount within a certain period of time, a
4		physician is to be notified.
5	Q	For Mrs. Willabor in the end of January of 1997, in
6		your mind, Doctor, when does the red flag go up?
7		What kind of weight gain or weight loss?
8		MR. MINGUS: Objection.
9	A	I really can't answer that question as asked. It
10		isn't a specific number. It truly depends on the
11		total clinical context of how the patient is doing
12		and everything that is going on at that time.
13	Q	If Mrs. Willabor lost 3 pounds in a month, is that
14		something that you would want to be advised of?
15		MR. MINGUS: Objection.
16	А	Same answer.
17	Q	You don't know?
18	Α	No, it's not a don't know. What I'm saying is it
19		completely depends on the clinical context, and if
20		this case weren't a year and a half old, I might
21		have a fresher memory for a particular case, but I
22		just don't.
23	Q	Are there any kinds of objective guidelines that are
24		out there indicating when a resident's weight gain
25		or loss is supposed to be flagged that you know of?

l	A	If there are, it would be in the nutrition
2		literature more likely rather than the medical
3		literature, but not that I know of.
4	Q	You're not aware of any?
5	A	Not that I know of.
6	Q	When you talk about the "total clinical picture,"
7		you have just recited a number of diagnoses that
8		Mrs. Willabor had when she was admitted, but you're
9		not comfortable opining as to what her complete
10		clinical picture was given the parameters of her
11		weight on admission and the diagnoses that she had?
12		MR. MINGUS: Objection.
13	А	Her complete clinical picture is terrible.
14	Q	Given that complete clinical picture, how closely do
15		you want to watch her weight?
16	А	The answer is it depends on what the expectations
17		are of whoever is looking at outcomes. If the
18		family directs that everything possible be done and
19		wants a high level of intervention, then we will do
20		that. If we're going for comfort measures, as my
21		progress notes state, then you're going to go mainly
22		for comfort measures and not do a lot of tests and
23		monitoring.
24	Q	Prior to today, have you seen a nutritional
25		assessment that was done of Mrs. Willabor?

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1	A	I perused the entire chart that's in front of me so
2		if, in fact, the chart contains the pages that
3		you're referring to, the answer is yes.
4	Q	It's marked as Plaintiff's Exhibit 16. It's in
5		front of you. Would you go to the entry marked
6		March 7th, 1991?
7	А	Okay. It must be 3-7-97.
8	Q	I beg your pardon. Yes, it is `97, of course.
9	А	I think I have it, yes.
10	Q	Okay. Do you see the notation of a recorded weight
11		loss of 44 pounds since January 27th, 1997?
12	А	Yes, I do.
13	Q	Do you see the notation above that of February 10th?
14		It indicates weekly weights have been ordered.
15	А	Correct.
16	Q	And below that, weekly weights not noted?
17	А	I see that, yes.
18	Q	Okay. Did it ever come to your attention that
19		Mrs. Willabor was not being weighed in accordance
20		with your orders?
21	А	I don't know the answer to the question because I
22		don't remember. But I will tell you in the overall
23		context of a patient not eating, I don't need that
24		information. I know she's going to lose weight, so
25		I don't need to have somebody tell me that. Plus, I

1		can walk in the room and look at the patient and
2		tell that too.
3	Q	Okay. So it's your understanding that she lost 44
4		pounds in six weeks because she was not eating?
5		MR. MINGUS: Objection.
6	A	The records clearly answer the question here.
7		Resident has been refusing meals. Repeatedly
8		resident refuses meals. This entry is made more
9		than once. And that goes back to the issue of the
10		difference between won't eat and can't eat.
11	Q	When we're talking about a woman who lost 44 pounds
12		in six weeks, Doctor, is it still appropriate to
13		have a person of that kind, given Mrs. Willabor's
14		total clinical picture, on a diuretic?
15	А	The answer to the question is that sometimes it
16		would be, and sometimes it would not be. In this
17		particular situation, the patient had some edema of
18		her lower extremities, and the concern here and
19		this becomes somewhat technical is the patient
20		already has decubiti on her feet or on her lower
2 1		extremities and then has some swelling on top of it.
22		It's going to even slow down the healing more, so
23		you want to get rid of the fluid. This was done
24		with short-term use of a diuretic and with some
25		elastic stockings.

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1	Q	What do you mean by "short-term use of a diuretic"?
2	А	Well, in looking at the notes here and
3	Q	I just want to know what you mean by the term.
4	A	Well, the answer is the duration during which this
5		patient was on the diuretic, which is it was
6		discontinued on March 12th, and it was started on
7		January 21st, so it was about a six-week period.
8	Q	It would basically approximate the period in which
9		the 44-pound weight drop occurred?
10		MR. MINGUS: Objection.
11	A	The answer is that's correct, and it's to be
12		expected. One of the reasons for giving the
13		diuretic is to get rid of excess fluids from the
14		body, so you expect a weight loss.
15	Q	So is it your view that the 44-pound weight loss
16		during the time that she was on Lasix was a good and
17		healthy thing to occur to her?
18		MR. MINGUS: Objection.
19	A	Okay. The answer to the question is that the weight
20		loss was due to a combination of the diuretic and
21		the patient not eating. The fact that the patient
22		is not eating is obviously not good and healthy for
23		the patient. Lasix was used to get rid of the extra
24		fluid which was impeding the healing of lower
25		extremity decubiti, which was done in an attempt to

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1		make the patient better.
2	Q	Do you have specific recollections of these things,
3		Doctor?
4	А	No.
5	Q	So you're not speaking from personal recollection of
6		Mrs. Willabor's case?
7	A	That's correct.
8	Q	Okay. If, in fact, there are no weekly weights
9		noted during this six-week period, Doctor, although
10		there was an order on indicating this resident was
11		supposed to be weighed QOD, in your opinion, is that
12		proper nursing care?
13		MR. MINGUS: Objection.
14	A	I don't have an opinion about that because I'm not a
15		nurse, and I'm not qualified.
16	Q	I believe Mr. Mingus asked you a question about
17		whether or not Mrs. Willabor was receiving proper
18		care while she as at Indian Hills, and you opined to
19		a reasonable degree of certainty that she was.
20	Α	I was referring to the topical treatment that the
21		patient was receiving to the decubiti.
22	Q	When you give an order to a nursing staff, do you
23		expect it to be carried out?
24	А	Of course.
25	Q	Is it improper for a nurse to fail to carry out your

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order?

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2		MR. MINGUS: Objection.
3	A	There is something that's called nursing judgment,
4		and if the nurse feels that the order is improper
5		and should not be followed, then she has to exercise
6		her or his nursing judgment and clarify it. For
7		example, if the patient happens to be allergic to a
8		medicine and the doctor phones in an order and says,
9		"Put the patient on that medicine," but at the time
10		that the order was given, nobody knew that she was
11		allergic, an example nursing judgment would be to
12		call the doctor back and say, "Doctor, we don't want
13		to use this medicine because the patient is
14		allergic," and further clarify it. So that's called
15		nursing judgment, so the answer to your question is
16		that nursing judgment has to be exercised.
17	Q	I'm interested in this specific instance. We're not
18		talking about an allergy. You have a resident with
19		a history of dehydration, and you're putting her on
20		Lasix, which is a diuretic, and you order her to be
21		weighed every other day. Now in your opinion, is it
22		proper for a nurse to ignore that order?
23		MR. MINGUS: Objection.
24	Q	Do you have an opinion?
25		MR. MINGUS: Objection.

1	А	I don't have an opinion about that.				
2	Q	Okay. Would it be would you expect a nurse to				
3		tell you that your order was being ignored?				
4		MR. MINGUS: Objection.				
5	A	Would I expect a nurse to tell me that an order is				
6		being ignored? Not as stated, no.				
7	Q	Mrs. Willabor is your patient, and you're concerned				
8		to find out about her condition, correct?				
9	A	I have an ongoing relationship with the patient that				
10		includes being apprised of her condition at any				
11		point in time,				
12	Q	And you asked to be apprised, and yet she's not				
13		weighed for a six-week period.				
14		MR. MINGUS: Objection.				
15	A	The answer is it doesn't exactly work like that.				
16		What may have generated the order to weigh the				
17		patient every other day may be the nutritionist				
18		wanting to monitor the patient's weight rather than				
19		my concern about her hydration, for example. So				
20		you'd have to know what generated the order to begin				
21		with to weigh the patient every other day.				
22	Q	Doctor, do you expect that a weight loss of 44				
23		pounds on a woman who's 120 pounds at the end $o\!f$				
24		January would have any negative effects on her				
25		health?				

1	A	The answer is the patient weighed 110, not 120.
2	Q	On admission?
3	А	According to the record in front of me, it says 110,
4		and the answer to the the further answer to the
5		question is that would I expect it to have ${f a}$
6		negative effect? Yes, but, more precisely, that the
7		conspiracy of medical problems that caused her to
8		lose weight is what I'm concerned about.
9	Q	Doctor, look on the nutritional assessment that's in
10		front of you. If you go to the second page, do you
11		see the entry for 9-97?
12	A	The patient expired on 7-97, so there couldn't be an
13		entry for 9-97.
14	Q	I'm sorry. 1-9-97. It's just the back of the first
15		page.
16	A	Okay.
17	Q	Do you see an entry to the effect that her weight
18		increased?
19	А	Yes.
20	Q	By 7 pounds?
21	А	Yes.
22	Q	And she then attained 117 pounds?
23	A	Yes.
24	Q	And that was in her first month at Indian Hills?
25	A	Yes.

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1	Q	And if you go down to the next entry, which is
2		1-23-97, do you see that her weight increased to 120
3		pounds?
4	A	Yes.
5	Q	Is a weight gain of that magnitude consistent with
6		the failure to thrive?
7		MR. MINGUS: Objection.
8	A	The weight gain in this particular situation is
9		probably due to fluid retention, and this is
10		complicated to explain, but it probably should go
11		into the record. When someone doesn't eat well,
12		their protein levels drop in the blood, specifically
13		the serum albumin. That's what holds fluid in the
14		intravascular space, which is inside the blood
15		vessels, and keeps it from going out into the soft
16		tissues.
17		When the albumin level goes down, you get
18		more swelling, more fluids going out into the soft
19		tissues. So this weight gain is almost certainly
20		not nutritional. In fact, it's probably just the
21		opposite. It's probably because her serum albumin
22		level was going down. There's less protein in the
23		blood vessels, more fluid going outside the blood
24		vessels, retaining fluid. Weight goes up.
25	Q	Do you see the entry for January 27th?

