

State of Ohio,)
) SS:
 County of Cuyahoga.)

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IN THE COURT OF COMMON PLEAS

- - -

Iwona Valdivieso, etc.,)	
)	
Plaintiff,)	
)	Case No. 443978
vs.)	
)	Judge Mannen
University Hospitals of)	
Cleveland, et al.,)	
)	
Defendants.)	

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DEPOSITION OF SUSAN WIERSMA M.D.

WEDNESDAY, JUNE 26, 2002

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The deposition of Susan Wiersma, M.D., called by the Plaintiff for examination under the Ohio Rules of Civil Procedure, taken before me, Ivy J. Gantverg, Registered Professional Reporter and Notary Public in and for the State of Ohio, by agreement of counsel and without further notice or other legal formalities, at the offices of Finelli & Margolis, 730 Leader Building, Cleveland, Ohio, commencing at 9:06 a.m., on the day and date above set forth.

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<p>1 APPEARANCES:</p> <p>2 On Behalf of the Plaintiff:</p> <p>3 Daniel M. Finelli, Esq. 4 Ronald A. Margolis, Esq. 5 Finelli & Margolis 6 730 Leader Building 7 Cleveland, Ohio 44114</p> <p>8 On Behalf of Defendant University Hospitals of Cleveland:</p> <p>9 Kevin M. Norchi, Esq. 10 Moscarino & Trau 11 630 Hanna Building 12 Cleveland, Ohio 44115</p> <p>13 On Behalf of Defendants Case Western Reserve University, 14 Dr. Barry Wessels and Dr. Sam Beddar:</p> <p>15 Stephen D. Walters, Esq. 16 Weston, Hurd, Fallon, Paisley & Howley 17 2500 Terminal Tower 18 Cleveland, Ohio 44113</p> <p>19 On Behalf of Defendants Dr. Wiersma and Dr. Kinsella:</p> <p>20 Marc W. Groedel, Esq. 21 David H. Krause, Esq. 22 Reminger & Reminger 23 113 St. Clair Building 24 Cleveland, Ohio 44114</p> <p>25 On Behalf of Dr. Wiersma and Dr. Kinsella Personally:</p> <p>Matthew P. Moriarty, Esq. Brzytwa, Quick & McCrystal 1660 West 2nd Street - Suite 900 Cleveland, Ohio 44113</p> <p>21 Also Present:</p> <p>22 Barry Hersch, Videographer</p>	<p>1 SUSAN WIERSMA, M.D.</p> <p>2 called by the plaintiff for examination under the Rules, 3 having been first duly sworn, as hereinafter certified, 4 was deposed and said as follows:</p> <p>5 CROSS EXAMINATION</p> <p>6 BY MR. FINELLI:</p> <p>7 Q. Doctor, good morning. My name is Dan Finelli, we 8 met before. The gentleman to my left is Ron Margolis, 9 and jointly we represent the Estate of Joshua Valdivieso.</p> <p>10 Can you state your full name and spell your last 11 name for the record?</p> <p>12 A. Susan Renee Wiersma, W-I-E-R-S-M-A.</p> <p>13 Q. Just a few guidelines. In the deposition, you 14 need to have your responses be all verbal responses so 15 the court reporter can take them down.</p> <p>16 If at any time you don't understand my question, 17 please tell me and I will repeat it so that you 18 understand it before answering.</p> <p>19 If at any time you need to take a break or talk 20 with counsel, just let me know and you can do so as long 21 as there is not a question pending, fair enough?</p> <p>22 A. Yes.</p> <p>23 Q. I have just been handed this morning a copy of 24 your curriculum vitae. Can you take a look at it and -- 25 MR. MARGOLIS: Mark it.</p>

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<p>1 MR. FINELLI: Yes, mark it as Plaintiff's 2 Exhibit W-1.</p> <p>3 And just let me know if that is a current 4 CV.</p> <p>5 (Thereupon, Plaintiff's Exhibit 1 (Wiersma) 6 was marked for identification.)</p> <p>7 (Thereupon, Mr. Walters entered the room.)</p> <p>8 MR. GROEDEL: You don't have to go through 9 every page. If it looks relatively up-to-date, 10 Susan, just tell him.</p> <p>11 A. I forgot the question.</p> <p>12 Q. I just wanted to know if it is a current CV.</p> <p>13 A. Yes.</p> <p>14 Q. Okay, thanks.</p> <p>15 Rather than just paging through it, let me just 16 ask you a few questions. First some bio data. Your date 17 of birth?</p> <p>18 A. 5-5-58.</p> <p>19 Q. And your Social Security number?</p> <p>20 A. 269-46-1503.</p> <p>21 Q. And your business address?</p> <p>22 A. 11100 Euclid Avenue, Cleveland, Ohio, 44106.</p> <p>23 Q. Okay, looking at your education, I notice you 24 graduated from Dartmouth College undergraduate in 1980?</p> <p>25 A. Yes.</p>	<p>1 Q. And then you attended medical school at Case 2 Western Reserve University?</p> <p>3 A. Yes.</p> <p>4 Q. Okay.</p> <p>5 Following medical school, tell me about your 6 training, postgraduate training?</p> <p>7 A. I did my internship in general pediatrics at the 8 University of Minnesota program, which included the 9 University of Minnesota Hospitals and Clinics, 10 Minneapolis Children's Hospital, St. Paul Children's 11 Hospital, Hennepin County and Ramsey County Hospitals.</p> <p>12 Q. And --</p> <p>13 A. I did my pediatric residency --</p> <p>14 Q. Let me just stop right there. That was an 15 internship?</p> <p>16 A. Internship, correct.</p> <p>17 Q. One year?</p> <p>18 A. One year.</p> <p>19 And then it was part -- that is the first year of 20 the three year general pediatric residency. I completed 21 the residency in that same program. So I spent three 22 years at University of Minnesota program.</p> <p>23 Q. And what year did you complete that residency?</p> <p>24 A. 1987.</p> <p>25 Q. And are you Board certified in pediatrics?</p>

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<p style="text-align: right;">Page 6</p> <p>1 A. I am. 2 Q. Okay. 3 And when would that -- when was that Board taken? 4 A. The original Board was -- it says in my CV. I am 5 not exactly sure of the year. But I recently recertified 6 in general pediatrics via the American Board of 7 Pediatrics' recertification program last year. 8 Q. Okay, it says -- 9 A. So I am currently Boarded. 10 Q. -- June of '89, that sounds right? 11 A. Yes. 12 Q. Okay, all right. 13 Then following your pediatric residency, what did 14 you do? 15 A. I did a three year pediatric hematology/oncology 16 Fellowship at the University of Southern California 17 program, which the hospital affiliation was Children's 18 Hospital of Los Angeles, as well as LA County. 19 Q. Okay. 20 And then you became Boarded in that, it looks like 21 in 1992? 22 A. Yes. 23 Q. Correct? 24 Pediatric -- 25 A. And I have recertified in that, as well.</p>	<p style="text-align: right;">Page 7</p> <p>1 Q. Okay, so you were Board certified in pediatric 2 heme-onc in 1992? 3 A. Yes. 4 Q. And then, as you said recertified, okay. 5 And that was completed -- when did you complete 6 that Fellowship? 7 A. 1990. 8 Q. 1990, okay. 9 Following the -- and was that the completion of 10 your training? 11 A. Yes. 12 Q. Following that, what did you do? 13 A. I became an assistant professor of medicine and 14 pediatrics at the University of Wisconsin. 15 Q. So following residency and Fellowship, you went to 16 the University of Wisconsin? 17 A. Yes. 18 Q. And were you in private practice there, or did you 19 have an academic position? 20 A. No, I was an assistant professor of pediatrics at 21 the medical school. It was an academic -- is an academic 22 program. 23 Q. Okay. 24 How long were you there? 25 A. From July of 1990 until June of 1998.</p>
<p style="text-align: center;">*** Notes ***</p>	
<p style="text-align: right;">Page 8</p> <p>1 Q. '98? 2 A. Eight. 3 Q. Okay. 4 And while you were there, was your practice mostly 5 pediatric hematology/oncology? 6 A. Yes. 7 Q. Okay. 8 During that time period, did you specialize in any 9 type of pediatric cancer, or were you doing a generalized 10 pediatric heme-onc practice? 11 A. I was doing a generalized pediatric hematology/oncology 12 practice. However, I was also the director of pediatric 13 marrow transplantation at University of Wisconsin, and I 14 also took care of adult transplant patients, as well. 15 And I was a member of the department of medicine, an 16 assistant, and then an associate professor of medicine in 17 Wisconsin, as well. 18 Q. Okay. 19 During that period of time, can you give me an 20 estimate of how many neuroblastoma cases you had treated? 21 A. I don't know. 22 Q. During the eight years, you can't give me an 23 estimate if it was 20, 50, a hundred? 24 A. Less than 50. 25 Q. Less than 50, okay.</p>	<p style="text-align: right;">Page 9</p> <p>1 Are you still licensed in Wisconsin? 2 A. Yes. 3 Q. All right. 4 During that period of time, did you have any 5 discipline regarding your license? 6 A. No. 7 Q. During that period of time, were you a defendant 8 in any medical negligence cases? 9 A. No. 10 Q. All right. 11 During that period of time, had you done -- had 12 you taken any depositions? 13 A. Yes. 14 Q. How many, roughly, if you can recall? 15 A. There were two cases in which I was involved, one 16 of which I actually did not testify in until after I 17 moved to Cleveland, but the case itself was a case from 18 the University of Wisconsin. 19 Q. You were involved in the patient care, but you 20 were not named as a defendant? 21 A. Correct. 22 Q. All right. 23 What were the circumstances of that case, or the 24 allegations, if you recall? 25 A. There were two cases.</p>
<p style="text-align: center;">*** Notes ***</p>	

<p style="text-align: right;">Page 10</p> <p>1 Q. Okay, the one case you were just talking about. 2 A. The case we were just talking about was a teenage 3 girl who had 11 months of abdominal complaints and bloody 4 diarrhea for which people made a diagnosis of an eating 5 disorder, eventually took her out of her home and away 6 from her parents because the court felt that her parents 7 weren't participating in the eating disorder program, and 8 after 11 months of this, and when she was in a court 9 ordered eating disorder clinic, inpatient facility, she 10 was taken to the hospital in the middle of the night 11 where a very large unresectable colon cancer was 12 diagnosed. She ultimately succumbed to that disease, and 13 there were issues regarding the delay in diagnosis. 14 Q. Okay. 15 A. I was the physician that became involved when the 16 diagnosis was made. So that -- my testimony began at the 17 time that the diagnosis was made. I was not involved in 18 the 11 months prior to that. 19 Q. Okay. 20 Do you know who the plaintiff attorney was that 21 took your deposition? 22 A. There were, as best I can recall, 12 lawyers at 23 the table when my deposition was taken. When I actually 24 went to testify, I think there was only one defendant. 25 The -- but I don't remember the exact names.</p>	<p style="text-align: right;">Page 11</p> <p>1 Q. Okay. 2 Were you represented by counsel during your 3 deposition? 4 A. Yes. 5 Q. Do you know his name or her name? 6 A. I don't remember. I have -- certainly have those 7 records, but I don't remember. 8 Q. Do you know what firm they were from? 9 A. I am sorry, I don't remember. 10 Q. Okay, that is fine. 11 And you mentioned two cases. The other case? 12 A. The other case was a young man who was diagnosed 13 with a nonmetastatic osteogenic sarcoma, which when 14 treated with best available therapy at that time had a 15 long-term disease-free survival rate of approximately 70 16 percent maybe, give or take. His parents did not want 17 him treated with standard medicine because they felt that 18 chemotherapy was poison. So we attempted to take the 19 family to court to say that he should be treated with 20 this sort of prognosis. 21 He was not my primary patient, but he was a 22 patient of our practice, and I was called upon to testify 23 in that case. 24 Q. And the only testifying you did was deposition? 25 A. No, the testifying I did was in court.</p>
<p style="text-align: center;">*** Notes ***</p>	
<p style="text-align: right;">Page 12</p> <p>1 Q. Okay. 2 You mentioned your earlier case where you gave a 3 deposition. Do you have records on that, as to who your 4 attorney was? 5 A. Yes. 6 Q. Do you have a deposition transcript? 7 A. I don't believe I current -- I have a copy of 8 that, no. 9 Q. Okay. 10 If you could kindly give that information to your 11 attorney, Mr. Groedel, or Mr. Krause -- 12 A. Okay. 13 Q. -- I would ask that you pass that along, okay? 14 A. Yes. 15 Q. I am just curious, graduating or finishing your 16 training in southern California, how is it that you 17 arrived at Wisconsin? Are you originally from that area? 18 A. Yes. 19 Q. Okay. 20 Have you ever served as an expert witness -- 21 A. No. 22 Q. -- in medical malpractice cases? 23 Why did you leave the University of Wisconsin in 24 1998? 25 Do you need to break to take that?</p>	<p style="text-align: right;">Page 13</p> <p>1 MR. GROEDEL: If you need to get it, you 2 can. It is up to you. 3 MR. FINELLI: I am sorry, do you need to 4 get that? 5 THE WITNESS: No. 6 MR. FINELLI: Okay. 7 Q. (Continuing) Why did you leave University of 8 Wisconsin? 9 A. I am sorry. 10 I am married to a physician, and in the late 11 1990s, somewhere around '97, '98, there were changes made 12 at the University of Wisconsin that made it a less 13 desirable place for my husband and I in terms of our 14 career. There were multiple issues involved, but in 15 general, it was a career decision for both of us to come 16 to Case Western Reserve. 17 Q. Okay. 18 And your husband is Dr. Kinsella? 19 A. Yes. 20 Q. Okay. 21 When were you married? 22 A. 1993. 23 Q. Okay. 24 And I don't recall from Dr. Kinsella's deposition, 25 but you do have some children?</p>
<p style="text-align: center;">*** Notes ***</p>	

