IN THE COURT OF COMMON PLEAS
ERIE COUNTY, OHIO

JAMES D. LAVELY,
Admr. Est. of Daniel J. Lavely,
Plaintiffs,
-VS- NO. 99 CV 049
SHAVIN AHLUWALIA, M.D.
Defendant.

STATE OF ILLINOIS } ss.
COUNTY OF C O O K }

The deposition of JOHN L. ZAUTCKE, M.D., taken before JOAN NOLTE-BURKE, CSR, RPR, Notary Public, at Hyatt Rosemont, 6350 N. River Road, Rosemont, Illinois, in the County of Cook, commencing at 4:00 o'clock p.m. on the 17th day of May, 2000.

APPEARANCES:

MS. DONNA TAYLOR-KOLIS
Donna Taylor-Kolis Co, L.P.A.
Third Floor - Standard Building
1370 Ontario Street
Cleveland, Ohio 44113-1701
(800) 243-9286
On behalf of the Plaintiff;

MR. JAMES W. HART
Flynn, Py & Kruse, L.P.A.
165 E. Washington Row
Sandusky, Ohio 44870
(419) 625-8324
On behalf of the Defendant.

(Witness sworn.)

JOHN L. ZAUTCKE, M.D.

called as a witness herein, having been first duly sworn, was examined and testified as follows:

EXAMINATION

By Mr. Hart:

Q. My name is Jim Hart and I represent Dr. Shavin Ahluwalia in a medical negligence suit pending in Ohio. And as you know, I have a chance to ask you some questions about the issues related to that suit.

Would you state your full name for the record, please.

A. John Lowell Zautcke.

Q. Doctor, what is your professional address?

A. My work address?

Q. Yes?

A. University of Illinois Hospital. It's 1740 West Taylor Street in Chicago.

Q. Have you ever practiced at Grant Hospital, by the way?

A. No.

Q. Okay. How old are you?

A. I'm 43.

Q. Have you *ever* been sued --

A. Yes.

Q. -- for malpractice?

MS. TAYLOR-KOLIS: Objection for the record, but you can certainly answer.

BY MR. HART:

Q. How many times have you been sued for medical negligence or medical malpractice?

A. Once.

Q. And is that case still pending?

A. No.

Q. And did it go to trial or was it settled?

A. It was settled and my name was dropped.

Q. There was no payment made on your behalf?

A. Correct.

Q. When was that?

A. Approximately 1992 or '93.

Q. How long have you been licensed to practice medicine in the state of Illinois?

A. Since about 1984 or so.

Q. Do you hold licenses in *any* other stake?

A. No.

Q. You're not licensed to practice medicine in the state of Ohio?

A. Correct.
Q. What were the allegations of negligence against you in that one lawsuit that got filed against you that ended up in your name being dropped?
A. It was an alleged failure to diagnose a pneumonia in an adolescent child.
Q. And you were sued in a lawsuit pending someplace here in the state of Illinois; is that right?
A. In that case, yes.
Q. Lawsuit got filed against you and other named defendants, I take it?
A. Yes.
Q. Did you retain an expert or your counsel retain an expert for you in that case?
A. Yes.
Q. I take it you disagreed with the expert of the plaintiff's counsel with respect to the claims that were made against you in the pleadings?
A. Yes, I did.
Q. Did you ever have your deposition taken?
A. Yes.
Q. Okay. Do you remember the style of that

case? What it was called; the name of the plaintiff?
A. I think it was Mallory.
Q. Last name Mallory?
A. Correct.
Q. And do you know -- who was the first named defendant, do you know?
A. The first name?
Q. Yes, was it you, -- the first defendant in the pleading, was it you or a hospital?
A. I believe it was me.
Q. Okay. Where was that pending? Was it Cook County?
A. Yes.
Q. I note from reviewing your resume that you have lectured at universities on the deposition process?
A. Yes.
Q. How often have you done that?
A. Probably about four -- three or four, five times.
Q. And what was the nature of the lecturing that you did with respect to the deposition process?
A. I have a good friend that's a malpractice

attorney and he and I often have staged mock depositions or he has -- actually he usually does most of the talking and he often talks about malpractice, the whole process of malpractice and being sued and the tort of negligence.
Q. Let's talk about your role in the education process. What do you add to the -- to the speaking portion of the lecture that you give?
A. Well, I often am either -- play a role of either a defendant -- defendant -- usually I play a role of a defendant doctor.
Q. How many times has your deposition been taken?
A. Probably about 25 times.
Q. How many times have you offered testimony in court?
A. I believe four times.
Q. How many times has your videotaped trial testimony been perpetuated?
A. Once.
Q. Ever been to Ohio?
A. Yes.
Q. When were you in Ohio?
A. I don't remember the dates.