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Yes, I do. 1 Α Is there a notation in the labs there as to what's 2 0 going on with her albumin levels? 3 Yes. Her albumin level is low. It's 2.7. 4 Α The use of Lasix would tend to dehydrate, you 5 0 indicated; is that correct? 6 MR. MINGUS: Objection. 7 The use of Lasix always would carry the potential 8 Α for dehydration, if not monitored. But if used 9 correctly, should not lead to dehydration. 10 11 What are the ways that the use of Lasix -- how do 0 12 you monitor a resident who's on Lasix? You do serial weights. You monitor blood tests. 13 Α You look at the patient clinically. 14 As I look at the notes which I marked as 15 0 Exhibit 45 -- they are your notes, sir, 16 Right here. 17 MR. CRANDALL: (Indicating.) 18 19 Are you going to go back to those? Is that what you want to look at? 20 It's Exhibit 45. MR. CHAPMAN: 21 Well, he's got them in 22 MR. CRANDALL: I just wanted to know, is that what you're 23 here. 24 going to do. So we should flip to them? MR. CHAPMAN: Please. 25

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1	Q	Do you have those in front of you now, sir?
2	А	If you're referring to that, the answer is yes.
3		(Indicating.)
4	Q	We're talking about the same thing. Do you see any
5		reference to the fact that Mrs. Willabor is on Lasix
6		in any of your notes?
7	A	No, I do not.
8	Q	Why did you take her off Lasix?
9	А	Okay. The answer is that I don't remember, but I
10		can give you an educated guess.
11		MR. CRANDALL: I don't want you to
12		guess. If you don't know, just say, "I don't know."
13		He's going to go on to his next question.
14	А	I don't know.
15	Q	Doctor, you indicated that if Mrs. Willabor had been
16		equipped with a nutritional feeding tube, a
17		nasogastric tube, that might have slowed the
18		development of her decubiti?
19	А	That's right.
20	Q	Because you say that there's a relationship between
21		nutrition and skin status?
22	А	Healing.
23		MR. MINGUS: Objection. Asked and
24		answered. Go ahead.
25	Q	The 44-pound weight loss that we're talking about,

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1		could that also have contributed to the development
2		of her skin problems?
3		MR. MINGUS: Objection.
4	Q	Do you know?
5	A	The answer could the answer is yes.
6		MR. MINGUS: Objection. Move to
7		strike.
8	Q	You've indicated, Doctor, that you expect that there
9		can be a number of consequences for somebody who
10		lost 44 pounds over a six-week period. Can you
11		summarize for me what kind of consequences you would
12		expect to see in a woman of Mrs. Willabor's status
13		during this time period in her life?
14	А	Yes. I expect her to decline globally and die.
15	Q	Because of a 44-pound weight loss in a six-week
16		period?
17	А	No.
18		MR. MINGUS: Objection. Objection.
19	А	No, no, no.
20	Q	That's my question, Doctor.
21	А	No. Because of the conspiracy of medical problems
22		producing the inability or unwillingness to eat and,
23		therefore, the weight loss. Now, the label for
24		that, again, is adult failure to thrive syndrome.
25	Q	So the 44-pound weight loss in a six-week period is,

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in your view, irrelevant to her decline? 1 MR. MINGUS: Objection. 2 I don't agree with that statement at all. 3 Α In what ways was it relevant to her decline? 4 0 That's what I want to understand. 5 In what way was what relevant to her decline? 6 А MR. CRANDALL: The 44-pound weight 7 loss. 8 In what way was the 44-pound weight loss relevant to Α 9 her decline? 10 Yes. Do you know? 11 0 Okay. I don't know how to quantitate it, if you're Α 12 looking for a quantification like it accounted for 13 50 percent of her decline or 20 percent. 14 I only want to know if you have an understanding as 15 0 you sit here if that weight loss in a six-week 16 period of time contributed to Beulah Willabor's 17 decline. 18 Did the weight loss contribute to her decline? 19 Α Part of what I mean when I say she declined is that 20 she's losing weight, so it's part of the definition 21 of the word "decline" in the way that I use the word 22 "decline." 23 MR. MINGUS: John, it's 3:30. How 24 much more? Do you want to reconvene if necessary? 25

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101 1 MR. CHAPMAN: Well, we need to 2 reconvene. MR. MINGUS: 3 Okay. MR. CHAPMAN: And I'll certainly work 4 5 with counsel to work that out, and that's it. It's your witness. 6 MR. CRANDALL: I'm not going to ask him 7 8 any questions. MR. CHAPMAN: 9 Do you want to advise him about his signature? 10 11 MR. CRANDALL: We are not going to waive. We will read the portion up to this point. 12 MR. CHAPMAN: I will order. 13 (Deposition concluded at 3:31 p.m.) 14 15 (Signature not waived.) 16 17 18 19 20 21 22 23 24 25 FINCUN-MANCINI -- THE COURT REPORTERS

1	I have read the foregoing transcript from page 1
2	through page 101 and note the following corrections:
3	
4	PAGE LINE REQUESTED CHANGE
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16 17	Robert Whitehoues, M.D.
18	Subscribed and sworn to before me this day of
19	, 1999.
20	,,
21	
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23	Notary Public
24	My commission expires
25	

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0	County of Cuyahoga.) 88': CERMEF'ELD'E
M	I Luanne K How? C rt Reporter and Notary Public
4	in and for the state of Ohio Duly commissioned and
ហ	gualifien po Deredy certify that the within mamen
9	witrees Robert Whitehouse, M p = > X me farst puly
7	BWOY to testify the truth the whole truth, and nothing
ω	Dut the truth in the cause aforemain; that the testimony
თ	them given by him was by me ReQuceD to stend ype/computer
10	is the presence of said witgess afterward transcriped,
Ч	and that the foregoing is a true and correct transcript of
12	the testimony so given >x him as aforesaid.
Ч	I Do further certify that tbis Deposition ms
14	taken at the time and place in the foregoing caption
Ч Ч	app cifiew.
1e	I do further certify that I am not a relative
17	counsel, or attorney of wither party, or otherwise
18	isteresten in the event of this action.
1 6	μΝ WμTN≷SS WHEREOF, μ ⊅ave h⊮≭pumto ∃et my hamΩ
20	and affixpd my spal of o≤≤icp at ClpvelanD Ohio on
21	this 10th day of May_ 1999.
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23	Laanse K. Howe
24	Luanne K. Howe, Court Reporter and Notary Dublic in and for the State of Obio
7 7	nission expires October 2, 1999.
	FINCUN-MANCINI THE COURT REPORTERS