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<p>1 A. We have one child. 2 Q. Okay. 3 What changes were made -- first -- strike that. 4 Were the changes that you are talking about, as 5 far as in the departments, were they made in the 6 department -- in Dr. Kinsella's department, or in your 7 department, or both? 8 A. Both.</p>	<p>1 well with our careers, and so we began looking at other 2 positions as early as 1992. 3 Q. Only after you had been there two years? 4 A. Uh-huh. 5 Q. Okay. 6 What is your understanding of the investigation 7 that transpired involving your husband, Dr. Kinsella, at 8 the University of Wisconsin?</p>
<p>9 Q. Okay. 10 What changes were made in your department that 11 made it unfavorable for you to be there? 12 MR. GROEDEL: Objection. 13 You may answer. 14 A. I don't believe unfavorable is the correct word. 15 I believe that -- 16 Q. Intolerable? 17 A. -- a better -- no. No, not that strong. 18 There were changes made at the University of 19 Wisconsin in response to the Wisconsin legislature 20 wanting the University of Wisconsin to kind of shift its 21 emphasis from more of a research institution to training 22 more primary care physicians for the State of Wisconsin. 23 And so slowly over time in the 1990s, there began to be 24 less emphasis on sort of academics, and more emphasis on 25 primary care sorts of things. That model did not fit as</p>	<p>9 MR. GROEDEL: Objection. I mean, we have 10 already gotten into this with Dr. Kinsella. 11 MR. FINELLI: I would like to know her 12 understanding. 13 MR. GROEDEL: Well, okay. But I just want 14 to let you know in advance, it is only going to be 15 a limited amount of questioning, I think, that we 16 will permit under these circumstances. 17 But you may answer that question. I will 18 object. 19 MR. MARGOLIS: Just so that the record is 20 complete, Dr. Kinsella's recollection of the 21 investigation was very, very limited, and the 22 majority of his answers were, I don't know, I 23 don't recall, I am not certain. 24 So the fact that this subject area was 25 broached with Dr. Kinsella certainly is not</p>
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<p>1 exclusionary of this witness given her responses 2 to this area of inquiry. 3 MR. FINELLI: You can answer. 4 THE WITNESS: Could you ask me the question 5 again, please. 6 MR. FINELLI: Can you repeat the question. 7 (Record read.) 8 MR. GROEDEL: Objection. 9 You can answer. 10 MR. WALTERS: Are we talking about her 11 knowledge exclusive of information learned through 12 privileged marital communications? 13 MR. FINELLI: Well -- 14 MR. WALTERS: I don't have that in my 15 notes. 16 MR. FINELLI: I don't think that has been 17 raised. 18 MR. WALTERS: I just am asking. 19 MR. GROEDEL: You can answer the question 20 to the extent that you know. 21 A. There was an investigation regarding some billing 22 issues or -- I believe that was what it was, an 23 investigation of billing issues. 24 Q. Okay. 25 Do you know the disposition of that investigation?</p>	<p>1 MR. GROEDEL: Objection. 2 You may answer. 3 A. There were no charges filed. 4 Q. Okay. 5 Is the reason Dr. Kinsella left University of 6 Wisconsin a result of the investigation that took place? 7 MR. GROEDEL: Objection. 8 You may answer. 9 A. The reasons that we left Wisconsin were several. 10 It was not the sole reason we left Wisconsin. 11 Q. Just one of the reasons? 12 MR. GROEDEL: Objection. 13 You may answer. 14 Q. (Continuing) Well, you stated it was not -- 15 A. Yes. 16 Q. -- the sole reason. 17 A. Correct. 18 Q. Okay, all right. 19 If you had not been married to Dr. Kinsella in 20 1993, would you have stayed at the University of 21 Wisconsin -- 22 MR. GROEDEL: Objection. 23 A. I don't know. 24 Q. -- after 1998? 25 A. I don't know.</p>
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<p>1 Q. Okay.</p> <p>2 You mentioned the other case that you testified in</p> <p>3 that was court testimony, trial testimony?</p> <p>4 A. There were two.</p> <p>5 Q. The other one, you also testified in court?</p> <p>6 A. Yes.</p> <p>7 Q. Okay, I am sorry, I thought that was just a</p> <p>8 deposition.</p> <p>9 Do you know what years those were? And let me ask</p> <p>10 you about the osteosarcoma first.</p> <p>11 A. I -- to my best recollection, it was probably 1991 --</p> <p>12 Q. Okay.</p> <p>13 A. -- or '92. But it was fairly soon after I was at</p> <p>14 the University of Wisconsin. The other one was after I</p> <p>15 had moved to Cleveland.</p> <p>16 Q. Did you travel to Wisconsin for trial --</p> <p>17 A. Yes, yes.</p> <p>18 Q. -- to give testimony?</p> <p>19 Was it in the same building as the other one?</p> <p>20 A. No.</p> <p>21 Q. Were they both in the city of Wisconsin?</p> <p>22 A. The State of Wisconsin.</p> <p>23 Q. I mean -- strike that.</p> <p>24 What city were they in?</p> <p>25 A. The osteosarcoma was in Fond Du Lac County, and</p>	<p>1 the colon cancer was in a county outside of Green Bay,</p> <p>2 because I flew into Green Bay.</p> <p>3 Q. Okay, what county is the University of Wisconsin</p> <p>4 in?</p> <p>5 A. Dane.</p> <p>6 Q. Do you recall the patient's last name of the</p> <p>7 osteosarcoma?</p> <p>8 A. No, I am sorry, I don't.</p> <p>9 Q. Okay.</p> <p>10 Tell me a little bit about the details of you</p> <p>11 applying and interviewing at the University Hospitals for</p> <p>12 the position of staff physician?</p> <p>13 A. I believe that I interviewed in September of 1997,</p> <p>14 yes. And I had two days of interviews, I believe, if I</p> <p>15 recall.</p> <p>16 Q. Okay.</p> <p>17 And when were you offered the position?</p> <p>18 A. To my best recollection, probably October of '97.</p> <p>19 Q. Okay.</p> <p>20 Was your position offered contemporaneous with</p> <p>21 Dr. Kinsella getting his position as chairman of the</p> <p>22 department of radiology?</p> <p>23 A. Yes.</p> <p>24 Q. Okay.</p> <p>25 A. Radiation oncology.</p>
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Page 20	Page 21
<p>1 Q. Radiation oncology.</p> <p>2 Was, to your understanding, Dr. Kinsella's</p> <p>3 acceptance of his chair at UH conditioned upon you also</p> <p>4 receiving a position at UH?</p> <p>5 A. I don't know.</p> <p>6 Q. Okay.</p> <p>7 What department did you start with when you</p> <p>8 started at UH?</p> <p>9 A. I am in the department of pediatrics.</p> <p>10 Q. Okay.</p> <p>11 When you first started, who was the chairperson of</p> <p>12 the department of pediatrics?</p> <p>13 A. Dr. Ellis Avner.</p> <p>14 Q. Who was the chairperson of that department in the</p> <p>15 year 2000?</p> <p>16 A. Dr. Ellis Avner.</p> <p>17 Q. Still is?</p> <p>18 A. Yes.</p> <p>19 Q. Okay.</p> <p>20 Within the department of pediatrics, is there a</p> <p>21 separate department of pediatric oncology?</p> <p>22 A. It is not a separate department.</p> <p>23 Q. It falls under the department of pediatrics?</p> <p>24 A. It is a division within the department of</p> <p>25 pediatrics.</p>	<p>1 Q. Okay.</p> <p>2 And the division name would be pediatric oncology?</p> <p>3 A. Hematology/oncology.</p> <p>4 Q. Pediatric hematology/oncology?</p> <p>5 A. Yes.</p> <p>6 Q. Is there a head of that division or a chair of</p> <p>7 that division?</p> <p>8 A. Yes, the division chief is Dr. Susan Shurin.</p> <p>9 Q. Okay.</p> <p>10 How long has she been in that position, if you</p> <p>11 know?</p> <p>12 A. Many years.</p> <p>13 Q. Since you started there?</p> <p>14 A. Yes.</p> <p>15 Q. All right.</p> <p>16 And still is currently?</p> <p>17 A. Yes.</p> <p>18 Q. All right.</p> <p>19 In the year 2000, do you know who the chief of</p> <p>20 staff was at UH?</p> <p>21 A. Dr. Robert Daroff.</p> <p>22 Q. Okay.</p> <p>23 Is he still presently the chief of staff?</p> <p>24 A. Yes. I know he -- his retirement is anticipated,</p> <p>25 but I am not sure of the date.</p>
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<p style="text-align: right;">Page 22</p> <p>1 Q. Okay, that is fine. 2 What I would like to do now is talk a little bit 3 about the medicine of Joshua Valdivieso. 4 Do you recall when you first saw him as a patient? 5 A. Yes. 6 Q. When was that? 7 A. July of 1999. 8 Q. That was when he was diagnosed with neuroblastoma, 9 in July of 1999? 10 A. Yes. 11 Q. At that time, he was age three, correct? 12 A. His date of birth -- 13 MR. MARGOLIS: Here are some of the records 14 we have put together. 15 Q. He was either age three, I think, or close to 16 becoming age three? 17 A. Yes. 18 Q. Okay. 19 A. His date of birth was July 16th. So it was 20 shortly before his third birthday. 21 (Thereupon, Mr. Margolis left the room.) 22 Q. Okay. 23 What was his staging at the time of diagnosis? 24 A. Stage IV neuroblastoma. 25 Q. All right.</p>	<p style="text-align: right;">Page 23</p> <p>1 Did he have any surgery? 2 A. Yes. 3 Q. And what surgery did he have? 4 A. When? 5 Q. Regarding the neuroblastoma. 6 MR. GROEDEL: Prior to her seeing him? 7 A. As of July of 1999? 8 Q. Relative to the neuroblastoma, did he have any 9 resection done of tumor? 10 A. Yes. 11 (Thereupon, Mr. Margolis reentered the 12 room.) 13 Q. Where was that done? Was that done -- 14 A. Akron Children's -- 15 Q. -- at UH? 16 A. Akron Children's Hospital. 17 Q. Okay. 18 And that was the superrenal mass or the adrenal 19 gland? 20 A. Yes. 21 Q. Okay. 22 What was your understanding at the time you first 23 saw him as to his metastatic condition of the 24 neuroblastoma? 25 A. He had widely metastatic disease at the time that</p>
<p style="text-align: center;">*** Notes ***</p>	
<p style="text-align: right;">Page 24</p> <p>1 I met him. 2 Q. Abdominal lymph nodes? 3 A. He had many areas of bone involvement, as well as 4 bone marrow involvement. I don't recall the status of 5 his abdominal lymph nodes. 6 Q. Okay. 7 Was there any histopathology done -- 8 A. Yes. 9 Q. -- at UH? 10 A. The pediatric pathologist at University Hospitals 11 reviewed the slides from the resection which we obtained 12 from Akron Children's Hospital. In addition to that 13 specimen, we examined a bone marrow specimen at 14 University Hospitals. 15 Q. And that confirmed neuroblastoma? 16 A. Yes. 17 Q. Do you know the results of his ferritin, was it 18 elevated? 19 A. It was elevated. 20 Q. How about his MYCN oncogene? I didn't see any of 21 that in the record, and I don't know if that was done. 22 A. It was done. It was not amplified. 23 Q. It was not amplified, okay. 24 And you proceeded to provide him with induction 25 chemotherapy, correct?</p>	<p style="text-align: right;">Page 25</p> <p>1 A. Yes. 2 Q. And that was according to the N7 protocol -- 3 A. Yes. 4 Q. -- from Memorial Sloan-Kettering? 5 A. Yes. 6 Q. Was that developed -- do you know who developed 7 that at Sloan-Kettering, was it Dr. Cheung? 8 A. He was one of the -- he is one of the pediatric 9 oncologists at Memorial Sloan-Kettering that is involved 10 in these patients. I don't know who actually personally 11 devised the regimen. 12 Q. Okay. 13 Obviously you talked to the parents during this 14 period of time when he was receiving induction 15 chemotherapy, correct? 16 A. No. 17 Q. You did not? 18 A. I talked with his mother. His father was not in 19 the country. 20 Q. Okay. 21 At the time you started the induction 22 chemotherapy, did you talk to her about any prognosis -- 23 A. Yes. 24 Q. -- of Joshua? 25 What was that discussion, and what was the</p>
<p style="text-align: center;">*** Notes ***</p>	

<p style="text-align: right;">Page 26</p> <p>1 prognosis?</p> <p>2 A. The discussion in general terms was that he had</p> <p>3 Stage IV neuroblastoma, which if treated very</p> <p>4 aggressively has a survival rate of approximately 30</p> <p>5 percent.</p> <p>6 Q. Okay.</p> <p>7 And obviously you had several discussions with</p> <p>8 Iwona, Joshua's mother, during this period of time that</p> <p>9 he was receiving induction chemotherapy, correct?</p> <p>10 A. Yes.</p> <p>11 Q. Where were these meetings? Were they in the</p> <p>12 hospital room or were they in your office?</p> <p>13 A. In his hospital room.</p> <p>14 Q. Okay.</p> <p>15 A. Perhaps they were also in a conference room on the</p> <p>16 inpatient unit.</p> <p>17 Q. All right.</p> <p>18 What was the treatment regimen plan for Joshua</p> <p>19 following the induction chemotherapy?</p> <p>20 A. The treatment plan was to give induction</p> <p>21 chemotherapy to hopefully achieve a remission, and to</p> <p>22 then harvest stem cells and purge them, followed by a</p> <p>23 consolidative myeloablative regimen that would include</p> <p>24 chemotherapy and local radiation followed by stem cell</p> <p>25 infusion. Following that, we anticipated using the</p>	<p style="text-align: right;">Page 27</p> <p>1 differentiating agent, cis-retinoic acid.</p> <p>2 Q. Accutane?</p> <p>3 A. Correct.</p> <p>4 Q. All right.</p> <p>5 Following his induction of chemotherapy, he did</p> <p>6 not have any progression of disease, correct?</p> <p>7 A. When?</p> <p>8 Q. After completion of his induction chemotherapy.</p> <p>9 A. What do you consider induction chemotherapy?</p> <p>10 Q. Well, he received seven courses of chemotherapy --</p> <p>11 A. Yes.</p> <p>12 Q. -- correct?</p> <p>13 A. Yes.</p> <p>14 Q. All right. That was the induction chemotherapy,</p> <p>15 was it not?</p> <p>16 Well, why don't you tell me what induction</p> <p>17 chemotherapy is?</p> <p>18 A. Okay.</p> <p>19 The term induction chemotherapy is a term that we</p> <p>20 use when we treat a variety of cancers, but the exact</p> <p>21 definition of what induction chemotherapy is for leukemia</p> <p>22 is different than what induction chemotherapy would be</p> <p>23 for neuroblastoma.</p> <p>24 In general terms, we hope to give several rounds</p> <p>25 of chemotherapy, at which point we hope we can't find any</p>
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<p style="text-align: right;">Page 28</p> <p>1 evidence of cancer, in other words, he is in remission.</p> <p>2 The sooner that happens, the better.</p> <p>3 Now, one could say, okay, if that takes three</p> <p>4 courses, then that was the induction. If it takes five</p> <p>5 courses, then that was the induction. So that</p> <p>6 terminology is a little bit ambiguous in this case.</p> <p>7 What I think is important in terms of what you are</p> <p>8 asking is that the chemotherapy that was meant to get him</p> <p>9 into remission prior to the harvesting of his stem cells,</p> <p>10 and prior to the consolidative transplant, there was</p> <p>11 evidence of progression of disease during that time.</p> <p>12 Q. Okay.</p> <p>13 During that period of time, did his bone marrow --</p> <p>14 did his bone marrow biopsies subsequent to the seventh</p> <p>15 course show tumor free marrow? Were his bone biopsies</p> <p>16 negative following his seven courses of chemotherapy?</p> <p>17 A. There was one bone marrow biopsy that was</p> <p>18 negative.</p> <p>19 Q. Okay.</p> <p>20 It is my understanding that following the seven</p> <p>21 courses of chemotherapy, he remained -- strike that -- he</p> <p>22 continued to have MIBG positive sites in his cortical</p> <p>23 bones?</p> <p>24 A. Yes.</p> <p>25 Q. But his bone marrow biopsy was negative for tumor?</p>	<p style="text-align: right;">Page 29</p> <p>1 A. My recollection is that there was a negative bone</p> <p>2 marrow aspirate in biopsy just prior to his harvesting,</p> <p>3 and then I simply don't recall how many bone marrow tests</p> <p>4 we did subsequent to that, prior to the transplant.</p> <p>5 Q. Okay, would you have done the transplant if the</p> <p>6 bone marrow was positive?</p> <p>7 A. When?</p> <p>8 Q. Subsequent to the transplant, if any of the bone</p> <p>9 marrow biopsies were positive, would you have proceeded</p> <p>10 with the bone marrow transplant?</p> <p>11 A. I don't --</p> <p>12 Q. I am sorry, the harvesting.</p> <p>13 A. Oh. I don't know.</p> <p>14 Q. Okay.</p> <p>15 In what circumstances in Joshua's case would you</p> <p>16 have proceeded with bone marrow harvest if any of the</p> <p>17 bone marrow biopsies were positive?</p> <p>18 A. The harvest had been completed.</p> <p>19 Q. Okay, I am trying to figure out why you stated</p> <p>20 that he had progression of his disease following his</p> <p>21 seven courses of chemotherapy?</p> <p>22 A. No, during that -- during the course of his seven</p> <p>23 courses. He had -- ah, this will help.</p> <p>24 May I refer to your --</p> <p>25 Q. Sure.</p>
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<p style="text-align: right;">Page 30</p> <p>1 A. If you turn to --</p> <p>2 Q. I had also asked you to bring any medical records</p> <p>3 and documents that you authored relative to the care of</p> <p>4 Joshua. And I don't know if --</p> <p>5 MR. GROEDEL: We have already provided them</p> <p>6 to you. I mean, you should have everything. We</p> <p>7 have given you everything that she has.</p> <p>8 MR. MARGOLIS: Well, but the point is, if</p> <p>9 she needs to refer to them, it was asked for her</p> <p>10 to bring them to this depo, so that if she needs</p> <p>11 to refer to anything that is not in front of her,</p> <p>12 that is why we asked that she bring her records,</p> <p>13 so that it wouldn't be a recollection, but she</p> <p>14 could refer to it.</p> <p>15 MR. GROEDEL: Well, we don't have them. If</p> <p>16 you want to show her something, that is fine. I</p> <p>17 mean, I think she is going to be able to answer</p> <p>18 the questions anyway.</p> <p>19 MR. MARGOLIS: That is fine, but you were</p> <p>20 asked to bring them.</p> <p>21 MR. GROEDEL: Go ahead.</p> <p>22 Q. (Continuing) What are you referring to?</p> <p>23 A. If you allow me, on Page 7.</p> <p>24 Q. Okay.</p> <p>25 A. This was a summary of his chemotherapy prior to</p>	<p style="text-align: right;">Page 31</p> <p>1 his transplant. And after his second course, although we</p> <p>2 still saw tumor in his marrow, there was improvement.</p> <p>3 Q. Okay.</p> <p>4 A. Following the -- following Course 4, we became</p> <p>5 concerned that his bone marrow showed actually more tumor</p> <p>6 than it had after Course 2, and we were so concerned</p> <p>7 about that, that we actually repeated that to be -- to</p> <p>8 try to confirm that finding, so that it wasn't just a</p> <p>9 sampling error.</p> <p>10 But we did --</p> <p>11 Q. That is after Course 5?</p> <p>12 A. And then Course 5, it -- he had more marrow</p> <p>13 disease after Course 4 than after Course 2. And so we</p> <p>14 checked --</p> <p>15 Q. How do you know that?</p> <p>16 A. Because I have the bone marrow reports, and I have</p> <p>17 reviewed them.</p> <p>18 Q. Okay.</p> <p>19 A. And that is why, if you look at the traditional N7</p> <p>20 protocol, it doesn't -- it doesn't stipulate giving</p> <p>21 repeated courses of cisplatin in etoposide, but it</p> <p>22 appeared that the Vincristine, Adriamycin and</p> <p>23 Cyclophosphamide was not effective for Joshua, and that</p> <p>24 it was the cisplatin in etoposide that was effective,</p> <p>25 which was why we continued to give that chemotherapy,</p>
<p style="text-align: center;">*** Notes ***</p>	
<p style="text-align: right;">Page 32</p> <p>1 because we were seeing response with that.</p> <p>2 Q. Okay.</p> <p>3 A. But there was evidence of increasing marrow</p> <p>4 disease, progressive marrow disease, during the course of</p> <p>5 that chemotherapy program.</p> <p>6 Q. Okay, but my initial question which I asked a</p> <p>7 while ago was, prior to his bone marrow harvest, his bone</p> <p>8 marrow biopsy was negative for tumor?</p> <p>9 A. Correct.</p> <p>10 Q. Okay.</p> <p>11 And isn't that the goal of induction chemotherapy --</p> <p>12 A. Yes.</p> <p>13 Q. -- to rid the tumor cells in the bone marrow prior</p> <p>14 to harvest?</p> <p>15 A. The goal of induction chemotherapy is to induce a</p> <p>16 remission, which means that you don't see tumor in the</p> <p>17 marrow or anywhere else.</p> <p>18 Q. Okay.</p> <p>19 Is it fair to say that at the time of his bone</p> <p>20 marrow harvest, he had no evidence of tumor cells in the</p> <p>21 bone marrow, but he had continuing MIBG positive sites at</p> <p>22 the cortical bone?</p> <p>23 A. His bone marrow was negative. I don't recall that</p> <p>24 we actually did an MIBG scan at that exact time. But</p> <p>25 given that his MIBG scan was positive at diagnosis and</p>	<p style="text-align: right;">Page 33</p> <p>1 remained positive, I would assume that it was likely</p> <p>2 positive at that time, even if we didn't do it.</p> <p>3 Q. Okay.</p> <p>4 When was his bone marrow harvest done?</p> <p>5 A. December of 1999.</p> <p>6 Q. Would you group Joshua as a person or as a patient</p> <p>7 that had a partial response to induction chemotherapy?</p> <p>8 A. Yes.</p> <p>9 Q. Okay.</p> <p>10 That is often seen in children with Stage IV</p> <p>11 disease over the age of one year, correct? People --</p> <p>12 those types of patients diagnosed over the year of one --</p> <p>13 age of one year, Stage IV, it is common to have those</p> <p>14 patients develop a partial response to induction</p> <p>15 chemotherapy?</p> <p>16 A. It is the one -- it is one of the types of</p> <p>17 responses that we see.</p> <p>18 MR. FINELLI: Okay. And if I may, I would</p> <p>19 like to mark that as Plaintiff's Exhibit W-2. And</p> <p>20 it is Dr. Wiersma (1 - 32).</p> <p>21 (Thereupon, Plaintiff's Exhibit 2 (Wiersma)</p> <p>22 was marked for identification.)</p> <p>23 BY MR. FINELLI:</p> <p>24 Q. Doctor, if you will look at Plaintiff's Exhibit 2,</p> <p>25 Number 1. It is a letter dated January 10th, 2000, and</p>
<p style="text-align: center;">*** Notes ***</p>	