Q. What was the purpose of being in Ohio?
A. I testified at trial there. I think I believe twice.
Q. And what -- tell me about that. You actually physically went to Ohio and testified in front of a jury?
A. Yes.
Q. Who was plaintiff's counsel in those two cases, if you can recall?
A. Fred Luper, was one. I can't remember the other one.
Q. Where did you testify; in what counties or cities, do you recall?
A. I believe -- I know Toledo was one of them and I believe Toledo may have been the second one also.
Q. Luper, is that L-u-p-e-r?
A. Yes.
Q. When was it that you testified in Toledo?
A. I guess about five or six years ago.
Q. And did you testify on behalf of a defendant physician or the injured plaintiff?
A. Plaintiff.
Q. Have you ever testified by way of

deposition or videotape on behalf of a defendant physician?
A. Yes.
Q. What's the makeup of your -- your evaluation review process in terms of percentage of plaintiff work versus defense work?
A. Currently or in my --
Q. How about since you've done -- seen fit to review cases for counsel from the beginning?
A. In the beginning probably it's two-thirds plaintiff one-third defense.
Q. And then is that a different percentage today?
A. Lately I think it's much more towards 50/50.
Q. And how is that? How do you account for that?
A. I enjoy doing defense work more. It's local near Chicago and when I'm busy I'll often say no, that I'm too busy to a plaintiff case and since I enjoy doing the defense work, I find myself doing more defense work lately.
Q. Was attorney Luper the plaintiff's counsel in both cases where you testified in Toledo?

A. No, that was just one.
Q. Do you know the name of the other plaintiff's counsel?
A. No, I don't.
Q. Do you remember the name of the firm?
A. No, I think he was by himself. I don't remember.
Q. Do you know the results of the cases that you testified in as a witness on behalf of an injured plaintiff, whether it was a verdict for the plaintiff or the defendant?
A. I believe that was a verdict for the defendant in both cases.
Q. So then I take it that for whatever reason the jury chose not to accept your opinion that there was negligence on behalf of a defendant doctor that you testified against?
A. Yes.
Q. Have you ever testified in a medical negligence case regarding the care and treatment of an internal medical doctor before?
A. I think I have.
Q. How many times would you have done that?
A. See, I don't know, because I think a lot of

times internal medicine doctors are working in the emergency department or in an urgent care setting and I -- I couldn't begin to remember exactly how many.
Q. Well, would it be just a handful where you've actually testified about the standard and care of a doctor of internal medicine?
A. Probably less than ten.
Q. Okay. And in most of those settings if not all of those settings it's a situation where the internist was dealing closely with an emergency room department? Is that what you're saying?
A. I would say that's a majority of the cases. Or an urgent care setting.
Q. Have you always practiced as an emergency room physician in an urgent care setting?
A. Can you say that again?
Q. Have you always performed your work as emergency room physician in an urgent care -- strike that, in an urban setting?
A. Yes.
Q. Have you practiced exclusively in the Chicago area since you got licensure?
A. Yes.

Q. The testimony that you provided in Lucas County, which would be Toledo, was that regarding the standard and care of physicians who were operating out of Toledo -- in the Toledo area, like the Medical College of Ohio or Toledo Hospital or something like that?
A. I don't think it was one of those that you named, but I think it was in the Toledo area.
Q. Ever testified in a case involving a standard of care and treatment provided by a doctor in a community of fewer than 50,000 people, if you know?
A. I believe I have.
Q. Tell me, in what setting would you have testified in a case of a community of that size or smaller?
A. Well, I just know that a lot of the cases I've had have been from small hospitals and small cities.
Q. Name a small hospital and a small city where you reviewed a case in the state of Ohio?
A. I can't think --
Q. Any?
A. I can't think of any.