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15	herein, called by the defendants for oral examination,	11.4	Mr. C	hapman 41 - 9	
16	pursuant to the Ohio Rules of Civil Procedure, taken	15	Mr. M	ingus 47 - 4	
:17	before Luanne K. Howe, court Reporter and Notary	16	Mr. M	ingus 47 - 7	
18	Public in and for the State of Ohio, at the office of	17	Mr. M	ingus 55 - 18	
19	Robert Whitehouse, M.D., 36001 Euclid Avenue, Suite B-	15 18	Mr. M	ingus 56 - 18	
220	Willoughby, Ohio 44094, on Tuesday, April 27, 1999,	19	Mr. M	ingus 56 - 22	
21	commencing at 1:00 p.m.	20	Mr. M		
22	connecting at 1.00 prat	21	Mr. M	•	
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 frivolous term, quote, total body failure, unquote. This means that she had something wrong with every part of her body, and it was globally failing. Q Do you have any opinions as to what her future prognosis was or what her life expectancy was? MR. CHAPMAN: At what point? MR. MINGUS: At the time of her admission. MR. MINGUS: At the time of her admission. A At the time of her admission, her prognosis was somewhere between terrible and terminal. Her life expectancy is diminishingly small. What do you mean by "diminishingly small."? A She could die any time. What other strike that, please. Did she have any mental or psychological problems at the time of her initial admission? A She had severe dementia. What is that, Doctor? A Dementia means loss of intellectual faculties. MR. CHAPMAN: Objection. Go ahead. 	Loretta Buxton, etcv- Indian Hills Nursing Center, et al						
1 Q. She also had X-rays which were consistent with old 1 Q. Did she have any other psychological problems at 2 granulomatous disease; is that correct? 3 A I don't think she was really tested as such for 4 What is that?		Page 9	T		Page 11		
2 granulomatous disease; is that correct? 3 A 3 A That's correct. 3 A I don't think she was really tested as such for don't psychiatric diagnoses like depression, attemportation of the records that she was really tested as such for don't think she was really tested to place, time, and stating what that correct? 10 Q bottor, at the time of he arteries in those arteries and wanced incective that was signed at page. What page is that? I don't think is that correct? 20 A that in the intor that correct? Q A again, I w	10		1	0	C		
3 A That's correct. 3 A I don't think she was really rested as such for 4 Q What is that? other psychiatric diagnoses like depression, 7 Q She also had coronary artery disease; is that 5 8 A correct? 0 9 Q What is that? 0 10 Q What is that? 0 11 A stato order of the arteries, of those arteries that a disoriented to place, time, and situation at the 12 supply the heart muscle itself. 0 No. Cerebrowascular disease; 13 Q She also had afbaccoma; is that correct? 10 A 10 Q She also had glacoma; is that correct? 10 12 Q She also had glacoma; is that correct? 10 13 Q Doctor? 11 A 14 A Shat diagnose glacoma. 12 13 Q Doctor, I at the time of her minitial admission to 13 14 can't with <i>r</i> into the numising home, but 1 don't 10 15 what gags is that? 12 A kpain, I was't personally diagnose glacoma. 12 14 Q Could you tell me about your history that you took 14 14 15 wheny on first saw the patient?	1 -	-	1	-			
4 Q What is that? 4 other psychiatric diagnoses like depression, anxiety. 5 A She means she was exposed to TB at one time, and it's concret? 6 Q Indee from some of the records that she was disoriented to place, time, and situation at the scorect? 9 A Right. 9 Doctor? 10 A You mean do I remember that, in fact, she was us objected in that way? I don't remember, but do the records indicate that? Yes, they do. 12 supply the heart muscle itself. 10 No. Cerebrovascular disease. 10 Obctor? 10 A You mean do I remember that, in fact, she was us disoriented in that way? I don't remember, but do 13 Sha also had atterosciencic cardiovascular disease. 10 Obctor? 10 A You mean do I remember that, in fact, she was signed is that correct? 14 is that correct? 16 A Yes. 12 Obctor? 10 A You mean do I remember that, in fact, she was signed is that correct? 15 A No. Cerebrovascular disease. 16 Yes. Yes. 10 Doctor? 10 Doctor? 10 A You mean do I remember that, in fact, she was signed is that correct? 10 A Yes. 10 Doctor? 10 A Yes. 10 Doctor? 10 A Yes. 10 Doctor? 10 Doctor 10 That diadmission to th	3 A	-	3	Α	I don't think she was really tested as such for		
5 A Be means she was exposed to Ta at one time, and 5 anxiety. 6 if 's considered inactive at this point. 5 anxiety. 7 O She also had coronary artery disease; is that 5 anxiety. 8 correct? 9 What is that? 0 9 Q What is that? 0 Doctor? 10 A You mean do 1 remember that, in fact, she was 11 at stapply the heart muscle itself. 11 disoriented in that way? 1 don't remember, but do 12 Q She also had atherosclerotic cardiovascular disease. 13 O Doctor, at the time of her initial admission to 15 A No. Cerebrovascular disease. 13 Q Doctor, at the time of her initial admission to 13 Q She also had glaucoma; is that correct? 10 Q Abay. Doctor, let me hand it to you. It's been 14 A That's hardening of the arteries in those arteries 18 previously marked as Plaintif's Exhibit 7. That's 15 A That's hardening of the arteries in those arteries 18 a corpo of an advanced directive that was signed at 16 Q Marage is that? personally diagnose glaucoma. 21 A gain, Iwas' presonally there when they did this, 20 A Could you tell me about your history that you took 14 Q What is an advanced directive that was end ot manally 3 A Yeah. As I mentioned, the term that'	4 0		1				
6 it's considered inactive at this point. 6 Q I note from some of the records that she was disoriented to place, time, and situation at the time of ther initial admission; is that correct, 9 A Right. 9 Doctor? 10 A Your mend to I remember that, in fact, she was and sourced directive that the records indicate that? Yes, they do. 11 A Hardening of the arteries, of those arteries that 10 A Your mend to I remember that, in fact, she was and sourced directive that 12 supply the heart muscle itself. 10 No. Cerebrovascular disease. 11 14 is that correct? 14 Indian Hills, that correct? 14 15 No. Cerebrovascular disease. 15 Q Octor, 1 the time of her initial admission to Indian Hills, is that correct? 16 Q Mat is that, Doctor? 10 Q She also had glaucoma; is that correct? 10 Q Okay. Doctor, 1 et me hand it to you. I's been formally icagnose glaucoma. 12 Porsonally diagnose glaucoma. 10 10 11	-		5				
7 She also had coronary artery disease; is that 7 disoriented to place, time, and situation at the 8 correct? 9 Right. 9 9 Q What is that? 10 A Hardening of the arteries, of those arteries that 11 disoriented in thar way? I don't remember that, in fact, she was 13 Q She also had anterosclerotic cardiovascular disease; 10 A Fardening of the arteries in those arteries 14 Indian Hills, there was an advanced directive that vas signed; is that correct? 16 What is that, Docto? 16 Yes. 17 A That's hardening of the arteries in those arteries 17 Q Okay. Doctor, let me hand it to you. It's been previously marked as Plainift's Exhibit 7. That's a acy of an advanced directive that was signed at the time of Mrs. Willabor's initial admission to 18 Page 10 Page 10 11 Indian Hills; is that correct? 17 Q Could you tell me about your history and Physical Record." 20 A Again, I wasn't personally there when they did this, but does this resemble the form that we use in these 18 Yeah. As I mentioned, the term that's used to the advanced directive? 3 Yea. 19 C Could you tell me about your history and physician talk to advanced directive? 3	-	-			5		
8 correct? 8 time of her initial admission; is that correct, Doctor? 9 A Right. 9 Doctor? 0 10 What is that? 10 A Hardening of the arteries, of those arteries that supply the heart muscle itself. 10 A You mean do I remember that, in fact, she was disoriented in that way? I dori 'remember, but do Its that correct? 13 G Ble also had atherosclerotic cardiovascular disease; 10 A You mean do I remember that, in fact, she was disoriented in that way? I dori 'remember, but do Its that correct? 16 Q What is that, Doctor? 11 A That's hardening of the arteries in those arteries that supply the vein. 13 Q Doctor, at the time of far. Willabor's initial admission to Indian Hills; sic that correct? 19 Q She also had glaucoma; is that correct? 10 A That diagnosis was itsed on the information witch it carme in with her into the nursing home, but I don't personally diagnose glaucoma. 10 Could you tell me about your history that you took when physical Record." 12 A Again, I wasn't personally there when they did this, but they concell the advanced directive? 24 A gain. I wasn't personally diagnose glaucoma. 24 Again, I wasn't personally there when they did this, but they concell the advanced directive? 25 A Yeek. As I mentioned, the term that's used to each other about this, we sometimes use the more for this supply wasn't when physicians talk to each other about this, we sometimes use the thore for solution is called adult for each other about this, we sometimes use the more for this wasn't personaly therective? 3 A Yees.	7.0	-		-			
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 8 This means that she had something wrong with every part of her body, and it was globally failing. 9 Q And what did the advanced directive in 9 Q And what did the advanced directive in 9 Q And what did the advanced directive in 10 Mrs. Willabor's case provide? 11 A The advanced directive states that we are not to 12 MR. CHAPMAN: At what point? 13 MR. MINGUS: At the time of her 14 admission. 15 A At the time of her admission, her prognosis was 16 somewhere between terrible and terminal. Her life 17 expectancy is diminishingly small. 18 Q What do you mean by "diminishingly small."? 19 A She could die any time. 10 What other strike that, please. 11 Did she have any mental or psychological 12 problems at the time of her initial admission? 23 A She had severe dementia. 24 Q What is that, Doctor? 25 A Dementia means loss of intellectual faculties. 8 deteriorate. 9 Q And what did the advanced directive in 10 Mrs. Willabor's case provide? 11 A The advanced directive states that we are not to 12 pound on the patient's chest or intubate her, or 13 place a tube through her nose into the stomach to 14 feed her. 15 Q And that advanced directive is purportedly signed by 16 Mrs. Willabor's daughter, Loretta Buxton; is that 17 correct? 18 A Anybody's guess on this one. I wouldn't go out on a 19 limb to say what that signature says there. 20 What is that, Doctor? 21 Q When a patient's family signs an advanced directive which prohibits the use of a feeding tube, how does 23 that affect the way that you can take care of a 24 patient's nutritional status? 25 MR. CHAPMAN: Objection. Go ahead. 	6	each other about this, we sometimes use the more	6		guardian stating what level of aggressiveness is to		
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Robert WhiteshouseMulti-PageTM.oretta Buxton, etc. -v- Indian Hills Nursing Cerler, et al

oret	ta Buxton, etcv- Indian Hills Nursing Cer	er,e	t al
	Page 17		Page 19
1	congestive heart failure, arteriosclerotic heart	1 A	My notes don't show cachexia as such, so I'd have to
2	disease, arteriosclerotic cerebrovascular disease,	2	see a photograph of the patient before I could
3	chronic atrial fibrillation, peripheral vascular	3	answer that.
4	disease, osteoporosis, degenerative arthritis,	4 Q	Doctor, was she taking any medication at the time of
5	Paget's disease of the bone, anemia, hypertension,	5	her initial admission?
6	bronchitis, folate deficiency, left ventricle	6 A	I'm sure she was, and that would be on the
7	hypertrophy, glaucoma, old heart attack per EKG,	7	medication list, which I don't actually have here.
8	right lung nodule, early decubiti, cholelithiasis,	8	I'm sorry. We do have it. It's about a page and a
9	electrolyte imbalance, multiple nonspecific	9	half of medications.
0	laboratory abnormalities. Other per attached,	10 0	Could you tell me what she was taking and what she
1	meaning records from the hospital.	11	was taking it for?
2 Q	What is early decubiti?	<i>1</i> 2 A	Yes. She was on a folate supplement, which is a
3 A	Bedsores.	13	vitamin supplement. She was on one baby aspirin a
4 Q	She had bedsores at the time of her initial	14	day to help thin the blood out. She was on an
5	admission?	15	antidepressant called Zoloft. She was on a
6 A	According to my notes.	16	nitroglycerin patch, which we use for coronary
7 Q	That was located on the scapula?	17	artery disease. She was on a medicine called
8 A	Both scapulae.	18	Digoxin, which we use to regulate the heart beat.
.9 0	Where is the scapula located?	19	She was on Lisinopril, which is a medication we use
20 À	Back here. (Indicating.)	10	for more than one thing. Probably in her case, it
!1 Q	You're pointing to the shoulder blade area?	11	was being used for the congestive heart failure and
!2 A	Superior-posterior thoracic area.	12	possibly for hypertension.
!3 Q	Your history also indicates a right lung nodule?	13	She was on an inhaler to help keep her
!4 A	Correct.	14	breathing tubes open. She was on nutritional
15 Q	What was that, Doctor?	25	supplements three times a day and a medicine as
	Page 18		Page 20
1 A	It was never ultimately diagnosed. The patient was	1	needed for constipation. Also, at one point, she
2	seen by a specialist, who is Dr. Epstein, who saic	2	was on an antibiotic, and at one point, she was on a
3	if we were to evaluate it, the patient would need :	3	medicine called Lasix, which is a diuretic we use
4	CAT scan of the chest. And, again, after some	4	for heart failure.
5	discussion with Dr. Epstein and/or the family, we	5 Q	Did you place her on Lasix during her stay?
6	decided that we wouldn't do anything about whatever	6 Ã	She was on Lasix when she came in, I believe. To be
7	it was anyhow given her other multiple medical	7	honest, I can't read about half of it. It's just a
8	problems. So it was ultimately decided not to get	8	poor quality copy, but it would make sense that she
9	the CAT scan of the chest.	9	probably was on Lasix when she came in, which is one
10 Q	What is folate deficiency?	10	of the medicines they use for treating heart
11 A	Folate is one of the B vitamins. It's in your diet.	11	failure.
12	Almost all folic deficiency in the United States is	12 Q	Doctor, I'd like to refer you to your physician's
13	due to malnutrition.	13	orders. Do you have those in front of you?
14 Q	Did she have signs of malnutrition at the time of	14 A	Yes. Okay, yeah. Here, I can clarify this for you.
15	her initial admission?	15	The date is cut off on this, but, actually,
16 A	Yes.	16	January 21st of '97, the patient was started on
17 Q	Could you tell me about those, Doctor?	17	Lasix for some swelling of her lower extremities.
18 A	Well, you're mostly talking about how the patient	18 Q	I note from your order of January 27th of 1997 that
19	appears clinically, meaning that they look thin.	19	you started her on Rocephin; is that correct?
20	They look malnourished. They look chronically ill.	20 A	Yes.
21	There are also some chemical indices that we use	21 Q	What is Rocephin?
22	like serum albumin and some vitamin levels, calcium	22 A	It's an antibiotic.
23	levels, and so on that are markers for nutrition.	13 Q	And on your order immediately before that dated
24 Q	Would you describe her as being cachectic at the	24	January 28th, 1997, Mrs. Willabor was transferred to
-			
25	time of her initial admission?	25	Room 404-A; is that correct?