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<p>1 is that letter authored by you, with your signature at 2 the bottom? 3 A. Yes. 4 Q. Okay. 5 If you look at the second paragraph, the last 6 sentence. 7 A. Uh-huh. 8 Q. You have, "Despite this aggressive treatment plan, 9 his chance of survival is only 30 percent." 10 So on January 10th, after the bone marrow harvest 11 was done in December, your prognosis for survival for 12 Joshua was 30 percent, correct? Isn't that what you have 13 written there? 14 A. That is what is written. 15 Q. Okay. 16 And this was a letter authored for what purpose? 17 A. This letter was written in order to assist the 18 family in obtaining long-term visas so that they could 19 stay with Joshua throughout the remainder of his 20 treatment. This letter was in follow-up to a letter that 21 I wrote in July of 1999 to try to assist the family and 22 the father and the paternal grandparents coming here. 23 There is a letter from July of 1999 that was the 24 initial letter to help them get visas to come to this 25 country, and at the time that I wrote the letter in July,</p>	<p>1 the -- let me back up. 2 The letter in July which I authored to assist the 3 family in obtaining visas was the same as this letter, 4 with the exception of the third paragraph. In other 5 words, initially I wrote this letter, the first two 6 paragraphs, in July. 7 Q. Okay. 8 A. In January, when it was clear that the treatment 9 was going to continue and the family's visas were going 10 to expire, I really felt it was important that his family 11 be able to stay. And so I sent a follow-up letter to the 12 Department of Justice requesting that their visas be 13 extended. 14 Q. And that is this January 10th, 2000 letter? 15 A. Correct. 16 Q. Which is Plaintiff's Exhibit 2-1. 17 A. The -- 18 Q. Now -- 19 A. My best recollection of this letter was that when 20 plans were being made to do his transplant, in other 21 words, the harvest had taken place and was successful, we 22 then began making plans for his transplant. And as part 23 of that, there were a lot of things going on. One was 24 the staging workup, one was trying to make sure his 25 family was going to be able to stay with him.</p>

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<p>1 And my recollection is that with regard to a 2 letter to extend their visas, that I said, take the 3 original letter, say we want their visas extended, and 4 let's send that. 5 And if you compare this letter to the one of July 6 12th, it is in fact identical, the first two paragraphs. 7 So that I -- I don't recall spending time amending 8 the details of his treatment and prognosis for this 9 letter. 10 Q. But you clearly and surely would not misrepresent 11 to the U.S. Department of Justice his prognosis of 30 12 percent, or to the family, at that point in time in 13 January, correct? 14 MR. GROEDEL: Objection. 15 You may answer. 16 A. Well, right around January 10th, the first two 17 weeks in January, there were a number of evaluations 18 ongoing. And some of those had an impact on what his 19 ultimate prognosis would have been at that time. 20 But the letter is dated January 10th, which likely 21 means that it was dictated or it was asked to be printed 22 sometime prior to that, and it -- although I don't recall 23 exactly, it would seem to me that I had not -- would not 24 have had a chance to review all of the recent data that 25 was forthcoming right around that time prior to getting</p>	<p>1 this letter out. 2 Q. Okay. 3 Is it fair to say, then, the family at that point 4 in time, January 10th, believed that Joshua had a 30 5 percent chance of survival, per your document here? 6 MR. GROEDEL: Objection. 7 A. I don't know. 8 Q. Did you ever -- 9 A. This letter was not written to them. 10 Q. Did you ever convey that information to Joshua's 11 family or mother on January 10th or around that time, as 12 far as his prognosis of being 30 percent? 13 MR. GROEDEL: Objection, asked and 14 answered. 15 You may answer again. 16 THE WITNESS: Oh. 17 MR. GROEDEL: I think you asked that 18 already. 19 MR. FINELLI: I don't know if I did, Marc. 20 A. The discussion in January with his mother would 21 have been in the context of the consent form for the 22 transplant. And it would not have been centered on this 23 letter, it would have been the consent for transplant, 24 that would have been the discussion I had with his 25 mother.</p>

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<p style="text-align: right;">Page 38</p> <p>1 Q. Okay, if we can go to Number 2. 2 A. (Witness complies). 3 Q. Is that the consent form you are referring to, 4 Doctor? 5 A. Yes. 6 Q. Okay. 7 You would agree, at the end of Paragraph 2, that 8 children with a partial response autologous transplant 9 may offer the best chance for cure, correct? 10 A. It may. 11 Q. All right. 12 And that is what you explained to the parents, or 13 at least Iwona, the mother? 14 A. Yes. 15 Q. All right. 16 And if you go to Page 4, under Benefits, that was 17 explained to her, as well, and part of that is hope that 18 the radiation and high dose chemotherapy will kill 19 remaining tumor cells; was that explained to her as part 20 of the benefit before she signed the consent? 21 A. That that was our hope. 22 Q. Okay. 23 Now, initially, the radiation that was planned to 24 be given to Joshua prior to the transplant was radiation 25 to the primary site and radiation to the MIBG positive</p>	<p style="text-align: right;">Page 39</p> <p>1 sites totaling about, I believe, 22 Grays, in twice a day 2 fractions, correct? 3 A. Yes. 4 Q. That was the original plan? 5 A. Yes. 6 Q. All right. 7 What was the purpose of -- well, what was the 8 purpose of giving radiation in that regimen to the 9 primary site and the MIBG sites -- MIBG positive sites? 10 As part of this whole treatment regimen -- 11 A. Right, I understand. 12 Q. -- what was the purpose of giving radiation? 13 A. In the development of this consolidative high dose 14 therapy for neuroblastoma, control of disease that 15 remains disease that you can detect at the time of 16 transplant, it seems that chemotherapy alone isn't enough 17 to get rid of that. So we try to give additional therapy 18 to those areas. 19 Also, historically, the primary -- the site of the 20 primary tumor is also a site where disease can recur. So 21 that in general, our approach is to say, well, we are 22 going to use the chemotherapy, but we are going to use 23 the radiation to help us for those spots that still have 24 enough tumor that are still that active that we can still 25 see them.</p>
<p style="text-align: center;">*** Notes ***</p>	
<p style="text-align: right;">Page 40</p> <p>1 Q. Okay. 2 And the purpose of giving the radiation, as you 3 explained, is also to actually benefit the patient, with 4 the hope of benefiting the patient to kill the 5 neuroblastoma cells? 6 A. Yes. 7 Q. All right. 8 And if you felt that the radiation would provide 9 no benefit to Joshua, obviously you or the radiation 10 department would not have proceeded with making him 11 undergo radiation therapy, correct? 12 A. Correct. 13 Q. All right. 14 Now, there came a point in time where that 15 regimen, that initial regimen of radiation therapy 16 proposed, was changed, correct? 17 A. Yes. 18 Q. And how did that come about, why was it changed? 19 A. Well, we were doing a radiologic evaluation, 20 specifically the MIBG scan, to see which areas of his 21 skeleton still showed evidence of active disease. And 22 when the MIBG scan was done, there were numerous areas. 23 This presented a significant problem for us, and 24 so in addition to the MIBG, we followed up the MIBG with 25 an extensive MRI evaluation of a number of areas of his</p>	<p style="text-align: right;">Page 41</p> <p>1 skeleton, which the MIBG scan appeared to be still 2 positive. 3 Q. And would you agree that the sites were mostly the 4 long bones of the legs and some vertebral bodies, as well 5 as an area of the sacroiliac? 6 MR. GROEDEL: Objection. 7 A. There were numerous lesions. I don't recall the 8 exact location of each of them. 9 Q. Okay. 10 Do you know, as you sit here today, whether there 11 were any MIBG positive sites of the skull at that time? 12 A. I don't recall. 13 Q. Okay. 14 Is there anything in your literature here that you 15 authored or signed in Plaintiff's Exhibit 2 that would 16 help you with that information to answer that question? 17 A. Would you like me to go through this exhibit at 18 this time to answer that question? 19 Q. Sure. 20 A. Okay. 21 MR. GROEDEL: To see if there was skull 22 metastasis, that is what you are looking for, Dan? 23 MR. FINELLI: Right, at that time where 24 they were planning to change the radiation 25 therapy, if there were any MIBG positive sites of</p>
<p style="text-align: center;">*** Notes ***</p>	

<p style="text-align: right;">Page 42</p> <p>1 the skull.</p> <p>2 MR. GROEDEL: Okay.</p> <p>3 MR. MORIARTY: Just to save time, do you</p> <p>4 know whether that information is in your package,</p> <p>5 or whether she needs to look at other records?</p> <p>6 MR. GROEDEL: I don't see it.</p> <p>7 MR. MARGOLIS: Go off the record a minute.</p> <p>8 (Thereupon, a discussion was had off the</p>	<p style="text-align: right;">Page 43</p> <p>1 scan, and it may be that when we determined that there</p> <p>2 were so many sites of long bone disease, that we did not</p> <p>3 do an evaluation of his skull, which is why he doesn't</p> <p>4 refer to that.</p> <p>5 So in summary, I am not sure that this is an</p> <p>6 exhaustive list of the sites that were positive on MIBG</p> <p>7 scan, that I think that in order to really address that</p> <p>8 issue, we would have to see the MIBG scan and its</p>
<p>9 record.)</p> <p>10 BY MR. FINELLI:</p> <p>11 Q. My question was, at the time you decided to change</p> <p>12 his radiation therapy in January of 2000, did he have any</p> <p>13 MIBG positive sites on the skull?</p> <p>14 A. I recall that the MIBG showed uptake in numerous</p> <p>15 areas.</p> <p>16 Q. In what?</p> <p>17 A. Numerous areas.</p> <p>18 Q. Okay.</p> <p>19 A. And some of which we examined with MRI scan.</p> <p>20 In order to accurately answer your question, I</p> <p>21 would really need to refer to the radiologist's reading</p> <p>22 of the MIBG scan. Specifically the reference that is</p> <p>23 made to the sites of residual disease in Dr. Kinsella's</p> <p>24 consultation note may reflect the fact that those were</p> <p>25 the areas that were subsequently investigated with MRI</p>	<p>9 complete report.</p> <p>10 Q. Okay.</p> <p>11 And if the skull did have positive MIBG --</p> <p>12 positive sites, that would be in the interpretive report</p> <p>13 of the radiology report, correct?</p> <p>14 A. I recall that the radiologist told me that there</p> <p>15 were so many sites they weren't sure they could even name</p> <p>16 them all. So I don't know if in the final dictated</p> <p>17 report of that MIBG, if they enumerated actually all of</p> <p>18 the sites. I know that the -- there is mention made that</p> <p>19 the skull was positive on MIBG initially.</p> <p>20 Q. Initially when?</p> <p>21 A. The diagnosis in July of '99.</p> <p>22 Q. Did you see that today?</p> <p>23 A. Yes, I did.</p> <p>24 Q. Where is that?</p> <p>25 A. In the summary on Page 7.</p>
<p style="text-align: center;">*** Notes ***</p>	
<p style="text-align: right;">Page 44</p> <p>1 MR. MARGOLIS: This is in Kinsella?</p> <p>2 A. (Continuing) No, this is in 1 to 32, Number 7,</p> <p>3 under Diagnostic Metastatic Workup, Number 6.</p> <p>4 Q. Okay.</p> <p>5 And that was in July of '99?</p> <p>6 A. Yes.</p> <p>7 Q. Okay.</p> <p>8 Who was the radiologist you were referring to,</p> <p>9 that you talked to?</p> <p>10 A. Dr. Melissa Myers.</p> <p>11 Q. Okay.</p> <p>12 All right, so you decided to change the radiation</p> <p>13 that was going to be given to Joshua in January. And</p> <p>14 what was the treatment plan that you developed?</p> <p>15 A. It was impractical if not impossible to</p> <p>16 effectively irradiate that many sites of bony disease</p> <p>17 separately, and so we discussed possible options. And</p> <p>18 one of the options was to give total body irradiation,</p> <p>19 because when one looked at the MIBG scan, effectively</p> <p>20 that is where the disease was, was throughout his</p> <p>21 skeleton.</p> <p>22 Q. So --</p> <p>23 A. Furthermore, there was experience using total body</p> <p>24 irradiation for patients with Stage IV neuroblastoma, so</p> <p>25 that it wasn't a procedure that was without previous</p>	<p style="text-align: right;">Page 45</p> <p>1 experience.</p> <p>2 Q. And again, you would not have offered TBI to</p> <p>3 Joshua if you felt that it would not provide any benefit</p> <p>4 medically?</p> <p>5 A. Yes.</p> <p>6 Q. Okay.</p> <p>7 Incidentally, how did Joshua get to you, was it a</p> <p>8 referral?</p> <p>9 A. It is my recollection that his mother requested to</p> <p>10 be transferred to Rainbow Babies and Childrens Hospital</p> <p>11 because she was dissatisfied with Akron Children's</p> <p>12 Hospital.</p> <p>13 Q. Okay.</p> <p>14 So it is your understanding that Joshua was taken</p> <p>15 to University Hospital by her [sic] mother, and that as</p> <p>16 part of being a patient at University Hospital, you were</p> <p>17 the doctor or the pediatric oncologist chosen to take</p> <p>18 care of Joshua?</p> <p>19 A. Yes.</p> <p>20 Q. It is not that they came to you directly?</p> <p>21 A. Yes.</p> <p>22 Q. They came to you through University Hospital?</p> <p>23 A. Correct.</p> <p>24 Q. Okay.</p> <p>25 And then for the portion of radiation therapy that</p>
<p style="text-align: center;">*** Notes ***</p>	