Loret	oretta Buxton, etcv- Indian Hills Nursing Center, et al				
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1	down into specifics because the statement is so	1		Lab work was reviewed and was found to be	
2	broad.	2		okay at that time. The chest X-ray showed the	
3 Q	Doctor, I'd like to take you back to your	3		chronic granulomatous disease, which we already	
4	physician's notes, if you could take me through	4		referred to, which in my opinion does not need	
5	those, please. First of all, starting with your	5		treatment, as my note states, and that we were	
6	December 31st, 1996 note	6		monitoring blood levels of some of the medicines.	
7	MR. CHAPMAN: Excuse me. I'm not sure	7	0	Why did her chronic granulomatous disease not	
	I'm referring to the same thing you are. Is that	8	Y	require treatment?	
8	marked as an exhibit?	9	۵	The reason in this patient why you would not treat	
9 10	MR. MINGUS: NO.	10		this is because it's old. It just refers to the	
10	THE WITNESS: Do you want to see it?	111		patient having been exposed at one time to TB, and	
11 12	MR. CHAPMAN: Can I get a quick copy?	112		it's not active.	
12	THE WITNESS: How about if I do this.	13	\circ	Could you go on to your February 13th note, please?	
13	We've got a copy machine here, but in order to	14	~	Yes. This is the note we referred to previously.	
15	answer his question, I have to have this.	15	11	The patient continues to globally decline. I	
16	MR. CRANDALL: Do you want a copy of	116		discussed with family. No further aggressive	
17	all of them? You don't have any of them?	117		interventions. Multiple lab abnormalities now,	
18	MR. CHAPMAN: I have them somewhere.	118		which are consistent with dehydration and her poor	
19	For some reason, they are not in my exhibit	119		intake, which is to be expected, of course.	
:.0	notebook.	20	0	What ways are there to treat dehydration?	
	THE WITNESS: Can I answer his	21		We've already discussed that before. It includes	
:.1 :.2	question first?	22	11	passing a tube down from the nose into the stomach,	
.3	MR. CHAPMAN: Yeah, why don't you do	23		creating an opening in the abdominal wall and	
	that, and we can go off the record for a minute.	23		passing a tube through there and feeding through	
5 A	Coming back to your question now, on	25		that tube, intravenous fluids, and then the	
	Page 26			Page 28	
1	December 31st of 1996, my entry says, "Per the	1		previously mentioned TPN, total parenteral	
2	history and physical" that means refer to the	2		nutrition, involving the placing of a central line	
3	page that we previously discussed called the	3		in the chest cavity.	
4	"History and Physical Records," and then in quotes	4	Q	And can you tell me why none of those particular	
5	it says, "partial measures," unquote. What that is	5		measures were taken to treat her dehydration? Because I discussed it with the family, and they	
6	is a clarification of what the patient's advanced		A	<u>.</u>	
7	directive is, and in this case, it's not, quote,	7		didn't want anything further done. I might add that	
8	full measures, which means do everything possible.	8		intravenous fluids are not a permanent solution.	
9	And it's not, quote, an actual DNR, which means	9		You could use those for a few days, but you can'	
0	don't do any aggressive measures. It was kind of in	10		keep IVs in forever. They have to be changed every three days so that the lines don't become infected	
	the gray area in between as specified on the	11	0	What would be the permanent solution or the more	
2	advanced directive, which we've already discussed as	12	Q	long-term solution to treating dehydration? Would	
3	well in some detail, so that's what that entry	13 14		that be the feeding tube?	
4	refers to. Shall I keep going?	14 15	٨	The feeding tube, yes. And even the tube that goes	
5 Q	Well, why don't we stop, and you can get John a	15	A	from the nose into the stomach is not considered	
6	MP CHARMAN, Thank you	17		permanent. You can use that up to a month or two,	
7	MR. CHAPMAN: Thank you. (Discussion off the record.)	17		but that causes complications too, so the only	
8	Why don't you walk me through your	1		permanent one would be the tube that goes right	
19 Q		19 20		through the abdominal wall into the stomach, which	
20	January 18th, 1997 progress note? Sure. The progress note of January 18th of 1997	[is called a PEG tube, P-E-G.	
21 A	states that the patient didn't have any apparent	12	0	I take it then, Doctor, that you determined that	
22 23	complaints. She was confused, but pleasant. He		×	using intravenous fluids would not have been a	
23	temperature was okay. Her vital signs were okay.	23 24		solution to Mrs. Willabor's dehydration problems?	
24	She was not eating well.	25	Δ	It would have been a short-term solution or shall	
	She was not canng well.	100	11	it would have been a bioit term solution. Of shall	

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	Page 33		Page 3:		
1	medical certainty?	I	treatment, "to various areas per nursing notes."		
2	MR. CHAPMAN: Objection.	2	This refers to the patient's multiple bedsores, and		
3 A	Yes, it is.	3	at this point, I discussed with Dr. Niemczura, who's		
4 Q	Could you read your March 24th note, please,	4	a vascular specialist, to see if anything could be		
4 Q 5	Doctor I'm sorry your April 24th note?	5	done to improve the blood supply to these areas that		
	At this point, the patient was evaluated in some way	6	aren't healing. And, in fact, Dr. Niemczura's note		
6 A	by Dr. Epstein, who as I mentioned previously is the	7	is dated nine days previous to that, so he had		
7			obviously seen her in the meantime.		
8	lung specialist, and who at that point had said a	8	•		
9	CAT scan of the chest would have to be done to	9	And, again, would it be appropriate for me		
10	evaluate the nodule, so my note indicates CAT scan	10	to quote from Dr. Niemczura's notes?		
11	of chest pending, meaning further pulmonary	11 Q			
12	follow-up.	12 A	, , , , , , , , , , , , , , , , , , ,		
13 Q	Do you know if the CAT scan of the chest was ever	13	blood supply to any of these areas and they are not		
14	taken?	14	going to heal, and he's recommending amputation.		
15 A	As my notes indicate again, I'm reading between	15	And, again, it's very likely I talked to		
16	the lines here, it was eventually decided not to do	1	Dr. Niemczura personally at the time because that's		
17	the CAT scan for the reason we talked about	17	my practice to do that.		
18	previously, which is that the patient was to be	18	MR. CHAPMAN: Objection.		
19	comfort measures only, so even if we did the	19 A			
20	CAT scan and it was abnormal, it would give us	20	better.		
21	information that wouldn't change what we would do	21 Q	11.2		
22	with the patient.	22	development of Mrs. Willabor's sores?		
23 Q	Doctor, could you read your next note, please?	23	MR. CHAPMAN: Objection.		
24 A	Yeah. In fact, that's what the next note says, "Do	24 A	Major.		
25	not feel CAT scan of the chest should be pursued	25 Q	Could you explain, please?		
	Page 34		Page 36		
1	further." And my memory of this is that I talked to	1 A	C		
2	Dr. Epstein during that time, and that was what we	2	dies, including areas of skin, which is called a		
3	decided between the two of us. And I think we have	3	bedsore.		
4	a note from Dr. Epstein somewhere that probably	4 Q	Mrs. Willabor had sores on her right foot and ankle;		
5	indicates that. And at that point too, we're doing	5	is that correct?		
	cultures on the wounds to see what kind of bugs grow		I'd have to look I know she had multiple		
6 7	out.	7	decubiti. In fact, I've got pictures here, and the		
	Did you refer Mrs. Willabor to Dr. Epstein?	8	pictures are labeled as right foot. Yes, right foot		
8 Q			and ankle, but also the right scalp.		
9 A	Yeah. Dr. Epstein's note is from May 6th of 1997.	9	• •		
0	And at that point too, she had pneumonia.		To a reasonable degree of medical certainty, is it		
1 -	Would it be appropriate for me to quote from	1	your opinion that the lack of blood supply was a		
2	his notes?	2	cause of sores on Mrs. Willabor's right foot and		
3 Q	Sure.	3	ankle?		
4 A	Quote, "In view of general health and age, do not	4	MR. CHAPMAN: Objection.		
5	feel FOB is warranted." There's another word I		It was a major cause. And also the right buttocks		
6	can't read. "Evaluate with diagnostic workup as	6	is listed too, so the scalp, the buttocks, right		
7	above." And I do recall talking to Dr. Epstein at	7	foot, right ankle. She had multiple sites.		
8	this time since I see him almost every day, and I'm	8 Q	What was done to treat Mrs. Willabor's sores?		
9	99 percent sure that our mutual decision was that we	9 A			
.0	shouldn't, as we say, "drag this lady through any	0	sort or another and also antibiotics intermittently.		
,1	more tests," unquote, is how we would have said it	1 Q	What do you mean by topical treatment?		
:2	to each other because it wouldn't change our	2 A	This is one where you have to consult the nursing		
:3	management.	3	notes to see what she was getting, and probably she		
4 Q	Could you read your next note, please, Doctor?	4	was getting different treatments to different sites		
.5 À	We are up to June now. "Ongoing RX," meaning	5	at different times. I can tell you the types of		

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1 A	I don't know how to answer the question because I	1 1	A.	University of Wisconsin.
2	don't know what the legal definition of "negligent"	2 (Q	When?
3	is. I assume that's not a medical word. It's a	31	9	I'm sorry. When you say "license," do you mean my
4	legal word, and I don't know what it means.	4		medical degree?
5 Q	Okay. Do you have any opinions as to whether or not	5		Yes.
6	anything else could have been done to prevent let	6		Graduated in 1974.
7	me rephrase that. Why do you believe Mrs. Willabor	7	0	Okay. Are you board certified in any area?
8	was more prone to fall than perhaps other people?	1	•	I'm board certified in family practice, and I have a
9	MR. CHAPMAN: Objection.	9		fellowship in geriatrics.
10 A	Just what I just said. You know, just advanced age,	10 (0	Would you basically describe for me your current
11	frailty, total body failure.	11		practice?
12	MR. MINGUS: Doctor, I don't have	112 /	A	Solo family practice with an emphasis on geriatrics.
13	anything else for you right now. Thank you very	13 (Q	How long have you practiced in that fashion?
14	much for your time.	14		MR. CRANDALL: Go ahead and answer the
15	CROSS-EXAMINATION	15		question, then make copies.
16 By	Mr. Chapman:	16 /		How long have I been in practice?
17 Q	Doctor, my name is John Chapman. I'm the attorney		· ·	How long have you been a solo family practitioner
18	along with Cal Hurd, the gentleman to my left, the]18		with an emphasis in geriatrics?
19	attorney for the Beulah Willabor family. I have	1 19 A		Intermittently since 1977.
20	some questions for you as well.	20 (~	Do you have staff privileges at any hospitals?
21 A	Sure.			Yes. Lake Hospital Systems East, Lake Hospital
22 Q	Before coming to today's deposition, sir, did you	22		Systems West, Laurelwood, Mount Sinai East,
23	review any papers?	23		Meridia Euclid, Hospice House, and teaching staff at
24 A	Wherever I got this pile of papers from was reviewed	24		Case Western.
25	by me.	25 (Q	Did you talk to anybody other than your attorney in
	Page 42			Page 44
1 Q	Okay. And that comprises the complete chart?	1		preparation for today's deposition?
2 A	(Indicating.)	2 1		No. You know what? I did get a phone call from
3 Q	You're pointing out two additional documents to me.	3		can you excuse me for one second? Let me get another piece of paper.
4	So there's a notebook in front of you, and you	4		(Witness was temporarily excused.)
5	reviewed that prior to today. You also reviewed those photographs. And what's the other document?	5	٨	I actually got a letter from I said phone call.
6	1 6 1	7		That was incorrect. A letter from Loretta Buxtoa
7 A	The document is not labeled. My guess is that this is copies of the nursing notes.	8		that was dated March 22nd, and I did call her back
8 9 Q	May I see it, please?	9		to address the concerns in the letter.
10 A	(Witness complies.) Since it's about half legible,	110		(Indicating.)
10 A	I'm not completely sure.	11 (My question was whether or not you talked with
112 Q	Doctor, during your testimony, you referred to notes	112	•	anybody other than your attorney, who's here today,
13	from Dr. Niemczura?	113		about
14 A	Niemczura.	1 14 A		Yeah, I spoke with Loretta Buxton.
15 Q	Niemczura?			You spoke with Miss Buxton. What did you discuss
16 A	Yes.	116	•	with Miss Buxton?
17 0	And also Dr. Epstein?	1 17 A	A	Boy, I would have addressed whatever she is asking
18 A	Yes.	18		about in her letter. And, basically, the letter
	Could you point those out to me?	119		says, would you talk to Mr. Chapman.
1	I'm holding them in my hand right now.	20 (Is that what you discussed with her?
1	May I see those two pages, please?	21 /	A	Yes.
21 Q			~	How did you respond to that question?
21 Q 22 A	(Witness complies.)	22 (
		23 /	A	I said that we had already set up an interview to
22 A	(Witness complies.) Thank you. Doctor, you're a medical doctor? Yes.	23 / 24	A	I said that we had already set up an interview to talk to somebody, and then I received a phone call
22 A 23 Q	(Witness complies.) Thank you. Doctor, you're a medical doctor?	23 /	A	I said that we had already set up an interview to

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1 A	Yes. It's called the chart, and it's at the nursing	1 Q	You can't get them to come in?
2	home. And I'm holding a copy or what is alleged to	2 A	That's correct.
3	be a complete copy of the patient's chart in my	3 0	Why are they reluctant to come in?
4	hands at this time. (Indicating.)	4 A	You'd have to ask them that.
5 Q	So did you make entries into the charts at	5 Q	What is this specialty that you have in it's
6	Indian Hills during visits to Indian Hills?	6	family medicine and geriatrics. Are you essentially
7 A	The answer is it's done differently on different	7	an internist?
8	patients at different times depending on what's	8 A	No. There are two separate things. One is I did
9	happening. But in general, every patient would have	9	a three-year residency in family practice, and I'm
10	a monthly progress note. If there's something else	10	board certified in family practice. Our
11	going on above and beyond the average monthly visit,	11	organization is the American Academy of Family
12	then additional notes are made.	12	Physicians, so I'm a fellow of the AAFP. I'm board
13	And by the way, the documentation of	13	certified in family practice.
14	conversations with physician and family members also	14	As a separate specialty, I have a fellowship
15	occurs in the nursing notes and sometimes in the	15	in geriatrics, and I'm, therefore, also a fellow of
16	social service notes and other places too, so I'm	16	the American Geriatric Society. So that makes me a
17	referring now strictly to the physician progress	17	FAGS, F-A-G-S, and a FAAFP, F-A-A-F-P. They are
18	notes.	18	separate fellowships, though.
19 Q	If Mrs. Willabor or a member of her family wanted to	19 0	Okay. Is a specialty in geriatrics exactly what
20	contact you regarding the care that Mrs. Willabor		is it that you're able to do? Is it diagnosing
21	was receiving at Indian Hills, what would be the	:21	infirmities of the aged, or can you treat a wide
22	normal mechanism for them to get in touch with you?	:22	variety of infirmities of the aged?
23 A	Call the office. Now, sometimes family members will	23 A	That's correct.
24	leave messages actually at the nursing home.	24 0	Do you have staff privileges at any nursing homes
25	There's a folder for each physician on each one of	25	other than Indian Hills?
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1	the nursing units. And I go to the nursing home	1	25. It's actually more.
2	three times a week, and I check each folder on each	1	How many patients do you have who are residents in
3	nursing unit. And I make sure it's clean by the	3	nursing homes at any given time?
4	time I leave. Occasionally, you'll have a message	4 A	I think it's in the hundreds. I don't know the
5	in the folder saying the family of so and so wants	5	exact number. My billing lady could give you an
6	to talk to you about their mother or whatever.	6	up-to-date, exact number.
7 Q	Is it your practice to wear a white coat when you're	7 Q	So you visit 25 nursing homes three times a week?
8	making the rounds at Indian Hills?	8 A	No. The nursing homes that I visit three times a
9 A	I never wear a white coat. It's scares the	9	week are just my real busy, larger nursing homes
10	patients.	:10	because there's so much work to do. I have to go in
11 Q	Now, from time to time, do you call I think you	:11	three times a week to get all the work done. But
12	indicated that you called upon physicians in other	:12	other nursing homes, I may only have one or two
13	specialties	:13	patients. I go in once a month and just as needed
14 A	That's correct.	14	if they get sick or something.
15 Q	to assist you when a particular problem came up?	15 Q	Doctor, I served a subpoena on you at the end of
16 A	That's correct.	16	last week requesting that you produce certain
17 Q	And you referenced already Dr. Epstein and Dr	17	documents that I could refer to during the
18 A	Niemczura.	:18	deposition. One of them was any documents that
19 Q	Niemczura. Are Dr. Epstein and Dr. Niemczura	:19	evidence, relate, or pertain in any way to the
20	also on staff at Indian Hills?	20	manner in which Beulah Willabor's medical care was
21 A	Not that I know of. It's very unusual to have a	:21	assigned or referred to you. Do you remember that
22	specialist come into nursing homes. It happens	22	request?
23	occasionally.	23 A	As you're reading it now, yes.
24 Q	Why is that?	24 Q	Okay. Do you possess any such documents?
25 A	They just don't do it.	25 A	The only documents I know of relevant to this
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1	Beulah Willabor was a resident at Indian Hills, and	1	Q	Is it proper practice every time the attending
2	we established that that was sometime towards the		_	physician looks in on the resident for somebody to
3	very end of December 1996, and we have also	3		make a note of that?
4	established that she died in July of 1997. So do	-	Α	I'd say that happens most of the time, but not all
5	you have that period of time in mind?	5		of the time.
6 A	I sure do.	6		Mr. Mingus asked you some questions about some
7 Q	Okay. Is it your testimony that you made rounds at	7	-	documents, which I actually saw for the first time
8	Indian Hills about three times a week?	8		today in the physician's notes for Beulah Willabor.
9 A	Yes, absolutely.	وا		What I'd like to do is mark them and ask you a
10 O	Okay. When you made rounds, did you make notations	10		couple questions about them.
11	as to each and every resident who was under your			MR. MINGUS: Note an objection to the
12	care?	12		
12 13 A	Absolutely not.	13		previous question. (Plaintiff's Exhibit 45 marked for
13 A 14 Q	Why is that?	14		identification.)
15 A	It would be incredibly time consuming, and it's not		Q	The two pages that I just marked as Exhibit 45 , both
16	necessary for patient care.	16	-	of those are in your handwriting, correct?
17 Q	So you had to budget your time among all the		Α	That's correct.
18	residents who were under your care at any of the		Q	And those comprise all of the physician's notes for
19	given nursing homes?	10 19	Q	Beulah Willabor?
20 A	I completely disagree with the statement as you made		Α	I didn't personally copy the patient's chart, so
21	it. The way it works is any patient on a skilled	21		don't know the answer to the question.
22	unit has to be seen once a month according to		Q	All of the handwritten notes that you wrote for
23	federal and state regulations, and an entry has to	13	_	Beulah Willabor during the period of time that I'm
24	be made in the patient's chart once a month.	24		asking about are on those two pages?
25	Patients on intermediate care only have to have ar	15		MR. MINGUS: Objection.
	Page 58			Page 60
1	entry every two months. Those are the regulations,	1	A	I don't know because I didn't copy the patient's
2	and the paperwork as it is in front of me meets	2		chart myself.
$\frac{2}{3}$	those regulations, and that's why these are written		0	So there may be additional notes that you made in
4	this way, to meet those regulations.			So there may be additional notes that you made I
		4	×	• •
5		4 5	X	the chart that haven't been brought to your
5 6	That is not, however, a reflection of the	5		the chart that haven't been brought to your attention?
5 6 7	That is not, however, a reflection of the actual time and energy I spend in the nursing home	5 6	A	the chart that haven't been brought to your attention? Is that possible? Yes.
6	That is not, however, a reflection of the actual time and energy I spend in the nursing home with an individual patient. The answer to that is I	5 6	A	the chart that haven't been brought to your attention?
6 7	That is not, however, a reflection of the actual time and energy I spend in the nursing home with an individual patient. The answer to that is I spend whatever time is necessary to take care of the	5 6 7 8	A	the chart that haven't been brought to your attention?Is that possible? Yes.I don't know. I'm not the one who's providing you
6 7 8	That is not, however, a reflection of the actual time and energy I spend in the nursing home with an individual patient. The answer to that is I	5 6 7 8	A	the chart that haven't been brought to your attention? Is that possible? Yes. I don't know. I'm not the one who's providing you with documents.
6 7 8 9	That is not, however, a reflection of the actual time and energy I spend in the nursing home with an individual patient. The answer to that is I spend whatever time is necessary to take care of the patient. And that may mean phone calls to family	5 6 7 8 9	A Q	the chart that haven't been brought to your attention? Is that possible? Yes. I don't know. I'm not the one who's providing you with documents. MR. CRANDALL: I think that's his
6 7 8 9 10	That is not, however, a reflection of the actual time and energy I spend in the nursing home with an individual patient. The answer to that is I spend whatever time is necessary to take care of the patient. And that may mean phone calls to family members from here in the office that don't even get	5 6 7 8 9 10	A Q A	the chart that haven't been brought to your attention? Is that possible? Yes. I don't know. I'm not the one who's providing you with documents. MR. CRANDALL: I think that's his point. Neither does he.
6 7 8 9 10 11	That is not, however, a reflection of the actual time and energy I spend in the nursing home with an individual patient. The answer to that is I spend whatever time is necessary to take care of the patient. And that may mean phone calls to family members from here in the office that don't even get documented in the records. It may mean hallway	5 6 7 8 9 10 11	A Q A	the chart that haven't been brought to your attention? Is that possible? Yes. I don't know. I'm not the one who's providing you with documents. MR. CRANDALL: I think that's his point. Neither does he. I didn't personally copy the chart, so I don't know
6 7 8 9 10 11 12	That is not, however, a reflection of the actual time and energy I spend in the nursing home with an individual patient. The answer to that is I spend whatever time is necessary to take care of the patient. And that may mean phone calls to family members from here in the office that don't even get documented in the records. It may mean hallway consultations with other physicians at the hospital,	5 6 7 8 9 10 11 12	A Q A	the chart that haven't been brought to your attention? Is that possible? Yes. I don't know. I'm not the one who's providing you with documents. MR. CRANDALL: I think that's his point. Neither does he. I didn't personally copy the chart, so I don't know the answer to the question.
6 7 8 9 10 11 12 13	That is not, however, a reflection of the actual time and energy I spend in the nursing home with an individual patient. The answer to that is I spend whatever time is necessary to take care of the patient. And that may mean phone calls to family members from here in the office that don't even get documented in the records. It may mean hallway consultations with other physicians at the hospital, as it did in this case.	5 6 7 8 9 10 11 12 13	A Q A	the chart that haven't been brought to your attention? Is that possible? Yes. I don't know. I'm not the one who's providing you with documents. MR. CRANDALL: I think that's his point. Neither does he. I didn't personally copy the chart, so I don't know the answer to the question. Okay. I just noticed from the entries on those two
6 7 8 9 10 11 12 13 14	That is not, however, a reflection of the actual time and energy I spend in the nursing home with an individual patient. The answer to that is I spend whatever time is necessary to take care of the patient. And that may mean phone calls to family members from here in the office that don't even get documented in the records. It may mean hallway consultations with other physicians at the hospital, as it did in this case. Many things are not reflected in the	5 6 7 8 9 10 11 12 13 14	A Q A Q	the chart that haven't been brought to your attention? Is that possible? Yes. I don't know. I'm not the one who's providing you with documents. MR. CRANDALL: I think that's his point. Neither does he. I didn't personally copy the chart, so I don't know the answer to the question. Okay. I just noticed from the entries on those two forms that you seem to pretty much span the period
6 7 8 9 10 11 12 13 14 15	That is not, however, a reflection of the actual time and energy I spend in the nursing home with an individual patient. The answer to that is I spend whatever time is necessary to take care of the patient. And that may mean phone calls to family members from here in the office that don't even get documented in the records. It may mean hallway consultations with other physicians at the hospital, as it did in this case. Many things are not reflected in the records, so I very, very strongly disagree with the	5 6 7 8 9 10 11 12 13 14 15 16	A Q A Q	the chart that haven't been brought to your attention? Is that possible? Yes. I don't know. I'm not the one who's providing you with documents. MR. CRANDALL: I think that's his point. Neither does he. I didn't personally copy the chart, so I don't know the answer to the question. Okay. I just noticed from the entries on those two forms that you seem to pretty much span the period of time that Mrs. Willabor was there. Would that be
6 7 8 9 10 11 12 13 14 15 16	That is not, however, a reflection of the actual time and energy I spend in the nursing home with an individual patient. The answer to that is I spend whatever time is necessary to take care of the patient. And that may mean phone calls to family members from here in the office that don't even get documented in the records. It may mean hallway consultations with other physicians at the hospital, as it did in this case. Many things are not reflected in the records, so I very, very strongly disagree with the term "budgetmy time." The correct wording would be	5 6 7 8 9 10 11 12 13 14 15 16	A Q A Q A	the chart that haven't been brought to your attention? Is that possible? Yes. I don't know. I'm not the one who's providing you with documents. MR. CRANDALL: I think that's his point. Neither does he. I didn't personally copy the chart, so I don't know the answer to the question. Okay. I just noticed from the entries on those two forms that you seem to pretty much span the period of time that Mrs. Willabor was there. Would that be fair?
6 7 8 9 10 11 12 13 14 15 16 17	That is not, however, a reflection of the actual time and energy I spend in the nursing home with an individual patient. The answer to that is I spend whatever time is necessary to take care of the patient. And that may mean phone calls to family members from here in the office that don't even get documented in the records. It may mean hallway consultations with other physicians at the hospital, as it did in this case. Many things are not reflected in the records, so I very, very strongly disagree with the term "budgetmy time." The correct wording would be I spend whatever time is necessary to make sure the	5 6 7 8 9 10 11 12 13 14 15 16 17	A Q A Q A Q	the chart that haven't been brought to your attention? Is that possible? Yes. I don't know. I'm not the one who's providing you with documents. MR. CRANDALL: I think that's his point. Neither does he. I didn't personally copy the chart, so I don't know the answer to the question. Okay. I just noticed from the entries on those two forms that you seem to pretty much span the period of time that Mrs. Willabor was there. Would that be fair? Oh, yes.
6 7 8 9 10 11 12 13 14 15 16 17 18	That is not, however, a reflection of the actual time and energy I spend in the nursing home with an individual patient. The answer to that is I spend whatever time is necessary to take care of the patient. And that may mean phone calls to family members from here in the office that don't even get documented in the records. It may mean hallway consultations with other physicians at the hospital, as it did in this case. Many things are not reflected in the records, so I very, very strongly disagree with the term "budgetmy time." The correct wording would be I spend whatever time is necessary to make sure the patients' needs are met. And, yes, we all budget	5 6 7 8 9 10 11 12 13 14 15 16 17 18	A Q A Q A Q	the chart that haven't been brought to your attention? Is that possible? Yes. I don't know. I'm not the one who's providing you with documents. MR. CRANDALL: I think that's his point. Neither does he. I didn't personally copy the chart, so I don't know the answer to the question. Okay. I just noticed from the entries on those two forms that you seem to pretty much span the period of time that Mrs. Willabor was there. Would that be fair? Oh, yes. <i>So</i> , normally, you would expect that there wouldn't
6 7 8 9 10 11 12 13 14 15 16 17 18 19	That is not, however, a reflection of the actual time and energy I spend in the nursing home with an individual patient. The answer to that is I spend whatever time is necessary to take care of the patient. And that may mean phone calls to family members from here in the office that don't even get documented in the records. It may mean hallway consultations with other physicians at the hospital, as it did in this case. Many things are not reflected in the records, so I very, very strongly disagree with the term "budgetmy time." The correct wording would be I spend whatever time is necessary to make sure the patients' needs are met. And, yes, we all budget our time in one way or another.	5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	A Q A Q A Q	the chart that haven't been brought to your attention? Is that possible? Yes. I don't know. I'm not the one who's providing you with documents. MR. CRANDALL: I think that's his point. Neither does he. I didn't personally copy the chart, so I don't know the answer to the question. Okay. I just noticed from the entries on those two forms that you seem to pretty much span the period of time that Mrs. Willabor was there. Would that be fair? Oh, yes. <i>So</i> , normally, you would expect that there wouldn't be any notations in between the times that are noted
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6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 Q 21 22 A	That is not, however, a reflection of the actual time and energy I spend in the nursing home with an individual patient. The answer to that is I spend whatever time is necessary to take care of the patient. And that may mean phone calls to family members from here in the office that don't even get documented in the records. It may mean hallway consultations with other physicians at the hospital, as it did in this case. Many things are not reflected in the records, so I very, very strongly disagree with the term "budgetmy time." The correct wording would be I spend whatever time is necessary to make sure the patients' needs are met. And, yes, we all budget our time in one way or another. Sure. When you do visit a resident, is it your practice to make some chart notation? Part of the time, that is done, and there are other times when the resident is seen and no notation is made by me in the chart, but it may be made by	5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 12 23 14	A Q A Q A Q A Q A Q	the chart that haven't been brought to your attention? Is that possible? Yes. I don't know. I'm not the one who's providing you with documents. MR. CRANDALL: I think that's his point. Neither does he. I didn't personally copy the chart, so I don't know the answer to the question. Okay. I just noticed from the entries on those two forms that you seem to pretty much span the period of time that Mrs. Willabor was there. Would that be fair? Oh, yes. <i>So</i> , normally, you would expect that there wouldn't be any notations in between the times that are noted there. They would be out of sequence or would be found somewhere else. That's a really bad question. If you can answer it, my hat is off to you. I'm lost in the labyrinth of the dependent clauses. Let's strike it and try again.
6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 Q 21 22 A 23	That is not, however, a reflection of the actual time and energy I spend in the nursing home with an individual patient. The answer to that is I spend whatever time is necessary to take care of the patient. And that may mean phone calls to family members from here in the office that don't even get documented in the records. It may mean hallway consultations with other physicians at the hospital, as it did in this case. Many things are not reflected in the records, so I very, very strongly disagree with the term "budgetmy time." The correct wording would be I spend whatever time is necessary to make sure the patients' needs are met. And, yes, we all budget our time in one way or another. Sure. When you do visit a resident, is it your practice to make some chart notation? Part of the time, that is done, and there are other times when the resident is seen and no notation is	5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 12 23	A Q A Q A Q A Q A Q	the chart that haven't been brought to your attention? Is that possible? Yes. I don't know. I'm not the one who's providing you with documents. MR. CRANDALL: I think that's his point. Neither does he. I didn't personally copy the chart, so I don't know the answer to the question. Okay. I just noticed from the entries on those two forms that you seem to pretty much span the period of time that Mrs. Willabor was there. Would that be fair? Oh, yes. <i>So</i> , normally, you would expect that there wouldn't be any notations in between the times that are noted there. They would be out of sequence or would be found somewhere else. That's a really bad question. If you can answer it, my hat is off to you. I'm lost in the labyrinth of the dependent clauses.