<p style="text-align: right;">Page 46</p> <p>1 he needed, you referred Joshua to Dr. Kinsella?</p> <p>2 A. Yes.</p> <p>3 Q. Okay.</p> <p>4 A. Will we be taking a break soon?</p> <p>5 Q. Do you need to take a break now?</p> <p>6 MR. GROEDEL: Do you want to take a break?</p> <p>7 A. Sure.</p> <p>8 MR. FINELLI: Okay, that is fine. Take a</p> <p>9 five minute break.</p> <p>10 (Thereupon, a discussion was had off the</p> <p>11 record.)</p> <p>12 (Short recess had.)</p> <p>13 BY MR. FINELLI:</p> <p>14 Q. Doctor, we were talking about the radiation</p> <p>15 therapy regimen in January. It was decided eventually to</p> <p>16 give TBI, a dose of 10 Grays fractionated over three</p> <p>17 days, correct?</p> <p>18 A. Yes.</p> <p>19 Q. Okay.</p> <p>20 A. Yes.</p> <p>21 Q. All right.</p> <p>22 Would you agree that the N7 protocol, the CCG 3891</p> <p>23 and the 34DAT from Boston Children's and Philadelphia --</p> <p>24 Children's Hospital of Philadelphia are probably at</p> <p>25 present the best treatment regimens for neuroblastoma</p>	<p style="text-align: right;">Page 47</p> <p>1 Stage IV?</p> <p>2 MR. GROEDEL: Objection.</p> <p>3 You may answer.</p> <p>4 A. I am familiar with protocol N7. I am familiar</p> <p>5 with protocol 3891 that you referred to. I don't know</p> <p>6 that I am familiar with the other protocol that you</p> <p>7 referred to.</p> <p>8 Q. Yes, it is utilized at Children's Boston Hospital</p> <p>9 and Children's Hospital of Philadelphia, 34DAT.</p> <p>10 A. I actually am not aware of details of that</p> <p>11 protocol.</p> <p>12 Q. Okay.</p> <p>13 Would you agree, then, that N7 and CCG 3891 are</p> <p>14 two of the best treatment plans at present available for</p> <p>15 patients with Stage IV neuroblastoma?</p> <p>16 MR. GROEDEL: Objection.</p> <p>17 You may answer.</p> <p>18 And I am objecting, because you are asking</p> <p>19 her about something that is in vogue now, as</p> <p>20 opposed to 2000.</p> <p>21 But with that objection, sure, go ahead and</p> <p>22 answer.</p> <p>23 A. When there is a disease that generally has a poor</p> <p>24 prognosis, people are always trying new things to try to</p> <p>25 improve our treatment results. There are -- but no one</p>
<p style="text-align: center;">*** Notes ***</p>	
<p style="text-align: right;">Page 48</p> <p>1 has the exact answer, because if the exact answer were</p> <p>2 known, we would all use it.</p> <p>3 Q. And that is understandable, physicians utilize --</p> <p>4 A. But the N7 protocol is considered a standard</p> <p>5 excellent therapy for neuroblas -- Stage IV</p> <p>6 neuroblastoma.</p> <p>7 There are parts of the 3891 protocol that are</p> <p>8 considered part of standard therapy. But we have also</p> <p>9 moved forward based on the results of 3891 to develop new</p> <p>10 approaches and new strategies.</p> <p>11 Q. And N7 and 3891 were in existence as model</p> <p>12 therapies in the year 2000, as well, correct?</p> <p>13 A. Yes.</p> <p>14 Q. And part of the progress that you mention is the</p> <p>15 addition of providing cis-retinoic acid after the</p> <p>16 transplant process?</p> <p>17 A. That information became available as a result of</p> <p>18 Protocol 3891.</p> <p>19 Q. Okay.</p> <p>20 Did you attend the conference on advances in</p> <p>21 neuroblastoma research held this month?</p> <p>22 A. No.</p> <p>23 Q. Okay.</p> <p>24 Are you aware of any of the abstracts that were</p> <p>25 presented --</p>	<p style="text-align: right;">Page 49</p> <p>1 A. No.</p> <p>2 Q. -- by Sloan Memorial -- Memorial Sloan-Kettering?</p> <p>3 A. No.</p> <p>4 Q. Were you aware the conference existed?</p> <p>5 A. No.</p> <p>6 Q. Did Joshua receive post stem cell rescue radiation</p> <p>7 therapy?</p> <p>8 A. Yes.</p> <p>9 Q. When was that?</p> <p>10 A. May of 1999.</p> <p>11 Q. When he presented back to University Hospitals?</p> <p>12 A. I am sorry, May of 2000.</p> <p>13 Q. May of 2000, okay.</p> <p>14 A. I was wrong.</p> <p>15 Q. When did you first learn that the total dose of</p> <p>16 TBI that Joshua received was incorrect, it was actually</p> <p>17 1 Gray instead of 10 Gray?</p> <p>18 A. After the suit was filed.</p> <p>19 Q. I will refer you to Wiersma Number 12, and it is a</p> <p>20 follow-up evaluation summary of Joshua dated February</p> <p>21 16th, 2000.</p> <p>22 If you look under Number 2, it says he received</p> <p>23 TBI at a total dose of 999 cGys.</p> <p>24 A. Yes.</p> <p>25 Q. Which would be approximately 10 Grays?</p>
<p style="text-align: center;">*** Notes ***</p>	

Page 50	Page 51
<p>1 A. Yes. 2 Q. All right. 3 So at that time, you were still aware or it was 4 your understanding that Joshua had received 10 Grays of 5 TBI in January of 2000? 6 A. Yes. 7 Q. When you wrote this on February 16th of 2000, what 8 was the basis for that information, how did you obtain 9 that information? 10 A. That was what was intended, and I had no reason to 11 believe that that wasn't what was given. 12 Q. Okay. 13 At that point in time, had you ever looked, up 14 until that point in time, at the prescription sheet? 15 A. No. 16 Q. Okay. 17 You said that was intended, but how do you know 18 that was intended? You had to look at some information, 19 did you not, some records? 20 A. When Joshua was to receive his total body 21 irradiation, I sent to radiation oncology the details of 22 how the TBI was to be delivered, both in terms of dose 23 and fractionation. 24 Q. And -- 25 A. And I had no reason to believe that wasn't what</p>	<p>1 was given. 2 Q. And was that information part of the tumor board 3 meeting in January on Joshua? 4 A. I don't know. 5 Q. Was there a tumor board meeting on Joshua's case 6 in January of 2000? 7 A. I don't recall. 8 Q. All right. 9 How often are tumor board meetings? 10 A. Once a week, provided we have patients to discuss. 11 Q. Okay. 12 I had asked you, as part of the duces tecum, to 13 bring any written documentation of the tumor board 14 meetings applicable to Joshua. Is that available? 15 A. The only one I am aware of was May of 19 -- May of 16 2000, which was part of the hematology/oncology chart, of 17 which you have a copy. 18 Q. Okay. 19 So you have no recollection of attending the 20 January tumor board meeting when Joshua's case was 21 presented? 22 A. I don't have a specific recollection of that, 23 no. 24 Q. Okay. 25 Are there minutes taken at the tumor board</p>
*** Notes ***	
Page 52	Page 53
<p>1 meeting? 2 A. Often, there are. 3 Q. Who would take the minutes? 4 A. Usually I do. 5 Q. All right. 6 And where are the minutes stored? 7 A. Sometimes on my desk, and sometimes they get put 8 in the chart. 9 Q. Okay. 10 And if they are not put in the chart, what happens 11 to the minutes? 12 A. They would sit on my desk. 13 Q. For how long? I mean, are they kept for 14 posterity, or kept as medical records? 15 A. It is inconsistent. 16 Q. All right. 17 Is it consistent to think that minutes from tumor 18 board meetings in the year 2000 are still available? 19 A. Yes. 20 Q. All right, where would they be? 21 A. Some may be in the hospital chart -- some may be 22 in the hematology/oncology charts. 23 Q. Okay, that would be part of the University medical 24 records? 25 A. It would be part of the hematology/oncology chart.</p>	<p>1 I don't believe a copy goes to the hospital record. 2 Q. Okay. 3 Is Wiersma 1 through 32 the hematology/oncology 4 chart for Joshua Valdivieso? 5 A. This is not the complete chart, no. These appear 6 to be excerpts from that chart. 7 Q. Okay. 8 Would you be able to look at the heme-onc medical 9 records of Joshua and determine whether the minutes of 10 the January tumor board are in that chart, and if they 11 are, give them to Marc, and he can provide them to us? 12 A. Yes. 13 MR. FINELLI: Okay. 14 MR. MORIARTY: You guys do have that chart. 15 MR. MARGOLIS: Yes, we have the chart, but 16 I don't -- 17 MR. FINELLI: We don't have the minutes. 18 MR. MARGOLIS: -- have the minutes, from 19 our review of the chart. 20 MR. GROEDEL: For January of 2000? 21 MR. FINELLI: Yes. 22 MR. MARGOLIS: Yes, that is what we are 23 focusing in on, where are the minutes for January 24 of 2000, whether in the the chart or not. 25 MR. GROEDEL: Okay.</p>
*** Notes ***	

1 BY MR. FINELLI:

2 Q. And if they are not in the chart, where else would
3 they be? Would you be able to find them?

4 A. I don't know if they even exist.

5 Q. All right.

6 A. I actually didn't have a record that it was
7 discussed at tumor board in January. I don't know.

8 Q. Okay.

9 But usually at every tumor board meeting, minutes
10 are taken?

11 MR. GROEDEL: Objection. That is not what
12 she said. I don't think that is what she said.

13 A. Usually.

14 Q. Okay.

15 So you first learned that Joshua received the
16 incorrect dose of TBI after the lawsuit was filed?

17 A. Yes.

18 Q. And you gleaned that from the complaint itself, or
19 from someone else, some other source?

20 A. Well, my first hint was from the complaint.

21 Q. Okay.

22 What did you do after you got your first hint that
23 there was an incorrect prescription?

24 A. I immediately went to my husband's office.

25 Q. And did what?

1 A. Asked him if he saw the complaint, and if he had
2 received a copy.

3 Q. Okay.

4 And what was his response?

5 A. He had apparently received it moments earlier, and
6 he had -- he hadn't had a chance to look at it.

7 Q. So did you then relay the information to him that
8 there were allegations of an incorrect prescription as

9 far as the TBI?

10 A. Yes.

11 Q. All right.

12 Is it your understanding, then, that that was
13 Dr. Kinsella's first time he became aware of an incorrect
14 dose of TBI given to Joshua?

15 A. That was the first time he was aware that that
16 allegation was made.

17 Q. Okay.

18 What did you do with that information once you
19 learned that there was an allegation of an incorrect
20 prescription for TBI?

21 A. I said, I received this -- what do you call that,
22 a complaint, or lawsuit?

23 Q. Complaint.

24 A. I received a copy of this complaint, your name is
25 on it, you must have gotten it, too. And --

*** Notes ***

1 Q. Do you need to answer that? We can take a break.
2 A. This will take 30 seconds. Can we go off the
3 record?

4 MR. MARGOLIS: That is fine, sure. Take
5 your mike off.

6 (Thereupon, a discussion was had off the
7 record.)

8 BY MR. FINELLI:

9 Q. Doctor, you mentioned that after you first had
10 information after the lawsuit was filed, you went to see
11 Dr. Kinsella in his office. Was anyone else in the
12 office at the time?

13 A. No.

14 Q. Okay.

15 What did you do when you learned of the
16 information of the allegation of an incorrect
17 prescription for TBI?

18 A. I asked him if he had seen the complaint. He said
19 no.

20 I said, well, it just came. And the issue is that
21 he got the wrong radiation dose. And that obviously got
22 his attention.

23 And I said, did you know anything about this?

24 And he said, no, what are they talking about, what
25 radiation wrong dose?

1 And I said, they said he got the wrong TBI dose.
2 And I said, that -- do you know anything about that?

3 And he said, no.

4 And I said, well, radiation oncology is like this
5 technical procedure with all kinds of records of things
6 that are done, like the machine records how much dose is
7 given, and don't you put something on the patient and
8 measure how much was given, so shouldn't we just be able
9 to prove that this didn't happen?

10 And he said, you are right, you are right, there
11 are lots of records, I don't know anything about this, I
12 am -- you know, I am sure we will be able to get it
13 cleared up, because you are right, there are all kinds of
14 records and stuff, just calm down.

15 So I said, okay, we will clear this up.

16 And then I left the office.

17 Q. Other than speaking to Dr. Kinsella about this,
18 did you do anything else with the information you now
19 learned?