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1	MR. CHAPMAN: Nutritional assessment.	1	
2 A	Yes, it's labeled a nutritional assessment.	2	that date?
3 Q	Is that a document that you refer to when you're	3	MR. MINGUS: To what date?
4	monitoring the status of your patient?	4	MR. CHAPMAN: He read a note
5 A	No, it is not.	5	indicating no further aggressive interventions, so
6 Q	Do you make then, your own nutritional assessments	6	I'm asking what interventions had preceded that.
7	for residents?	7	
8 A	My nutritional assessment of the residents is based	8	received up to that point, which is embodied in the
9	upon what I'm told by the nursing staff.	9	physicians' orders and the nurses' progress notes
10 Q	In December of 1996, when Beulah Willabor became	10	and nursing notes.
11	your patient, were you concerned about her weight?	11 () So all the care she received at Indian Hills was
12 A	My history and physical on the patient lists the	12	aggressive and should be discontinued?
13	main diagnosis as failure to thrive. Failure to	13	MR. MINGUS: Objection.
14	thrive includes malnutrition and concerns about	14 () Is that your testimony?
15	weight.	15 /	A No, no, no.
16 Q	Okay. So the short answer is, yes, you were?	16 (Q I want to understand about Beulah Willabor. That's
17 A	Yes.	17	what I'm asking about right now.
18 Q	You wanted to monitor the weight?	18 /	A The answer to your question is no.
19 A	It doesn't follow that one would monitor the weight	19 (
20	unless you were going to pursue full measures upon	20	My question is whether or not there were any
21	the patient. Some patients get admitted to the	21	previous aggressive actions taken with respect to
22	nursing home merely for comfort measures, and you're	1	her care.
23	not going to monitor that.	23 A	1 I
24 Q	Was it your understanding that I want to make	24	defining the word "aggressive."
25	sure I understand your testimony here, Doctor. Was	2.5 (2 I'm just asking you with respect to Mrs. Willabor.
	Page 66		Page 68
1	Mrs. Willabor was maintaining Mrs. Willabor's	1	She was your resident. You've got her chart in
2	weight a concern while she was under your care?	2	front of you, and I'm asking a question about her.
3 A	The answer to the question is it depends on who	3 /	- · · ·
4	you're talking about. If the expectation is that	4	defining the word "aggressive." My own personal
5	the patient is going to get better and we are going	5	definition may be different than, for example,
6	to do everything possible, the answer would be yes.	6	Loretta Buxton's definition of the term.
7	If the expectation was the patient was being	7 (-
8	admitted for comfort measures or for what we call	8	want to understand what you meant when you made that
9	maintenance, the answer would be varying degrees of	9	entry.
10	yes and no. So in other words, it depends what your	10 A	5
11	goal is.	11	outcome of my conversation with the family and what
12 Q	What was your goal for Beulah Willabor?	112	they mean by it, so the answer is it means different
13 A	The goal is whatever the family directs us to do.	13	things on different patients at different times when
14 Q	What did the family direct you to do?	14	I made that entry. It doesn't mean the same thing,
15 A	As my notes state on March 6th of 1997, "comfort	15	and I'm not saying that to give you a hard time.
16	measures only."	16 (
17 Q	Is maintaining nutritional status a part of a	1 17	"aggressive actions" meant when you wrote it down in your chart?
18	comfort measure? That's completely arbitrary. If you talk to ten	118 119 A	your chart? A Yes, I did.
19 A	different people, they'll give you ten different	20 C	
20 21	answers. So the answer is whatever the family	20 C	•
22	decides. And, again, to quote from my own progress	22 (•
22	notes here, this time February 13th of 1997,	23 A	-
23 24	"Discussed with family, no further aggressive	24	tube. It also would be intubation. It also would
25	interventions."	25	be pounding on the chest in case the heart stops.
		1 -	