20 A. When?

21 Q. At that time. Or subsequent to that point in
22 time.

23 A. I worried about it.

24 Q. Did you go and look at the medical records
25 yourself to check?

*** Notes ***

<p style="text-align: right;">Page 58</p> <p>1 A. At some point, I did. 2 Q. When? 3 A. Well, I only had access to the hematology/oncology 4 chart. So as I recall, I looked at the 5 hematology/oncology chart at some point within a day of 6 receiving the complaint. 7 Q. And what information did that provide you? 8 A. That everything that I had in my 9 hematology/oncology chart said that we intended to give 10 10 Gray of TBI. 11 Q. Okay. 12 And as a doctor caring for Joshua, would you not 13 have had access to the University Hospital records or the 14 radiation therapy records -- radiation oncology records? 15 A. No. 16 Q. Why not? You wouldn't have access to those 17 records? 18 A. Those are in the radiation oncology department. 19 Q. If you wanted to, could you not have gone down to 20 radiation oncology to look at those records and look at 21 the prescription? 22 A. I don't know what their rules are for looking at 23 charts, at their own charts. 24 Q. Okay. 25 In the course of being a medical oncologist at</p>	<p style="text-align: right;">Page 59</p> <p>1 University Hospital, has there ever been an instance 2 where, taking care of a patient with cancer that was also 3 receiving radiation therapy, you went over to that 4 department to look at the radiation oncology records for 5 your patient? 6 A. No. 7 Q. Did you ever look at any computerized records? 8 A. Of what? 9 Q. Of the prescription that was provided for Joshua. 10 A. No. 11 Q. Would you have access to those? 12 A. I don't know if I could have access to them. I 13 have never looked at them. 14 Q. Okay. 15 Did you feel the need to file any incident report 16 or drug variance form once you learned of this 17 information? 18 A. By the time I learned that there was an error? 19 Q. Yes. 20 A. The people involved with incident reports, the 21 risk management/quality assurance department, knew about 22 it. 23 Q. So that obviated the need for you to fill out any 24 forms? 25 MR. GROEDEL: I will object.</p>
<p style="text-align: center;">*** Notes ***</p>	
<p style="text-align: right;">Page 60</p> <p>1 Go ahead, you can answer. 2 A. I spoke with someone from quality assurance at the 3 time that I found out, and I asked, what do we do now? 4 And the response was not -- 5 MR. NORCHI: Objection. 6 A. -- fill out a form. 7 MR. NORCHI: Objection. 8 MR. GROEDEL: Yes, yes. 9 Doctor, I don't want you to talk about any 10 conversations that you had with people in risk 11 management/quality assurance about this, because 12 we believe that that would be considered peer 13 review, okay? 14 So don't divulge the contents of any 15 discussion you had with individuals from quality 16 assurance, okay? 17 BY MR. FINELLI: 18 Q. We will get into that a little bit, Doctor, but 19 you mentioned you spoke to somebody in risk management. 20 Who was it that you spoke to? 21 MR. GROEDEL: Objection. 22 That, you can answer. 23 A. Dr. Ludgin. 24 Q. And when would that have taken place? 25 MR. GROEDEL: Objection.</p>	<p style="text-align: right;">Page 61</p> <p>1 You can answer that. 2 A. I spoke to him on either the -- for the first time 3 about this on either the afternoon that I received the 4 complaint, which was Monday, July 30th, and I know I 5 spoke with him on Tuesday, July 31st regarding it. 6 Q. The first time you spoke with him, was anyone else 7 present besides you and Dr. Ludgin? 8 A. No. 9 Q. Okay, how about the second time? 10 A. No. 11 Q. So the only two meetings you have had -- you only 12 had two meetings with Dr. Ludgin, and at both of those 13 meetings, the only two people present were you and 14 Dr. Ludgin? 15 A. I didn't say that. 16 Q. Okay, let's go back. 17 The first meeting you had with Dr. Ludgin, was 18 anyone else present? 19 A. No. 20 Q. All right. 21 The second meeting you had with Dr. Ludgin, was 22 anyone else present at the meeting? 23 A. No. 24 Q. Did you have more than two meetings with 25 Dr. Ludgin?</p>
<p style="text-align: center;">*** Notes ***</p>	

<p style="text-align: right;">Page 62</p> <p>1 A. Yes. 2 Q. How many meetings did you have with Dr. Ludgin? 3 A. There was a third. 4 Q. When was that? 5 A. Either August 8th or August 9th. 6 Q. Okay. 7 Was anyone else present besides you and Dr. Ludgin 8 at that meeting? 9 A. Yes. 10 Q. Where was the meeting held? 11 A. Dr. Kinsella's office. 12 Q. Okay, who was present at that meeting? 13 A. Dr. Ludgin, Dr. Kinsella and myself. 14 Q. Okay. 15 Did you bring any materials to that meeting? 16 A. No. 17 Q. Okay. 18 Were any materials present at that meeting? 19 A. Yes. 20 Q. Were the medical records of Joshua present? 21 A. There were medical records of Joshua present, yes. 22 Q. Okay. 23 Was the radiation therapy prescription that 24 initially was filled out in January of 2000, was that 25 present?</p>	<p style="text-align: right;">Page 63</p> <p>1 MR. GROEDEL: Objection. 2 You can answer that. 3 A. The radiation oncology chart was present and the 4 prescription sheet was in it. 5 Q. I am going to hand you what has been previously 6 marked as Doctor -- Plaintiff's Exhibit Dr. Kinsella A. 7 If you look at 1, 2 and 3, can you tell me which 8 prescription sheet or more were present at that meeting? 9 MR. GROEDEL: Objection. 10 You may answer that. 11 A. I don't recall exactly. 12 Q. Okay. 13 A. I don't recall. 14 Q. All right. 15 Did you witness any alteration of the prescription 16 sheet during that meeting? 17 MR. GROEDEL: Objection. 18 MR. MORIARTY: Objection to form. 19 MR. NORCHI: Objection. 20 MR. GROEDEL: You may answer. 21 A. What I witnessed, if I can describe to you what 22 went on -- 23 Q. Please do. 24 A. -- in that meeting, I think it will answer your 25 question.</p>
<p style="text-align: center;">*** Notes ***</p>	
<p style="text-align: right;">Page 64</p> <p>1 When I arrived in the meeting, Dr. Ludgin and 2 Dr. Kinsella were already there. When I walked in the 3 door, which was closed, it was clear to me that something 4 was very wrong in that room. I had not anticipated that 5 that would be the case, because up until that time, I had 6 thought that somehow the complaint was a mistake, not the 7 radiation. 8 And so I walked into the room and it was clear 9 that something not good was happening. And so I closed 10 the door, I looked at my husband, who said, I made a 11 mistake, I wrote the wrong prescription. 12 I sort of sunk into the chair that was by the 13 door, which was across the desk from him. 14 Q. Were you shown the prescription? 15 A. At that moment, no. I sunk into the chair. And I 16 said, what do you mean? 17 Tim was sitting with the radiation oncology chart 18 in his lap on the other side of the desk. Dr. Ludgin was 19 pacing around the room on the side of the desk. And Tim 20 had a pen in his hand. Tim being Dr. Kinsella, my 21 husband. 22 And he said, I wrote the wrong prescription right 23 here, it's the wrong prescription, I meant 10, I wrote 1, 24 I wrote the wrong prescription (indicating). 25 Q. You are moving your hand?</p>	<p style="text-align: right;">Page 65</p> <p>1 A. And he was circling the -- he was circling a pen. 2 The chart was open. And the top page of that chart was 3 the prescription page; is that what we call that? 4 MR. MARGOLIS: Take your time and look at 5 it and identify it by number. 6 MR. MORIARTY: Well, there are multiple 7 copies of it in there, so -- 8 MR. MARGOLIS: That is why I said, refer to 9 the number, ma'am. 10 MR. GROEDEL: If you are able. I mean, she 11 has already said she doesn't remember which sheet 12 she saw. 13 BY MR. FINELLI: 14 Q. Let me ask you this, Doctor, first of all: 15 Were you able to identify the medical record that 16 he was circling? 17 MR. NORCHI: Objection. I don't think she 18 said he circled it. He had the pen -- well, so 19 far -- 20 MR. FINELLI: Okay. 21 MR. NORCHI: -- the pen is in the air, the 22 paper below it, the pen up here. 23 Q. (Continuing) Were you able to identify the medical 24 record that he was open to, the chart was open to? 25 A. Perhaps if I would finish my version --</p>
<p style="text-align: center;">*** Notes ***</p>	

<p style="text-align: right;">Page 66</p> <p>1 Q. Okay. 2 A. -- then we could get back to the specifics. 3 Q. Okay. 4 A. The chart that was in his lap was the bright 5 yellow radiation oncology chart. He had it open. He had 6 a pen in his hand. He was making circular motions with 7 the pen and telling me, I wrote the wrong prescription, I 8 made a mistake.</p>	<p style="text-align: right;">Page 67</p> <p>1 So the pen gets put down on the desk. I gain 2 enough composure to stand up and walk around the desk to 3 look at whatever it is that Tim is looking at, and it is 4 a prescription sheet. 5 Now, I simply do not recall which version of this 6 I looked at, at that moment. 7 Q. Fair enough. 8 Did you at any point in time ever witness an</p>
<p>9 And he was circling something, presumably -- 10 presumably, but I was on the other side of the desk. He 11 was making some indication on this piece of paper that he 12 had in front of him that he had just recognized that 13 there was an error. 14 Dr. Lud -- so I am -- Tim is telling me that he 15 made a mistake, it was his error. 16 I am saying, what do you mean? Oh, no. 17 And Dr. Ludgin starts saying, get that pen away 18 from there, get the pen away, don't bring -- and I am 19 saying, what do you mean? 20 Tim is saying, I made a mistake. 21 And he and I are having this conversation, and 22 Richard is -- Dr. Ludgin is pacing, and every time Tim 23 goes to make some physical motion toward this paper, 24 Dr. Ludgin says, I said, put the pen down, don't touch 25 this, I told you, don't mark on that.</p>	<p>9 actual marking from Dr. Kinsella's pen on a medical 10 record? 11 A. There was a pen, there was paper, there was 12 motion. Whether ink was being applied to paper or not, I 13 was not witness to that. 14 Q. Okay. 15 Nor what type of paper, whether it was a medical 16 record or not? You didn't witness any markings? 17 Whether it was a medical record, or a note piece 18 of paper, you didn't witness any markings; is that your 19 testimony? 20 A. The medical record, the radiation oncology chart, 21 was open to the prescription page. The exact version, I 22 simply do not recall. There was a pen and there was 23 motion going on, and I simply did not see the result of 24 that. 25 Q. Okay.</p>
<p style="text-align: center;">*** Notes ***</p>	
<p style="text-align: right;">Page 68</p> <p>1 So you didn't witness any physical markings of a 2 pen on the medical record or any other type of paper that 3 he may have had as part of the records? 4 A. I believe I have answered that -- 5 Q. Could you please answer it -- 6 A. -- to the best of my ability. 7 Q. Please answer it again, then. 8 A. I did not witness ink being applied to a piece of 9 paper. 10 Q. Okay. 11 And to your knowledge, did Dr. Ludgin ever witness 12 any markings, physical markings of the pen, on any of the 13 records? 14 A. I don't -- 15 MR. GROEDEL: Objection. 16 MR. NORCHI: Objection. 17 A. (Continuing) I don't know. 18 Q. Okay. 19 At any time after you learned, once the complaint 20 was filed, that an incorrect prescription was written, 21 did you feel an obligation that the family should know 22 about this subtherapeutic dose of radiation that Joshua 23 received? 24 A. I found out about it from the family, from the 25 complaint.</p>	<p style="text-align: right;">Page 69</p> <p>1 Q. Okay. 2 Did you feel any obligation, once you found out 3 about it, to talk to the family about the subtherapeutic 4 dose of radiation? 5 MR. GROEDEL: Objection. 6 You mean after the lawsuit was filed? 7 MR. FINELLI: Uh-huh. 8 MR. GROEDEL: Go ahead, answer. 9 A. Emotionally, I would have liked to have spoken to 10 Joshua's mother. But under circumstances of a lawsuit 11 having been filed, I thought that was likely 12 inappropriate. 13 Q. Okay, hypothetically, if you would have learned of 14 the incorrect prescription of TBI prior to the lawsuit 15 being filed, as a doctor taking care of Joshua in 16 University Hospital settings, would you have felt then 17 that there was an obligation for the family to know about 18 a subtherapeutic dose given Joshua? 19 A. Yes. 20 Q. Okay. 21 Who, or more than one people, would you have felt 22 were responsible for relaying this information or talking 23 to the family and letting them know about it? 24 MR. GROEDEL: Assuming they knew. 25 Q. (Continuing) Assuming they knew it. Continuing</p>
<p style="text-align: center;">*** Notes ***</p>	

<p style="text-align: right;">Page 70</p> <p>1 hypothetical.</p> <p>2 A. As the primary oncologist for Joshua, I would</p> <p>3 have felt that I would have been certainly involved in</p> <p>4 that conversation, and perhaps would have been the one</p> <p>5 to actually give the news.</p> <p>6 Q. Okay.</p> <p>7 Do you feel that Dr. Kinsella, who was the</p> <p>8 physician writing the incorrect prescription, would</p> <p>9 have had a duty to talk to the family, as well?</p> <p>10 A. When?</p> <p>11 Q. Continuing the hypothetical, if he had known</p> <p>12 about the medical error prior to the lawsuit being</p> <p>13 filed.</p> <p>14 A. I would have expected that he would have</p> <p>15 communicated that information with me, as Joshua's</p> <p>16 primary oncologist, and that we would have decided</p> <p>17 together as to how to relay the information to the</p> <p>18 family.</p> <p>19 Q. Do you feel anyone from University Hospitals would</p> <p>20 have had a duty or obligation to talk to the family, as</p> <p>21 well, if they had known of the medical error prior to the</p> <p>22 lawsuit being filed?</p> <p>23 MR. NORCHI: Objection.</p> <p>24 You mean, speak directly to the family?</p> <p>25 MR. FINELLI: Correct.</p>	<p style="text-align: right;">Page 71</p> <p>1 A. I believe that someone at University Hospitals, if</p> <p>2 they were aware of the error, should have brought it to</p> <p>3 my attention, as his primary oncologist, and that that</p> <p>4 would have been the most appropriate way for that</p> <p>5 information to be given to the family.</p> <p>6 Q. During your period of time up until the present</p> <p>7 time that you have been at University Hospital, have you</p> <p>8 had situations where you have cared for a patient in</p> <p>9 conjunction with Dr. Shina from the radiation department,</p> <p>10 radiation therapy department?</p> <p>11 A. There have been patients, pediatric oncology</p> <p>12 patients, patients treated within our practice group</p> <p>13 that have been cared for by Dr. Shina. To my best</p> <p>14 recollection, my primary -- I have not shared one of</p> <p>15 my primary oncology patients with him.</p> <p>16 Q. You know Dr. Shina professionally?</p> <p>17 A. Yes.</p> <p>18 Q. Okay.</p> <p>19 Would you hold Dr. Shina out to be a reputable</p> <p>20 radiation therapist -- radiation oncologist?</p> <p>21 MR. GROEDEL: Objection.</p> <p>22 You may answer.</p> <p>23 A. I don't believe that I am in a position to judge</p> <p>24 the qualifications of someone in general radiation</p> <p>25 oncology practice.</p>
<p style="text-align: center;">*** Notes ***</p>	
<p style="text-align: right;">Page 72</p> <p>1 Q. Would you have any reason not to believe that</p> <p>2 Dr. Shina, as a physician, is honest and trustworthy?</p> <p>3 MR. GROEDEL: Objection.</p> <p>4 You may answer.</p> <p>5 A. I don't have any specific reason.</p> <p>6 Q. Okay.</p> <p>7 Have you had the opportunity to read Dr. Shina's</p> <p>8 deposition?</p> <p>9 A. No, I have not.</p> <p>10 Q. Okay.</p> <p>11 Are you aware that Dr. Shina was deposed already</p> <p>12 in these proceedings?</p> <p>13 A. I am aware of that.</p> <p>14 Q. Okay.</p> <p>15 What are you aware -- are you aware of anything</p> <p>16 that he testified to as part of his deposition?</p> <p>17 MR. GROEDEL: Well, objection. Anything</p> <p>18 that she knows about Dr. Shina's deposition</p> <p>19 testimony came through her attorneys, which would</p> <p>20 be, I think, protected.</p> <p>21 MR. FINELLI: Fair enough.</p> <p>22 Q. (Continuing) Are you aware that Dr. Shina, during</p> <p>23 his deposition, stated that in May of 2000, he had a</p> <p>24 meeting with Dr. Kinsella where he conveyed to</p> <p>25 Dr. Kinsella at that time that an incorrect prescription</p>	<p style="text-align: right;">Page 73</p> <p>1 for TBI was written for Joshua?</p> <p>2 MR. GROEDEL: You can answer that.</p> <p>3 A. I believe my attorney told me something to that</p> <p>4 effect, yes.</p> <p>5 Q. Okay.</p> <p>6 But outside of your attorney, you were not aware</p> <p>7 that Dr. Shina had met with Dr. Kinsella, according to</p> <p>8 Dr. Shina's testimony, in May of 2000, and that he</p> <p>9 apprised Dr. Kinsella of the fact that an incorrect</p> <p>10 prescription for TBI was written?</p> <p>11 A. Other than that communication, I was not aware of</p> <p>12 that.</p> <p>13 Q. And that he also testifies, are you also aware,</p> <p>14 other than -- well, strike that.</p> <p>15 Are you aware that are Dr. Shina had a</p> <p>16 conversation with Dr. Shurin regarding the incorrect</p> <p>17 prescription for TBI?</p> <p>18 A. I was not aware of that.</p> <p>19 Q. Okay.</p> <p>20 Have you had any conversations with Dr. Shurin</p> <p>21 regarding Joshua's care and the incorrect prescription</p> <p>22 for TBI?</p> <p>23 A. There are two questions there.</p> <p>24 Q. Okay. Are you aware -- strike that.</p> <p>25 Did you have any communication or meetings with</p>
<p style="text-align: center;">*** Notes ***</p>	

<p style="text-align: right;">Page 74</p> <p>1 Dr. Shurin relative to Joshua's care, specifically the 2 incorrect dosage of TBI? 3 MR. MORIARTY: Objection to form. 4 MR. GROEDEL: Objection. 5 You can answer. 6 Q. (Continuing) Have you had any discussions with 7 Dr. Shurin regarding Joshua? 8 A. Yes. 9 Q. Okay, how many? 10 A. One -- I am sorry. Since the lawsuit was filed, 11 one. 12 Q. Okay. 13 Prior to the lawsuit, did you have any discussions 14 with Dr. Shurin -- 15 A. We -- 16 Q. -- regarding Joshua? 17 A. Joshua was under the care of the pediatric 18 oncology division from July of '99 until his death in 19 June of 2000, and so since we cross cover for each other, 20 and -- there would have been multiple occasions that 21 Dr. Shurin and I would have discussed Joshua -- Joshua's 22 clinical care. 23 Q. Okay. 24 Tell me about the meeting after the lawsuit was 25 filed?</p>	<p style="text-align: right;">Page 75</p> <p>1 A. It was not a meeting, per se. It was a brief 2 conversation. It occurred immediately after I left my 3 husband's office on July 30th. That would be the 4 encounter that we spoke about earlier, where I had just 5 received the complaint, and I went to him and said, do 6 you know anything about this, and he said no. 7 And I said, well -- would you like them to read 8 back my answer -- but in summary that, you know, isn't 9 there going to be a record of this, that sort of thing. 10 Upon leaving Tim's office, I had the occasion to 11 run into Dr. Shurin, who was aware of the lawsuit. And I 12 said -- she said, I'm sorry to hear that you're being 13 sued. 14 And I said, yes, it's very upsetting, this being, 15 you know, within two hours of having received the 16 complaint. 17 And I said, but you know, it's all over some sort 18 of thing about radiation, and I don't think there was an 19 error. And I just came from Tim's office, and I asked 20 him, and he doesn't know anything about this, and I said 21 to him, you know, isn't there going to be some record 22 about this, because don't you have all kinds of records 23 in radiation oncology about doses being given from the 24 machines, and aren't there lots of cross checks and 25 things?</p>
<p style="text-align: center;">*** Notes ***</p>	
<p style="text-align: right;">Page 76</p> <p>1 And I said, so hopefully, this will just get all 2 cleared up, because there should be all kinds of records 3 that this was in fact right. 4 And she said she was sorry again that this -- I 5 was going through this, said that in her many years of 6 practice, she had never been sued. That was the extent 7 of the conversation. 8 Q. Did she ask you specifically as to whether or not 9 an incorrect prescription for TBI was written? 10 A. No. 11 Q. Okay. Did you have any discussion -- strike that. 12 Was this communication or meeting with Dr. Shurin 13 prior to the time you met with Dr. Ludgin and 14 Dr. Kinsella? 15 A. Yes. 16 Q. So at that meeting, there would be no discussion 17 of alteration of records, because -- 18 A. No records had been looked at. 19 Q. Right. Okay. 20 Now, it is your understanding, correct me if I am 21 wrong, that Dr. Kinsella did not know of the incorrect 22 prescription until after the lawsuit was filed? 23 A. Yes. 24 Q. And it is Dr. Shina's testimony that in fact May 25 of 2000, he approached Dr. Kinsella and told him that an</p>	<p style="text-align: right;">Page 77</p> <p>1 incorrect prescription was written by Dr. Kinsella for 2 TBI for Joshua. 3 Do you have any explanation why the contrasting 4 testimony between Dr. Kinsella and Dr. Shina? 5 A. No. 6 MR. GROEDEL: Objection. 7 MR. MARGOLIS: I am sorry, I didn't hear 8 her answer. 9 A. (Continuing) No. 10 Q. Did you ever discuss with Dr. Kinsella the 11 testimony or the contrasting testimony between 12 Dr. Kinsella and Dr. Shina? 13 MR. GROEDEL: Objection. 14 You may answer. 15 A. Only -- only after Dr. Shina said that that 16 meeting took place. 17 Q. Okay. 18 And what was the fruits of that discussion with 19 Dr. Kinsella? 20 MR. GROEDEL: Objection. 21 You may answer. 22 A. That Dr. Kinsella does not recall that meeting. 23 Q. Okay. 24 It is not your opinion that Dr. Shina is 25 duplicitous in his testimony during the deposition in</p>
<p style="text-align: center;">*** Notes ***</p>	

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<p>1 this case, is it?</p> <p>2 MR. GROEDEL: Objection.</p> <p>3 A. I don't know.</p> <p>4 Q. Do you have any knowledge or reason to believe</p> <p>5 that Dr. Shina would be duplicitous in his testimony?</p> <p>6 MR. GROEDEL: Objection.</p> <p>7 You may answer.</p> <p>8 Asked and answered.</p>	<p>1 prescription error in May of 2000, and Dr. Kinsella</p> <p>2 wouldn't?</p> <p>3 MR. GROEDEL: Objection.</p> <p>4 MR. MORIARTY: Objection.</p> <p>5 MR. NORCHI: Objection.</p> <p>6 MR. GROEDEL: You may answer.</p> <p>7 MR. MORIARTY: That is not what Linda</p> <p>8 testified to.</p>
<p>9 A. I don't know.</p> <p>10 Q. As far as you know, there is no animosity between</p> <p>11 Dr. Shina and Dr. Kinsella, is there?</p> <p>12 A. I don't know.</p> <p>13 Q. Is there any animosity between you and Dr. Shina?</p> <p>14 A. Not me toward him. I can't speak for him.</p> <p>15 Q. Okay.</p> <p>16 Do you have any animosity towards Dr. Shurin?</p> <p>17 A. No.</p> <p>18 Q. All right. Now -- what's her name, Mangosh?</p> <p>19 MR. MARGOLIS: Linda Mangosh.</p> <p>20 Q. (Continuing) Yes, Linda Mangosh was deposed</p> <p>21 yesterday, and her testimony is that she was aware of the</p> <p>22 incorrect prescription for TBI in May of 2000.</p> <p>23 Do you know who Linda Mangosh is?</p> <p>24 A. Yes.</p> <p>25 Q. Any reason that Linda Mangosh would know of the</p>	<p>9 Go ahead.</p> <p>10 MR. GROEDEL: You can answer, if you can.</p> <p>11 A. As a result of the depositions and the information</p> <p>12 that has been forthcoming in -- as a result of this</p> <p>13 complaint and litigation, I have learned that there was</p> <p>14 a -- that this error was detected by persons in the</p> <p>15 radiation oncology department sometime in May.</p> <p>16 Q. Okay, and --</p> <p>17 A. Can I just take a break for a second?</p> <p>18 MR. FINELLI: Sure.</p> <p>19 (Short recess had.)</p> <p>20 MR. FINELLI: Ivy, can you read the last</p> <p>21 answer.</p> <p>22 THE NOTARY: Just the answer?</p> <p>23 MR. FINELLI: Uh-huh.</p> <p>24 (Record read.)</p> <p>25 MR. FINELLI: Okay.</p>
*** Notes ***	
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<p>1 BY MR. FINELLI:</p> <p>2 Q. Are you aware of the people that became aware of</p> <p>3 this sometime in May, specifically?</p> <p>4 A. I don't know all of the people, no.</p> <p>5 Q. Okay.</p> <p>6 Did you become aware that some people in</p> <p>7 administrative capacity in the department of radiation</p> <p>8 oncology became aware of this?</p> <p>9 A. That is my understanding --</p> <p>10 Q. Okay.</p> <p>11 A. -- from what I have heard.</p> <p>12 Q. We are talking about, became aware of it in May of</p> <p>13 2000?</p> <p>14 A. Correct --</p> <p>15 Q. Okay.</p> <p>16 A. -- yes. I am sorry.</p> <p>17 MR. NORCHI: Just for clarification, this</p> <p>18 is information that she has received from</p> <p>19 attorneys, I presume?</p> <p>20 THE WITNESS: Correct.</p> <p>21 MR. FINELLI: And through --</p> <p>22 THE WITNESS: Yes.</p> <p>23 MR. MARGOLIS: That is not what she said.</p> <p>24 She said through deposition and otherwise. She</p> <p>25 has got three lawyers here, if they want to make</p>	<p>1 an issue of it.</p> <p>2 MR. GROEDEL: Yes, they know. It is not a</p> <p>3 big deal, but I mean, the way the question is</p> <p>4 being phrased, it is sort of asking for privileged</p> <p>5 information. But I will let it go for the time</p> <p>6 being.</p> <p>7 MR. MORIARTY: Well, she hasn't attended</p> <p>8 all the depositions, except for Dr. Kinsella's.</p> <p>9 We haven't given her the transcripts.</p> <p>10 MR. MARGOLIS: I understand.</p> <p>11 MR. GROEDEL: I mean, if you want to ask</p> <p>12 her --</p> <p>13 MR. FINELLI: I am not diving into that.</p> <p>14 MR. GROEDEL: -- a question based upon what</p> <p>15 is in the deposition, fine.</p> <p>16 MR. FINELLI: I am not diving into that.</p> <p>17 BY MR. FINELLI:</p> <p>18 Q. Doctor, if administrative people in the department</p> <p>19 of radiation oncology, or outside the department of</p> <p>20 radiation oncology, or physicians -- strike that.</p> <p>21 If administrative people within the department of</p> <p>22 radiation oncology would have known of the incorrect</p> <p>23 prescription in May of 2000, would you have expected them</p> <p>24 to approach you with that knowledge?</p> <p>25 A. I would have expected to be made aware of that in</p>
*** Notes ***	

<p style="text-align: right;">Page 82</p> <p>1 some capacity, yes. 2 Q. Okay, why? 3 A. Because I was the primary oncologist for Joshua. 4 Q. Okay. 5 At that point in time, if you were given that 6 information and knowledge, what would you have done? 7 A. I would have spoken with the family. 8 Q. Okay. 9 And I believe you testified earlier you would have 10 also spoken with Dr. Kinsella, and jointly you would have 11 developed a plan to communicate this to the family? 12 A. Yes. 13 Q. During your practice at UH since you have joined 14 in 1998, I believe, how many neuroblastoma cases have you 15 seen? 16 A. Have I seen, or have I been -- 17 Q. I am sorry. 18 A. -- the primary oncologist for? 19 Q. Have you been the oncologist for. 20 A. Between five and ten. 21 Q. Okay. 22 A. Not ten, but probably around five, something like 23 that. 24 Q. At any point in time, have you had any discussion 25 with Dr. Nieder regarding the care of Joshua?</p>	<p style="text-align: right;">Page 83</p> <p>1 A. Yes. 2 Q. Okay, when was that? 3 A. Multiple occasions. 4 Q. All after the lawsuit was filed? 5 A. No. 6 Q. Okay. Let me ask it this way: 7 Have you had any discussions with Dr. Nieder 8 relative to the incorrect TBI prescription of Joshua? 9 A. No. 10 Q. And I preface the following questions with, in 11 reference to the incorrect dosage of TBI, any discussions 12 with Dr. Samuels? 13 A. No. 14 Q. Any discussions with Dr. Pham? 15 A. No. 16 Q. Any discussions with the physicist, Dr. Beddar? 17 A. No. 18 Q. Dr. Wessels? 19 A. No. 20 Q. Dr. Sibata? 21 A. No. 22 Q. Any discussions with Nurse Harp? 23 A. No. 24 Q. Any discussions with Linda Mangosh? 25 A. No.</p>
<p style="text-align: center;">*** Notes ***</p>	
<p style="text-align: right;">Page 84</p> <p>1 Q. Any discussions with the chief of staff? 2 A. No. 3 Q. Okay. 4 So your discussions regarding the incorrect dose 5 of TBI have been limited to Dr. Kinsella, Dr. Shurin and 6 Dr. Ludgin; is that correct? 7 A. My discussion with Dr. Shurin was prior to my 8 knowledge that there was an incorrect dose. 9 Q. Okay. 10 But it was regarding the complaint? 11 A. Correct. 12 Q. Okay. 13 Any discussions with anyone I have not mentioned 14 yet? 15 A. I am sorry, could you repeat that, the list? 16 (Record read.) 17 Q. Do you want me to repeat the -- rephrase the 18 question? 19 A. If I didn't answer it, please repeat it for me. 20 Q. Relative to the complaint that was filed and/or 21 the incorrect TBI prescription, have you had any 22 discussions with anyone other than Dr. Kinsella, 23 Dr. Ludgin and Dr. Shurin? 24 MR. MORIARTY: Objection. And you don't 25 have to mention lawyers.</p>	<p style="text-align: right;">Page 85</p> <p>1 Q. (Continuing) Excluding your lawyers. 2 A. I believe that I had a similar brief communication 3 with Dr. Nieder on the day of the complaint, similar to 4 the communication that I had with Dr. Shurin expressing 5 my concern that I had received this complaint and that 6 there should be records to be able to get this cleared 7 up. 8 Q. Okay. 9 And discussions with Dr. Nieder prior to that 10 would have been what I assume to be part of the care of 11 Joshua during that period of time? 12 A. Yes. 13 Q. Okay, if you can turn to Kinsella A-19. 14 A. (Witness complies). 15 Q. Have you seen -- and it is the letter dated 16 5-31-2000. 17 A. Yes. 18 Q. Have you seen that letter prior to today? 19 A. I knew of its existence. I had never read it. 20 Q. Okay. 21 So this is the first time you are actually looking 22 at the letter? 23 A. Yeah. 24 Q. Correct? 25 A. Yes.</p>
<p style="text-align: center;">*** Notes ***</p>	