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1 A	Malnutrition or poor nutrition or undernutrition is	1		in a nursing home.
2	one of the contributing factors to the development	1		<i>So</i> "comfort measures" is really a nursing term more
3	of decubiti.	3		than a doctor's term? Would that be accurate?
4 Q	Regarding the failure to thrive diagnosis, is that a	1		It's really both.
5	physical condition, failure to thrive, like	5		What does it mean to you as a physician?
6	tuberculosis or pneumonia, or what is that exactly?	6		It means different things on different patients at
7 A	The term "failure to thrive" comes from the	7		different times in different contexts.
8	pediatric literature, and it refers to babies who	8		What does it mean to you as to Mrs. Willabor?
9	don't feed well and who don't develop and grow well	9	-	Again, it depends on what the family decided. And
10	and just don't do well. They're runty r-u-n-t-y.	10		as I mentioned earlier, I have these conversations
11	They're runts.	11		three or four times a day with different family
12	You can see this again on the other end of	12		members, so I can't directly remember on this
13	life with frail, little old ladies that kind of are	13		particular case.
14	globally failing. They can't do things for	14		Okay. You have indicated that families make
15	themselves. They don't eat well. They are getting	15		health-care decisions or certainly participate in
16	weaker, more prone to accidents. They do less of	1		health-care decisions?
17	their ADLs, activities of daily living, just things	17		That's correct.
18	that we all do to take care of ourselves.	18		And in the context of comfort measures, you would
9	Intellectual decline, decreased problem-solving	19	•	turn to the family for guidance as to what measures
0	ability, decreased ability to respond to the	20		to provide and what measures not to provide. Would
1	environment, sensory deprivation and decline,	11		that be accurate?
2	meaning you don't see as well, you don't hear as	22	A	That's correct.
3	well, you don't taste as well, you don't swallow as	23	Q	What about selection of a nutritional supplement if
4	well.	24	-	there's a range of nutritional supplements
5 Q	Can the global failure that attends a failure to	25		available, is that a decision that's made by the
	Page 74			Page 76
1	thrive be related to nutrition?	1		family?
2 A	Yes.	2	А	Okay. The selection of what nutritional supplement
3 Q	What's that relationship?	3		used on a given patient at a given time is
4 A	Cause and effect. Poor nutrition can cause failur	4		determined by the recommendation of the nutritionist
5	to thrive, and failure to thrive can cause	5		or whoever is involved in making the recommendation
6	nutritional problems.	6		about the patient's nutrition, also the nurses who
7 Q	I would expect that in the case of an infant, that	7]	have to actually feed the patient, and sometimes the
8	the failure to thrive designation would require that	8		input from family members.
9	such an infant receive more care, rather than less	9		An example of that will be nutritionists
0	than a baby who's doing fine?	10		will recommend a certain thing. The nurses will
1 A	Again, the answer depends completely on what your	11		say, "She's not going to eat that. She will refuse
2	expectation and what your goal is. If your goal i	12	1	to eat that. Try something else." And then a
3	to make the patient better and prolong life, life	13		family member may chime in saying, "She loves
4	expectancy, then you would be more interventional.	14		watermelon, but she won't eat ice cream." They'll
5	If the goal is comfort measures and not to prolong	15		know food preferences, so it's a combination of all
6	the life expectancy, then you would not necessarily	16	1	those inputs.
7	do anything differently at all.	17		So needless to say, that's different for
8 Q	What does the phrase "comfort measures" mean?	18		each patient at different contexts at different
9 A	It means keep the patient comfortable and don't do	19		times, and it may change as the patient becomes more
0	anything more than that.	20		involuted. She may be able to safely eat something
1 Q	For somebody like Mrs. Willabor with multisymptom	21		at one point in time, which later on she may not be
2	that you've already testified about, what steps do	22		able to safely take by mouth. So that too is
3	you take to keep such a person comfortable?	23		dynamic. It changes over time.
1 / 4	A goin the energy of is in the nursing notes all the	24	0	Suffice it to say that it's important for the
4 A	Again, the answer is in the nursing notes, all the			
5	n-Mancini The Court Reporters	25		nursing staff and the physician to keep in touch Page 73 - Page 76

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1 A	No, it's not.	1	going to have to reconvene.
2 Q	How do you know?	2	MR. CRANDALL: We can deal with that
3 A	How do I know what?	3	later,
4 Q	How do you know that aggressive measures meant IV	4	MR. CHAPMAN: We've got a trial coming
5	fluids?	5	up on June 17th.
6 A	Okay. Because as I mentioned several times, I have	6	MR. CRANDALL: That's fine. There's no
7	this conversation several times a day with different	7	reason this depo should have taken this long.
8	family members, and because of the way that	8	MR. CHAPMAN: Pardon me?
9	conversation is carried out routinely, the	9	MR. CRANDALL: I don't know what part
10	conversation goes something like this again, I'm	:10	you didn't understand.
11	paraphrasing your mother either can't eat or	:11	MR. CHAPMAN: My client is a woman who
12	won't eat. She's becoming dehydrated and	:12	died. I'm representing the family.
13	malnourished. Our choices are A, B, C, and D. And	113	MR. CRANDALL: This isn't a wrongful
14	I need you to give me guidance as to where we should	314	death case against my client. This is a fact
15	go with your mother at this time. And the outcome	15	witness. He's already given up two hours and tein
16	of that conversation is what gets recorded in the	16	minutes of his time, and he's a professional. So if
17	progress notes. And, very likely, the conversation	17	you want to apply to the court for more time, then
18	took place at a time and place different than when] 18	go ahead.
19	this entry was made.	3 19	MR. CHAPMAN: I certainly will because
20 Q	You don't have any specific recollection of that	20	I have not been that long with this witness.
21	conversation, though?	21	MR. CRANDALL: You have. He said, "I
2:2 A	No. As I said several times	22	told you before," about 200 times, and you're asking
23	MR. CRANDALL: Just answer.	23	the same questions over and over.
24 Q	And you don't have to say it again. You could just	24	MR. CHAPMAN: I'll tell you what, I'll
25	say no.	25	try and zip it along.
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1 A	That's correct. I do not have a recollection of	1	By Mr. Chapman:
2	whatever it is you just said.	2 (Q Doctor, can we go to Exhibit 41 , which is the order
3 Q	But it's your understanding that when a family	3	that you put on? Doctor, I'm referring you now to
4	indicates on an advanced directive what course d	4	the physician's telephone order dated January 21st.
.5	treatment they want, that can change?	5	There's reference to something called Lasix?
6 A	It does change.	6 /	A Correct.
7 Q	It's a matter of consulting with the family when	7 (Q Is that something that you consulted with the family
8	changes in status appear?	8	about before putting her on?
9 A	That's exactly right.	9 /	A No.
10 Q	So if the family had wanted indicated on	10 0	2 Why did you put her on that?
1:1	Exhibit 7 that they do not want placement of tubes	11 /	A I don't remember. I can give you my best educated
1:2	for nutrition, that could have changed as well?	12	guess.
13 A	It frequently does.	13 (
14 Q	Thank you. Now, Doctor I want to go back to your	14	what you know.
1:5	MR. MINGUS: I have a check here	15 /	5
1		1.4.5.	2 Lasix, you identified as a diuretic?
16	through 3:00.	16 (
16 17	THE WITNESS: Okay.	16 (17 /	A That's correct.
17 18	THE WITNESS: Okay. MR. CRANDALL: How much longer are you	17 / 18 (A That's correct. Q Are you familiar with the properties of Lasix?
17	THE WITNESS: Okay. MR. CRANDALL: How much longer are you going to be?	17 / 18 (19 /	A That's correct.Q Are you familiar with the properties of Lasix?A I couldn't practice medicine without being familiar
17 18	THE WITNESS:Okay.MR. CRANDALL:How much longer are yougoing to be?I'm going to be a while.	17 / 18 (19 / 20	 A That's correct. Q Are you familiar with the properties of Lasix? A I couldn't practice medicine without being familiar with the properties of Lasix.
17 18 19 23 21	THE WITNESS:Okay.MR. CRANDALL:How much longer are yougoing to be?I'm going to be a while.MR. CHAPMAN:I'm going to be a while.MR. CRANDALL:We've got to stop at	17 / 18 (19 / 20 21 (A That's correct. Q Are you familiar with the properties of Lasix? A I couldn't practice medicine without being familiar with the properties of Lasix. Q In a thumbnail, Doctor, what impact does Lasix have
17 18 19 23 21 22	THE WITNESS:Okay.MR. CRANDALL:How much longer are yougoing to be?I'm going to be a while.MR. CHAPMAN:I'm going to be a while.MR. CRANDALL:We've got to stop at3:30.	17 / 18 (19 / 20 21 (22	 A That's correct. Q Are you familiar with the properties of Lasix? A I couldn't practice medicine without being familiar with the properties of Lasix. Q In a thumbnail, Doctor, what impact does Lasix have on a resident's body?
17 18 19 26 21 22 23	THE WITNESS:Okay.MR. CRANDALL:How much longer are yougoing to be?I'm going to be a while.MR. CHAPMAN:I'm going to be a while.MR. CRANDALL:We've got to stop at3:30.MR. CHAPMAN:MR. CHAPMAN:Why?	17 / 18 (19 / 20 21 (22 23 /	 A That's correct. Q Are you familiar with the properties of Lasix? A I couldn't practice medicine without being familiar with the properties of Lasix. Q In a thumbnail, Doctor, what impact does Lasix have on a resident's body? A Okay. It's a diuretic, which means that it removes
17 18 19 23 21 22	THE WITNESS:Okay.MR. CRANDALL:How much longer are yougoing to be?I'm going to be a while.MR. CHAPMAN:I'm going to be a while.MR. CRANDALL:We've got to stop at3:30.	17 / 18 (19 / 20 21 (22	 A That's correct. Q Are you familiar with the properties of Lasix? I couldn't practice medicine without being familiar with the properties of Lasix. Q In a thumbnail, Doctor, what impact does Lasix have on a resident's body? A Okay. It's a diuretic, which means that it removes extra fluid from the body.