<p style="text-align: right;">Page 86</p> <p>1 Q. When did you become aware of it? 2 A. From my lawyer. 3 Q. Okay. 4 And you certainly have the time to read it. Would 5 you like to read it now? 6 A. If I need to for you, I will. 7 Q. Sure. 8 A. Okay.</p>	<p style="text-align: right;">Page 87</p> <p>1 Q. (Continuing) Besides the lawyers. 2 A. No. And my husband, no. 3 My husband, in the context of, he was present when 4 we were informed of this letter. 5 Q. Okay. 6 Have you formed a, for lack of a better word, 7 differential as to who might have authored the letter? 8 A. No.</p>
<p>9 (Pause) 10 MR. MORIARTY: She is ready. What is your 11 question? 12 BY MR. FINELLI: 13 Q. Okay, did you write the letter? 14 A. No. 15 Q. I have to ask you that. 16 A. No. 17 Q. Do you know who did write it? 18 A. No. 19 Q. Do you have knowledge of anyone who may know who 20 wrote it? 21 A. No. 22 Q. Okay. 23 Did you have any discussions with anyone regarding 24 the letter? 25 MR. GROEDEL: Besides her lawyers?</p>	<p>9 MR. GROEDEL: Objection. 10 Q. Would you agree that Joshua Valdivieso -- 11 Valdivieso should have received the TBI dose of 10 Grays 12 in January of 2000? 13 A. That was the intention. 14 Q. How soon after completion of the TBI did he 15 receive his bone marrow transplant? 16 A. The same day. 17 Q. In your practice caring for your patients, what 18 duty do you owe them, as a physician? 19 MR. GROEDEL: Objection. 20 You may answer the question. I just think 21 it is a little vague. But go ahead, Doctor. 22 A. I believe I owe them my best medical judgment and 23 my care and compassion for their children, and their 24 child. 25 MR. GROEDEL: I withdraw the objection.</p>
<p style="text-align: center;">*** Notes ***</p>	
<p style="text-align: right;">Page 88</p> <p>1 Q. And that would include honesty? 2 A. Yes. 3 Q. Who was your employer in 2000, Doctor? 4 A. Case Western Reserve University School of 5 Medicine. 6 Q. Do you know who Dr. Kinsella's employee was -- 7 employer, in the year 2000? 8 A. No. 9 Q. Would you agree that the purpose of TBI for Joshua 10 was an attempt to delay the time of failure to his death? 11 A. Yes. 12 Q. And the purpose of TBI for Joshua was for him to 13 go into a period of remission and increase his time of 14 survival? 15 A. Yes. 16 Q. Do you think the subtherapeutic dose of 1 Gy may 17 negatively have affected the impact and intent of the 18 TBI? 19 MR. GROEDEL: Objection. 20 You may answer. 21 THE WITNESS: Could you read that again, 22 please? I am sorry. 23 MR. FINELLI: Okay. 24 (Record read.) 25 A. In retrospect, no.</p>	<p style="text-align: right;">Page 89</p> <p>1 Q. How about at the time? 2 A. At the time, the intent was to give 10 Gray. But 3 you are -- but the question was, as I look back now. The 4 answer is no. 5 Q. Why is that? 6 A. In preparation for the transplant, the 7 consolidative therapy that was intended was four days of 8 chemotherapy followed by one day of rest followed by 9 three days -- three doses of TBI followed by stem cell 10 rescue, the details of which are in the chart. 11 Joshua received his chemotherapy as intended, and 12 his three days of TBI, followed by the stem cell rescue 13 on January 28th of 2000. He subsequently, in the week to 14 two weeks following the stem cell infusion, was very, 15 very ill. So ill, in fact, that he required the 16 pediatric intensive care unit. 17 The specific reason that he was in the intensive 18 care unit was because of what was a picture of septic 19 shock in conjunction with typhlitis, which is an 20 inflammation of the bowel -- 21 Q. I am sorry, did you say enteritis? 22 A. Typhlitis. 23 Q. Typhlitis. 24 A. Which is an inflammation of the bowel wall that is 25 seen after chemotherapy and/or radiation.</p>
<p style="text-align: center;">*** Notes ***</p>	

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<p>1 MR. MORIARTY: I have to step out. I am 2 sorry. 3 THE WITNESS: Would you like for me to wait 4 for your return? 5 MR. MORIARTY: No, that is not necessary. 6 (Thereupon, Mr. Moriarty left the room.) 7 A. (Continuing) Typhlitis is a side effect of cancer 8 therapy, chemotherapy and/or radiation. And it can lead 9 to microperforations, which can lead to enteric organisms 10 gaining access to the bloodstream, therefore causing 11 bacteremia and often sepsis in a profoundly 12 immunocompromised individual such as someone going 13 through a transplant. It is not an unexpected 14 complication of stem cell transplant. But it is one that 15 is potentially very severe and potentially fatal. 16 Joshua experienced this constellation of symptoms, 17 that being typhlitis and a picture of septic shock. 18 Q. Did he recover from this period of debilitation? 19 A. And I believe that had he received 10 times the 20 dose of radiation that he actually received, that it is 21 likely that he would have died in the immediate trans -- 22 post transplant period. 23 (Thereupon, Mr. Moriarty reentered the 24 room.) 25 Q. Why?</p>	<p>1 A. Because his -- the severity of his complications 2 was already extreme. And if we would have actually given 3 him ten times the dose of radiation, I think it is likely 4 that he would not have survived that. 5 Q. Did he recover from this period of debilitation? 6 A. He did. 7 Q. When he was scheduled to receive his TBI, that was 8 for the sites that were MIBG positive, correct? 9 A. TBI is total body irradiation. That would include 10 the MIBG positive sites, yes. 11 Q. Okay. 12 In people that develop radiation -- post radiation 13 induced enteritis, is it due to the radiation being 14 concentrated in the area of the abdomen and pelvis? 15 A. The answer is that side effects from radiation 16 occur in -- within the radiation field. So if you have a 17 brain tumor irradiated, for example, you don't have 18 enteritis. 19 Since total body irradiation includes the abdomen, 20 one -- this would be an expected complication of total 21 body irradiation. 22 Does that answer the question for you? 23 Q. Yes. 24 A. Okay. 25 Q. But is that also in conjunction with the fact that</p>
*** Notes ***	
Page 92	Page 93
<p>1 the majority of people that develop radiation -- post 2 radiation induced enteritis is because the radiation is 3 given to the area of the abdomen and pelvis, as in, you 4 said, in TBI, he received it in that area. 5 In other words, if you are getting radiated in the 6 neck, you wouldn't expect enteritis? 7 A. Yes, that is correct. 8 Q. Okay. 9 So to get enteritis post radiation, you would have 10 to have some concentration of radiation to the abdomen 11 and pelvic area? 12 A. If the radiation was the cause of it, yes. 13 Q. Okay. 14 How was Joshua doing in the months of March and 15 April of 2000? 16 And you can refer to -- 17 A. Yes. 18 Q. -- your letters or your follow-up dictation notes, 19 if you would like. 20 A. Following his recovery from the acute toxicities 21 of the transplant, Joshua actually enjoyed a period of 22 relative health. He was still not able to eat and was 23 fed with hyperalimentation and required some medical 24 support, but was actually able to be home with his family 25 and participate in fun childhood activities, I am told by</p>	<p>1 his mother. 2 Q. Was he doing better in April, contrasted to March? 3 A. Some things were better, other things were worse. 4 Q. If Joshua would have received a therapeutic dose 5 of TBI in January of 2000, would he have received -- 6 would he have developed skull metastasis in May of 2000? 7 A. I don't know. 8 MR. FINELLI: Let's take a one minute 9 break. 10 (Short recess had.) 11 BY MR. FINELLI: 12 Q. Doctor, at all times during your care of Joshua, 13 you had interaction with Iwona, his mother, correct? 14 A. Yes. 15 Q. At all times during the care, did you know her to 16 be a caring and compassionate and compliant person? 17 A. Those are three different things. 18 Q. Okay, did you know her to be a compliant mother, 19 as far as the instructions regarding Joshua's care? 20 A. I know that she intended to be compliant. But I 21 know that Joshua didn't always agree with that. And so I 22 believe there were likely limits to the compliance. 23 Q. I am sorry, I didn't hear that. 24 A. There were limits to the compliance. 25 Q. Why were there limits, because of Joshua?</p>
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1 A. Yes.
 2 Q. At all times during your care, did you formulate
 3 an opinion as to Iwona's compassion regarding the medical
 4 condition of Joshua?
 5 A. Yes.
 6 Q. And that was what?
 7 A. She loved him very much.
 8 Q. Prior to the lawsuit being filed, were you ever
 9 made aware by Dr. Kinsella that a subtherapeutic TBI
 10 prescription was written for Joshua?
 11 A. No.
 12 MR. FINELLI: No further questions.
 13 MR. NORCHI: May I? I have a few
 14 questions.
 15 CROSS EXAMINATION
 16 BY MR. NORCHI:
 17 Q. It is still morning. Good morning.
 18 Dr. Wiersma, I have maybe five or ten more minutes
 19 of questions, and then you are finished with me.
 20 A. I am all yours.
 21 Q. Lucky me. Lucky me.
 22 You testified earlier that there came a time in
 23 the treatment of Joshua that alternate or additional
 24 therapies were needed, such as radiation therapy; do you
 25 remember that testimony this morning?

1 A. Yes.
 2 Q. You referred -- did you refer Joshua to
 3 Dr. Kinsella for further care?
 4 A. I referred Joshua to Dr. Kinsella for the
 5 radiation component of his care.
 6 Q. Did you sit down with Joshua's mother and discuss
 7 with her the necessity for the radiation oncology
 8 therapy?
 9 A. Yes.
 10 Q. Okay.
 11 Do you recall the discussion? And if you do,
 12 could you tell us what that discussion was?
 13 A. There was discussion of anticipated radiation
 14 therapy as part of his overall treatment plan even from
 15 the beginning, that that would eventually be used --
 16 Q. Okay.
 17 A. -- as planned in the context of the consolidative
 18 transplant phase of the therapy.
 19 Q. Just ignore them.
 20 A. The -- when it became clear that our original plan
 21 of giving radiation to his primary tumor site only, or to
 22 his primary tumor site and areas of persistent skeletal
 23 metastases, that that would be impractical because of the
 24 extent of disease, I then did have discussion with his
 25 mother as to the implications of that, and the need for

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1 TBI if we were to give any radiation and continue with
 2 the transplant plan.
 3 Q. Did you ever advise Mrs. Valdivieso of your
 4 relationship with Dr. Kinsella?
 5 A. I don't recall.
 6 Q. Okay.
 7 Is that something you would usually do, you
 8 typically do?
 9 A. Typically, I am not the one that tells my patients
 10 that my husband is Dr. Kinsella.
 11 Q. Who does that?
 12 A. I don't know.
 13 Q. Okay.
 14 But you did refer Joshua to Dr. Kinsella, and he
 15 began the assessment of Joshua sometime in mid January
 16 for the type of treatment he would be receiving?
 17 A. I don't recall the date of the initial
 18 consultation at which time the plan was not TBI.
 19 Q. Okay.
 20 I believe that might be January 6th or so. But --
 21 A. Around that time.
 22 Q. So then after the initial consultation, there was
 23 a change --
 24 A. Yes.
 25 Q. -- in the treatment plan?

1 A. Scans were done --
 2 Q. Okay.
 3 A. -- and the plan was changed.
 4 Q. And you referred to those, the MIBG scan and the
 5 subsequent MRIs --
 6 A. Yes.
 7 Q. -- that were performed. Okay.
 8 Based upon that assessment, the reassessment with
 9 the MIBG scan and the MRIs, was there a reassessment also
 10 of Joshua's prognosis?
 11 A. Yes.
 12 Q. How did his prognosis change, based upon the
 13 information --
 14 A. It became worse.
 15 Q. -- from those studies.
 16 It became worse?
 17 A. Yes.
 18 Q. Were you able to quantify that at all?
 19 A. I don't believe I quantified it in the consent
 20 form.
 21 Q. Okay.
 22 Did you ever quantify it in your discussions with
 23 Mrs. Valdivieso?
 24 A. I don't recall a specific number.
 25 Q. It is because of those tests, though, that TBI was

*** Notes ***

1 decided upon?
 2 A. Yes.
 3 Q. Okay.
 4 What did you tell Mrs. Valdivieso as to the reason
 5 for the TBI and the change in radiation therapy?
 6 A. That the plan had been to give radiation to the
 7 areas of his skeleton that had persistent MIBG
 8 positivity. When those areas were very numerous, and
 9 they were confirmed by abnormality, persistent
 10 abnormality on MRI scan, we explained to her that it
 11 would be impossible to give that many separate areas of
 12 radiation, and that therefore the only way that radiation
 13 made sense was to give it as total body irradiation.
 14 Q. Was Dr. Kinsella with you when you had that
 15 discussion --
 16 A. No.
 17 Q. -- with Mrs. Valdivieso?
 18 Did you ever have a joint conference where you and
 19 Dr. Kinsella were both present with Mrs. Valdivieso?
 20 A. Not that I recall.
 21 Q. You were asked some questions about Dr. Shina.
 22 You have met Dr. Shina, of course, correct?
 23 A. Yes.
 24 Q. He works in your husband's department, correct,
 25 radiation oncology?

1 A. Not any more.
 2 Q. But he did in January of 2000, correct?
 3 A. Yes.
 4 Q. Were they partners in a practice together?
 5 A. Yes.
 6 Q. Okay.
 7 You told us before -- well, you testified earlier
 8 that if it had become known to anybody back in May of
 9 2000 that the -- that a subtherapeutic dose of total body
 10 irradiation had been given to Joshua, that is information
 11 that you would want somebody to bring to you, correct?
 12 A. Yes.
 13 Q. So you could tell the family, correct?
 14 A. Yes.
 15 Q. If in fact Dr. Shina, as the clinical director and
 16 a colleague of your husband's, if he had that
 17 information, would it be reasonable for him to bring it
 18 to Dr. Kinsella, that is the information that he had
 19 regarding the subtherapeutic dose?
 20 A. Yes.
 21 Q. Okay.
 22 Would you expect Dr. Shina to also go to you with
 23 the same information, or would you expect -- or would it
 24 be reasonable and appropriate for him to rely on
 25 Dr. Kinsella to bring that information to you?

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1 A. I think either way would be acceptable or
 2 appropriate.
 3 MR. NORCHI: Okay.
 4 No further questions. Thank you.
 5 MR. WALTERS: Real briefly, Doctor --
 6 MR. MARGOLIS: Let me get you a mike.
 7 CROSS EXAMINATION
 8 BY MR. WALTERS:
 9 Q. Doctor, I represent Case Western Reserve
 10 University and Dr. Barry Wessels and Dr. Sam Beddar, the
 11 two physicists.
 12 You said in response to one of Mr. Finelli's
 13 questions, near the end, when you were asked who your
 14 employer was, you said Case Western Reserve University.
 15 Now, you are a member of the faculty of Case
 16 Western Reserve University, correct?
 17 A. Yes.
 18 Q. And all physicians, at least hospital based
 19 physicians at University Hospitals of Cleveland, are
 20 members of the faculty of Case Western Reserve
 21 University, correct?
 22 A. I don't know.
 23 Q. All right.
 24 You receive some compensation from CWRU?
 25 A. Yes.

1 Q. And am I correct that that compensation which you
 2 receive is for your efforts in teaching and research?
 3 A. Those are included in my list of duties.
 4 Q. Well, let's approach it from this way:
 5 When you see a patient, does your group, or you,
 6 personally, do you submit a bill for fees, when you see a
 7 patient?
 8 A. Yes, the pediatric practice plan submits a fee --
 9 a bill for my services.
 10 Q. And your services are rendered to patients,
 11 whether they are inpatients at University Hospitals, or
 12 you see them on an outpatient basis on a referral from
 13 someone outside University Hospitals, your services are
 14 rendered on a fee for services basis, correct?
 15 A. I don't know.
 16 Q. Okay.
 17 When you see a patient, let's say it is 2:00
 18 o'clock in the afternoon on a Thursday, and a patient is
 19 seen in your office --
 20 A. Uh-huh.
 21 Q. -- you conclude that patient encounter, whatever
 22 it is that you do. Is some record kept of that patient
 23 encounter?
 24 A. Yes.
 25 Q. And is that record then -- somehow does it find

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1 its way into a billing record, from which a bill is
2 generated?
3 A. To my --
4 Q. If I am confusing you --
5 A. -- knowledge --
6 Q. Go ahead.
7 A. -- yes.
8 Q. You mentioned your group. What is your group?
9 A. My -- which group?
10 Q. Your practice group.
11 A. The Pediatric Practice Plan.
12 Q. Okay.
13 A. There is -- department of pediatrics.
14 Q. The Department of Pediatrics Practice Plan.
15 And is there also a subgroup, if you will, for
16 pediatric hematology/oncology, or not?
17 A. I don't know.
18 Q. You receive compensation from the -- from the
19 group in some fashion, right?
20 A. My entire compensation is from Case Western
21 Reserve.
22 Q. Okay, is that what the check says on it?
23 A. Yes.
24 Q. Does the check bear any -- does -- not the
25 check -- but does your compensation bear any relationship

1 to the amount of services you have provided, whether
2 services to patients for which bills are generated, or
3 services to your group?
4 A. I am a salaried employee, so --
5 Q. So if you see one patient a year, or a thousand
6 patients a year, your pay is exactly the same; is that --
7 A. Yes.
8 Q. -- what you are saying? Okay.
9 You might not be around --
10 A. Not for long, that is right.
11 Q. Not for long, exactly. Okay.
12 How is your salary determined?
13 MR. GROEDEL: Objection.
14 You may answer.
15 Q. (Continuing) How is it determined --
16 A. I don't know.
17 Q. All right.
18 You receive -- you or your group receives fees for
19 rendering medical services to patients, correct?
20 A. Yes.
21 Q. All right.
22 Those fees are collected by a billing agency,
23 presumably. Do you know who it is?
24 A. No.
25 Q. Do you know where the fees go from there?

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1 A. No.
2 Q. Do you know -- are you telling me that your check
3 says Case Western Reserve University on it?
4 A. Yes.
5 Q. Okay.
6 And does it have any substyle to it, department of
7 such and such?
8 A. Not that I recall.
9 Q. All right, who signs the check?
10 A. I don't know.
11 Q. It is presumably signed by someone?
12 A. So far so good, yes.
13 Q. Yes.
14 But you have never looked to see who that is --
15 A. No.
16 Q. -- or what their title is; you don't know?
17 A. I don't recall.
18 Q. Okay.
19 Do you receive a second check from anyone else --
20 A. No.
21 Q. -- for any services? All right.
22 Do you receive any breakdown of the relationship
23 between the fees generated by your clinical practice in
24 relation to the check that you receive on a monthly or
25 semimonthly basis?

1 A. No.
2 Q. Your department does not provide breakdowns of
3 fees generated by Dr. Smith, Dr. Jones, Dr. Brown,
4 Dr. Black?
5 A. That is correct.
6 Q. Or at least if they do that, you don't see it?
7 A. That is correct.
8 Q. Who is the chair of your department, is it
9 Dr. Ellis Avner?
10 A. It is.
11 Q. And do you know where the bills generated as a
12 result of your clinical practice are sent, how they are
13 sent out?
14 A. No.
15 Q. You have nothing to do with that, whether they are
16 sent to the patient, to a third party provider, like an
17 insurance company, or the government, or whatever?
18 A. That is correct.
19 Q. Okay.
20 Now, Dr. Avner is the chairman of the academic
21 department of pediatrics at Case Western Reserve
22 University, correct?
23 A. Yes.
24 Q. He also is the chair or director of the department
25 of pediatrics at University Hospitals, or more

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<p>1 appropriately, Rainbow Babies and Childrens Hospital, 2 correct? 3 A. Yes. 4 Q. And in terms of managing the clinical practice of 5 the department of pediatrics at University Hospitals of 6 Cleveland, Dr. Avner is acting in which of the two 7 capacities that he holds -- 8 MR. NORCHI: Objection.</p>	<p>1 further with this line, but I am going to object. 2 She thinks -- she has told you who she thinks her 3 employer is, she has told you about her check. 4 If you want to ask her about where she 5 gets her benefits, and all that kind of stuff, 6 fine. If you have some different information 7 about her employment, bring it up in some other 8 context.</p>
<p>9 Q. -- that of the academic chair of CWRU, or of the 10 director of the department at University Hospitals? 11 A. I don't know. 12 Q. In terms of departmental expenditures, and now I 13 am talking about the department of pediatrics at 14 University Hospitals, do you sit on any committees that 15 determine those expenditures, for example, for continuing 16 medical education and that sort of thing? 17 A. No. 18 Q. Where those funds come from, you don't know? 19 A. Yes, that is correct. 20 Q. In terms of where the funds come from that provide 21 the ability of a check to be written in an amount 22 sufficient to pay your salary, do you know where those 23 funds come from? 24 A. No. 25 MR. MORIARTY: You can go a little bit</p>	<p>9 MR. WALTERS: Well, I am going to continue 10 on this line until we get it clarified. 11 MR. MORIARTY: Well, you are going to 12 continue along this line until I stop it, if it 13 continues along this line, because she doesn't 14 know the financial -- 15 MR. WALTERS: Well, you are not going to 16 stop it, Matt. 17 MR. MORIARTY: I will. 18 MR. WALTERS: The judge will stop it. You 19 may stop it -- 20 MR. MORIARTY: I will if I have to. 21 MR. WALTERS: -- temporarily. 22 MR. MORIARTY: Yes, temporarily. 23 MR. WALTERS: Yes, okay. 24 MR. MORIARTY: Go on. 25 MR. WALTERS: Let's understand that.</p>
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<p>1 BY MR. WALTERS: 2 Q. Is it your understanding that Case Western Reserve 3 University is in the business of providing medical care 4 to patients? 5 MR. GROEDEL: Objection. 6 Q. (Continuing) Is that your belief? 7 MR. GROEDEL: Objection. 8 You may answer. 9 A. I don't know. 10 Q. Okay. That is a fair answer. 11 Dr. Wiersma, when you are seeing patients in the 12 setting of an inpatient at Case Western Reserve 13 University, do you also have a function of teaching 14 medical students as well as residents in pediatrics? 15 A. Yes. 16 Q. On virtually a daily basis, I would assume? 17 A. Yes. 18 Q. You teach them in the context of rounding 19 patients, for example? 20 A. Yes. 21 Q. Do you act as an instructor in classroom teaching? 22 A. Yes. 23 Q. Do you receive any separate payment from anyone 24 for that function of being a member of the faculty and a 25 teacher of medical students and residents?</p>	<p>1 A. In addition to my compensation? No. My regular 2 check? No. 3 Q. Are you engaged in research, medical research? 4 A. Not bench research. 5 Q. Are you engaged in research in the sense of 6 participating in clinical studies of drugs? 7 A. Yes. 8 Q. And those studies are financed often through 9 grants? Maybe I can make it a little easier. 10 Have you participated in clinical research under a 11 grant of some sort issued to the investigators? 12 A. Yes. 13 Q. Okay. 14 And the source of financing that -- such a grant 15 might be, for example, the National Cancer Institute, 16 correct? 17 A. I don't know specifically. But theoretically, I -- 18 that might be a choice. 19 Q. Have you ever applied for a grant? 20 MR. GROEDEL: Objection. 21 MR. MORIARTY: Objection. 22 If you have any questions that have to do 23 remotely with Josh or her understanding of her 24 actual employment situation, could you please ask 25 them? Otherwise --</p>
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<p>1 MR. WALTERS: Well, let's get a clarification. 2 MR. MORIARTY: -- with all due respect -- 3 MR. WALTERS: Let's get a clarification. 4 MR. MORIARTY: -- I think we will terminate 5 this. 6 MR. WALTERS: Let's get a clarification. 7 Based upon the simple statement made by the 8 witness when asked, who is your employer, and 9 saying, Case Western Reserve University, I want to 10 be sure that there is not some claim now that is 11 in the offing against Case Western Reserve 12 University that this witness, Dr. Wiersma, was 13 providing medical care to Josh Valdivieso in the 14 course and scope of an employment by CWRU. And I 15 have a right to question this, because it is my 16 position that no clinical care is ever rendered to 17 any patient in the course and scope of an 18 employment with CWRU. 19 So that is the background. I didn't have 20 to give you that explanation, but that is why I am 21 asking that. 22 MR. MORIARTY: I understand that, but the 23 problem is, she doesn't know. You know, you can 24 ask her if she has got an employment contract. 25 MR. WALTERS: That is fine.</p>	<p>1 MR. MORIARTY: You can ask her those 2 trappings questions, but she does not know the 3 inner workings. And whether she gets grant money 4 or not, or whether these studies are funded by 5 grants, she doesn't know and has nothing to do 6 with it. 7 MR. WALTERS: I think you can agree that I 8 have not asked the same question twice. The 9 response of "I don't know" has been the response 10 to a number of my questions. 11 MR. MORIARTY: I am sorry, we just have a 12 disagreement. But I would like you to address 13 questions that have to do with this issue, or I am 14 sorry, I will, with all due respect, end this 15 deposition. 16 BY MR. WALTERS: 17 Q. Dr. Wiersma, did you have an appointment letter or 18 contract under which you work? 19 A. Do I have an appointment letter? Yes. 20 Q. Yes, okay. 21 MR. MARGOLIS: Steve, if you give that, 22 that will maybe clear it up. That is the duces 23 tecum to this depo. 24 MR. WALTERS: Oh, well, then maybe this 25 will -- maybe this will clear it up.</p>
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<p>1 Q. (Continuing) You were asked to bring with you to 2 this deposition any and all contracts, memoranda or other 3 agreements under which you perform any professional 4 services, including but not limited to any professional 5 service contracts with any corporations, hospitals or 6 other entities. 7 Do you have those with you? 8 A. No. 9 MR. WALTERS: Have those been provided? 10 MR. MORIARTY: You better ask her first 11 whether -- 12 MR. GROEDEL: See if they exist. 13 MR. MORIARTY: -- she has got an employment 14 contract. 15 MR. WALTERS: All right. 16 BY MR. WALTERS: 17 Q. Do you have a contract other than the letter of 18 appointment? 19 A. No. 20 Q. Okay. 21 And your letter of appointment -- and I don't know 22 whether it is one letter or two letters -- but you have 23 been appointed to the faculty of Case Western Reserve 24 University, and you have also received an appointment to 25 membership on the medical staff of University Hospitals</p>	<p>1 of Cleveland, correct? 2 A. Yes. 3 Q. Do you recall, was it two separate? 4 A. Yes. 5 Q. Okay. 6 In addition to those two documents, is there any 7 other contract -- 8 A. No. 9 Q. -- or memoranda? Okay. 10 Will you provide those to your attorneys? 11 A. Yes. 12 Q. All right. 13 Getting back to -- have you ever applied for a 14 research grant? 15 MR. GROEDEL: Objection. 16 A. Yes. 17 Q. And you have applied to whom? 18 MR. GROEDEL: Objection. 19 Q. (Continuing) Drug company, National Cancer 20 Institute, NIH, who? 21 And I am going to -- forget about Wisconsin, let's 22 just limit it to since you have been at University 23 Hospitals of Cleveland. 24 A. NIH. 25 MR. WALTERS: NIH? All right.</p>
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<p>1 MR. MORIARTY: With all due respect, if he 2 has no further questions that are relevant and 3 reasonably calculated to lead to discoverable 4 information, I am going to terminate this 5 deposition. 6 She has answered three hours worth of 7 questions about Josh, and a half an hours worth of 8 questions about what she knows about her 9 employment. 10 We are happy to produce her appointment 11 letters, and if, in your discussion with your own 12 client, there is some question about her 13 employment, and if they are going to make a claim 14 of agency against you, then we would be happy to 15 re-produce her for an exhaustive deposition about 16 her grants, et cetera. 17 MR. FINELLI: Before you do that, I have 18 two follow-up questions. 19 MR. WALTERS: Well, wait a second, I am not 20 done. Just because he says I am done, doesn't 21 mean I am done, all right? 22 MR. FINELLI: I understand. 23 BY MR. WALTERS: 24 Q. Dr. Wiersma, from the point that the lawsuit was 25 filed until this very moment, have you met with me or any</p>	<p>1 member of my office to prepare your defense in this case? 2 A. No. 3 Q. Your meetings with attorneys have been exclusively 4 either a personal attorney or someone from the office of 5 Reminger & Reminger, correct? 6 MR. MORIARTY: Objection. You don't have 7 to answer that. 8 She can meet with as many attorneys as she 9 wants. 10 MR. WALTERS: Yes, you know -- 11 MR. MORIARTY: She has already -- 12 MR. WALTERS: -- who said that she can't, 13 all right? 14 MR. MORIARTY: It is privileged. 15 I advise you not to answer that question, 16 Susan. 17 Q. (Continuing) Have you tendered the defense of your 18 case, your case in defending the Valdivieso lawsuit, to 19 Case Western Reserve University -- 20 MR. GROEDEL: Objection. 21 Q. -- to anyone at CWRU? 22 MR. GROEDEL: Objection. She would have no 23 way of being able to answer that statement. 24 MR. WALTERS: Well, she can say, I don't 25 know, and that is an acceptable answer.</p>
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<p>1 MR. MORIARTY: If you know, answer his 2 question. 3 MR. GROEDEL: She probably doesn't really 4 understand it, to be honest with you. 5 Q. (Continuing) Have you contacted anybody in the 6 administration of Case Western Reserve University, 7 including the legal department of Case Western Reserve 8 University, asking them to defend you in this lawsuit? 9 MR. GROEDEL: That is a yes or no question. 10 A. I apologize, I am not trying to avoid this. I 11 don't understand myself what is privileged information, 12 and so I would like the opportunity to ask Mr. Groedel as 13 to whether or not it is privileged for me to answer that 14 question. But I can't ask him. 15 Q. That is fine. 16 A. Can I ask him -- 17 Q. Sure. 18 A. -- off the record? 19 Q. Sure, sure. 20 (Thereupon, a discussion was had off the 21 record.) 22 MR. MORIARTY: Could you read back the last 23 question, please. 24 (Record read.) 25 A. No.</p>	<p>1 MR. WALTERS: That is all I have. 2 MR. FINELLI: Two follow-ups. 3 RECROSS EXAMINATION 4 BY MR. FINELLI: 5 Q. Doctor, on your CV, I noted that you mention you 6 are a moderator for the pediatric tumor board from 1998 7 to present. 8 A. Yes. 9 Q. Just briefly, your jobs and your duties and 10 responsibilities of being a moderator for tumor board? 11 A. I gather the names of the patients within the 12 division of pediatric hematology/oncology that myself or 13 my partners wish to have discussed. Then in conjunction 14 with my secretary, we compile that list, including the 15 pertinent information that we would like to discuss at 16 the meeting, for example, we want to look at the CAT scan 17 so that the radiologist brings the CAT scan, we want to 18 look at the bone marrow pathology so the bone marrow 19 pathologist brings the right specimen. I provide a list 20 of references for the subjects to be discussed. I am 21 responsible for the paperwork that is generated as a 22 result of the fact that it is a CME accredited 23 conference. And I take notes. 24 Q. Pediatric tumor board is monthly? 25 A. Weekly.</p>
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1 Q. Weekly.
 2 A. Provided that there are patients and issues to
 3 discuss.
 4 Q. Do you know if Joshua's case that was presented to
 5 the tumor board in January was a pediatric tumor board or
 6 a radiation oncology tumor board?
 7 A. I don't know.
 8 Q. How about in May of 2000?

1 MR. GROEDEL: Can we have 28 days for her
 2 to read the transcript?
 3 MR. MARGOLIS: Yes.
 4 - - -
 5 (DEPOSITION CONCLUDED)
 6 - - -
 7 Susan Wiersma, M.D. _____
 8

9 A. In May of 2000, there is a record that he was
 10 presented at the pediatric tumor board.
 11 Q. Okay.
 12 If a patient has a poor prognosis such that the
 13 physician does not anticipate that any medical treatment
 14 will have a meaningful impact on the patient's prognosis
 15 for cure or event-free survival, does the physician have
 16 a duty to inform the patient and the patient's family of
 17 that, so that they can make an informed decision about
 18 the treatment?
 19 A. Yes.
 20 MR. FINELLI: No further questions.
 21 MR. MORIARTY: Anything else?
 22 MR. NORCHI: No questions.
 23 MR. GROEDEL: Okay, very good.
 24 (Thereupon, the following discussion was
 25 had off the video record.)

*** Notes ***

1 CERTIFICATE
 2 State of Ohio, } ss:
 3 County of Cuyahoga.)
 4 I, Ivy J. Gantverg, Registered Professional
 5 Reporter and Notary Public in and for the State of Ohio,
 6 duly commissioned and qualified, do hereby certify that
 7 the above-named SUSAN WIERSMA, M.D., was by me first duly
 8 sworn to testify to the truth, the whole truth, and
 9 nothing but the truth in the cause aforesaid; that the
 10 deposition as above set forth was reduced to writing by
 11 me, by means of stenotype, and was later transcribed into
 12 typewriting under my direction by computer-aided
 13 transcription; that I am not a relative or attorney of
 14 either party or otherwise interested in the event of this
 15 action.
 16 IN WITNESS WHEREOF, I have hereunto set my hand
 17 and seal of office at Cleveland, Ohio, this 10th day of
 18 July, 2002.
 19
 20 Ivy J. Gantverg, Notary Public _____
 21 in and for the State of Ohio,
 22 Registered Professional Reporter.
 23 My commission expires November 5, 2003.
 24
 25

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