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1 A	I perused the entire chart that's in front of me so		Q	What do you mean by "short-termuse of a diuretic"?
2	if, in fact, the chart contains the pages that	2	Â	Well, in looking at the notes here and
3	you're referring to, the answer is yes.	3	Q	I just want to know what you mean by the term.
4 Q	It's marked as Plaintiff's Exhibit 16. It's in	1	Ā	Well, the answer is the duration during which this
5	front of you. Would you go to the entry marked	5		patient was on the diuretic, which is it was
6	March 7th, 1991?	6		discontinued on March 12th, and it was started on
7 A	Okay. It must be 3-7-97.	7		January 21st, so it was about a six-week period,
8 Q	I beg your pardon. Yes, it is '97, of course.	8	Q	It would basically approximate the period in which
9 A	I think I have it, yes.	9		the 44-pound weight drop occurred?
10 0	Okay. Do you see the notation of a recorded weight	10		MR. MINGUS: Objection.
11	loss of 44 pounds since January 27th, 1997?	11	Α	The answer is that's correct, and it's to be
12 A	Yes, I do.	12		expected. One of the reasons for giving the
13 Q	Do you see the notation above that of February 10th?	13		diuretic is to get rid of excess fluids from the
14	It indicates weekly weights have been ordered.	14		body, so you expect a weight loss.
15 A	Correct.	15	Q	So is it your view that the 44-pound weight loss
16 Q	And below that, weekly weights not noted?	16	-	during the time that she was on Lasix was a good and
17 A	I see that, yes.	:17		healthy thing to occur to her?
18 Q	Okay, Did it ever come to your attention that	18		MR. MINGUS: Objection.
19	Mrs. Willabor was not being weighed in accordance	:19	А	Okay. The answer to the question is that the weight
20	with your orders?	20		loss was due to a combination of the diuretic and
21 A	I don't know the answer to the question because I	21		the patient not eating. The fact that the patient
22	don't remember. But I will tell you in the overall	1		is not eating is obviously not good and healthy for
23	context of a patient not eating, I don't need that	213		the patient. Lasix was used to get rid of the extra
24	information. I know she's going to lose weight, so	24		fluid which was impeding the healing of lower
25	I don't need to have somebody tell me that. Plus, I	215		extremity decubiti, which was done in an attempt to
	Page 90			Page 92
1	can walk in the room and look at the patient and	1		make the patient better.
2	tell that too.		Q	Do you have specific recollections of these things,
3 Q	Okay. So it's your understanding that she lost 44	3		Doctor?
4	pounds in six weeks because she was not eating?	[А	No.
5	MR. MINGUS: Objection.	ļ	Q	So you're not speaking from personal recollection of
6 A	The records clearly answer the question here.	6	•	Mrs. Willabor's case? That's correct.
7	Resident has been refusing meals. Repeatedly resident refuses meals. This entry is made more	Į	A Q	Okay. If, in fact, there are no weekly weights
8	than once. And that goes back to the issue of the	9	Q	noted during this six-week period, Doctor, although
9 10	difference between won't eat and can't eat.	110		there was an order on indicating this resident was
10 11 Q	When we're talking about a woman who lost 44 pounds	111		supposed to be weighed QOD, in your opinion, is that
12	in six weeks, Doctor, is it still appropriate to	112		proper nursing care?
113	have a person of that kind, given Mrs. Willabor's	1		MR. MWGUS: Objection.
14	total clinical picture, on a diuretic?	114	А	I don't have an opinion about that because I'm not a
115 A	The answer to the question is that sometimes it	115		nurse, and I'm not qualified.
116	would be, and sometimes it would not be. In this	16	0	I believe Mr. Mingus asked you a question about
117	particular situation, the patient had some edema of	117	`	whether or not Mrs. Willabor was receiving proper
118	her lower extremities, and the concern here and	118		care while she as at Indian Hills, and you opined to
119	this becomes somewhat technical is the patient	119		a reasonable degree of certainty that she was.
20	already has decubiti on her feet or on her lower	20	Α	I was referring to the topical treatment that the
21	extremities and then has some swelling on top of it.	21		patient was receiving to the decubiti.
22	It's going to even slow down the healing more, so	22	Q	When you give an order to a nursing staff, do you
213	you want to get rid of the fluid. This was done	23		expect it to be carried out?
214	with short-term use of a diuretic and with some	24		Of course.
:15	elastic stockings. n-Mancini The Court Reporters	25	Q	Is it improper for a nurse to fail to carry out your
				Page 89 - Page 92

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1 A	Yes, I do.	1	could that also have contributed to the development
2 Q	Is there a notation in the labs there as to what's	2	of her skin problems?
$\begin{vmatrix} 2 \\ 3 \end{vmatrix}$	going on with her albumin levels?	3	MR. MINGUS: Objection.
4 A	Yes. Her albumin level is low. It's 2.7.	_	
	The use of Lasix would tend to dehydrate, you	4 Q	The answer could the answer is yes.
5 Q		5 A	•
6	indicated; is that correct?	6	MR. MINGUS: Objection. Move to
7	MR. MINGUS: Objection.	7	strike.
8 A	The use of Lasix always would carry the potentia	8 Q	You've indicated, Doctor, that you expect that there
9	for dehydration, if not monitored. But if used	9	can be a number of consequences for somebody who
0	correctly, should not lead to dehydration.	10	lost 44 pounds over a six-week period. Can you
1 Q	What are the ways that the use of Lasix how do	11	summarize for me what kind of consequences you would
2	you monitor a resident who's on Lasix?	12	expect to see in a woman of Mrs. Willabor's status
3 A	You do serial weights. You monitor blood tests.	13	during this time period in her life?
4	You look at the patient clinically.	14 A	Yes. I expect her to decline globally and die.
5 Q	As I look at the notes which I marked as	15 Q	Because of a 44-pound weight loss in a six-week
6	Exhibit 45 they are your notes, sir.	16	period?
7	MR. CRANDALL: Right here.	17 A	No.
8	(Indicating.)	18	MR. MINGUS: Objection. Objection.
9	Are you going to go back to those? Is that	19 A	No, no, no.
0	what you want to look at?	20 0	That's my question, Doctor.
1	MR. CHAPMAN: It's Exhibit 45.		No. Because of the conspiracy of medical problems
2	MR. CRANDALL: Well, he's got them in	22	producing the inability or unwillingness to eat and,
3	here. I just wanted to know, is that what you're	23	therefore, the weight loss. Now, the label for
4	going to do. So we should flip to them?	24	that, again, is adult failure to thrive syndrome.
5	MR, CHAPMAN: Please.	25 Q	So the 44-pound weight loss in a six-week period is,
-		X	
	$\mathbf{D}_{0} \approx 00$		$\mathbf{D}_{acc} = 100$
	Page 98		Page 100
1 Q	Do you have those in front of you now, sir?	1	in your view, irrelevant to her decline?
2 A	Do you have those in front of you now, sir? If you're referring to that, the answer is yes.	2	in your view, irrelevant to her decline? MR. MINGUS: Objection.
2 A 3	Do you have those in front of you now, sir? If you're referring to that, the answer is yes. (Indicating.)	2 3 A	in your view, irrelevant to her decline? MR. MINGUS: Objection. I don't agree with that statement at all.
2 A 3 4 Q	Do you have those in front of you now, sir? If you're referring to that, the answer is yes. (Indicating.) We're talking about the same thing. Do you see any	2 3 A 4 Q	 in your view, irrelevant to her decline? MR. MINGUS: Objection. I don't agree with that statement at all. In what ways was it relevant to her decline? That's
2 A 3 4 Q 5	Do you have those in front of you now, sir? If you're referring to that, the answer is yes. (Indicating.) We're talking about the same thing. Do you see any reference to the fact that Mrs. Willabor is on Lasix	2 3 A 4 Q 5	 in your view, irrelevant to her decline? MR. MINGUS: Objection. I don't agree with that statement at all. In what ways was it relevant to her decline? That's what I want to understand.
2 A 3 4 Q 5 6	Do you have those in front of you now, sir? If you're referring to that, the answer is yes. (Indicating.) We're talking about the same thing. Do you see any reference to the fact that Mrs. Willabor is on Lasix in any of your notes?	2 3 A 4 Q 5 6 A	 in your view, irrelevant to her decline? MR. MINGUS: Objection. I don't agree with that statement at all. In what ways was it relevant to her decline? That's what I want to understand. In what way was what relevant to her decline?
2 A 3 4 Q 5	Do you have those in front of you now, sir? If you're referring to that, the answer is yes. (Indicating.) We're talking about the same thing. Do you see any reference to the fact that Mrs. Willabor is on Lasix in any of your notes? No, I do not.	2 3 A 4 Q 5 6 A 7	 in your view, irrelevant to her decline? MR. MINGUS: Objection. I don't agree with that statement at all. In what ways was it relevant to her decline? That's what I want to understand. In what way was what relevant to her decline? MR. CRANDALL: The 44-pound weight
2 A 3 4 Q 5 6	Do you have those in front of you now, sir? If you're referring to that, the answer is yes. (Indicating.) We're talking about the same thing. Do you see any reference to the fact that Mrs. Willabor is on Lasix in any of your notes? No, I do not. Why did you take her off Lasix?	2 3 A 4 Q 5 6 A 7 8	 in your view, irrelevant to her decline? MR. MINGUS: Objection. I don't agree with that statement at all. In what ways was it relevant to her decline? That's what I want to understand. In what way was what relevant to her decline? MR. CRANDALL: The 44-pound weight loss.
2 A 3 4 Q 5 6 7 A 8 Q 9 A	Do you have those in front of you now, sir? If you're referring to that, the answer is yes. (Indicating.) We're talking about the same thing. Do you see any reference to the fact that Mrs. Willabor is on Lasix in any of your notes? No, I do not. Why did you take her off Lasix? Okay. The answer is that I don't remember, but I	2 3 A 4 Q 5 6 A 7 8 9 A	 in your view, irrelevant to her decline? MR. MINGUS: Objection. I don't agree with that statement at all. In what ways was it relevant to her decline? That's what I want to understand. In what way was what relevant to her decline? MR. CRANDALL: The 44-pound weight loss. In what way was the 44-pound weight loss relevant to
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