Q. I take it that the bulk of the review you do is regarding the standard and care provided by an emergency room physician?
A. Correct.
Q. Have you testified in court or by way of videotape in other areas of specialty other than emergency room medicine or with respect to an internist ten times or fewer?
A. Say that again, please.
Q. Standard of care of any other specialists other than an internist or an emergency room physician?
A. No, I mean -- I don't think anything besides that. It may have been different -- doctors of different training practicing in an emergency department. Like family practice, a lot of people moonlight in the emergency department with, you know, surgeons moonlight, lots of orthopaedic residents, lot of different people moonlight in emergency departments.
Q. Well, not even in the small town of Sandusky, Ohio do that we do that any more.
A. Thank God.
Q. Ever testified as to the standard and care

provided by nursing personnel?
A. Yes.
Q. Okay. By way of deposition or in court or both?
A. Deposition.
Q. You authored a piece -- strike that.
You've also lectured in the area of how to avoid being a defendant in a lawsuit?
A. Yes.
Q. Did you do any writings in that area or was that all lecture?
A. That was all lecture.
Q. What's the gist of the theme of your talks that you give to students or the listener?
A. Those talks are again with that same gentleman that I did the other lectures on the deposition and the gist is it's kind of a risk management talk, what kinds of cases are high risk, to document well, to avoid pitfalls that others have fallen into and when they've gotten sued.
Q. What pitfalls did you fall into that gave rise to the lawsuit that was filed against you?
A. I don't think I fell into a pitfall.
Q. What happened to you? How did you get --

how did you get sued?
A. I was a -- it was alleged that I --
(short interruption.)
THE WITNESS: I won't answer that. I'm sorry. I'm sorry, could you ask that last question again?
BY MR. HART:
Q. I guess to ask it a better way, what happened that gave rise to the lawsuit against you? What were the allegations against you? You said that your failure to diagnose some kind of pneumonia in an infant or something?
A. It was an adolescent.
Q. Adolescent?
A. Right.
Q. Emergency room setting?
A. Correct. I had -- it was an adolescent with a fever and a cough and I did a chest x-ray, the chest x-ray was clear and ultimately he was diagnosed with pneumonia.
Q. And what was the end result of the care and treatment of that adolescent?
A. He died.
Q. What are other signs and symptoms of

pneumonia besides cough, fever that you mentioned, what else?
A. Chest pain, shortness of breath.
Q. Okay. What else?
A. Weakness. You have some non specific symptoms like loss of appetite, nausea, chills, present with back pain, upper abdominal pain.
Q. How about --
A, I think we said cough, didn't we?
Q. How about vomiting blood?
A. Usually not vomiting blood, no.
Q. What does vomiting blood tend to indicate to you as an emergency room physician?
A. Sane kind of bleeding in the gastrointestinal tract.
Q. What else? Anything else?
A. No. I want to say swallowed blood like from a nose bleed and then vomited it up, I guess.
Q. You got involved in this case sometime this -- this case involving Dan Lavely sometime before February 18 of '97?
A. I'm not sure exactly when I first got involved.
Q. Did you bring any papers with you today

other than deposition transcript and stuff like that?
A. Yes, I did.
Q. Any notes or anything like that?
A. I didn't take any notes, no.
Q. Have you taken any notes in this case at all?
A. No.
Q. Have you done any writings in this case other than dictating the reports to counsel in this case?
A. I didn't dictate notes. I wrote reports.
Q. You wrote reports but you don't have any handwritten notes of anything in this case?
A. Correct.
Q. From the time that you received word that you were being asked to review until today's date?
A. Correct.
Q. You have a red folder there. What's in there?
A. The medical records.
Q. Anything else?
A. In here? Right now?
Q. Yes?

A. No.
Q. So would that be the complete file you have on this case other than correspondence from counsel?
A. Complete file is in front of me. There are depositions, my correspondence with Ms. Taylor, my reports and these medical records.
Q. How many reports have you written regarding this case? Is that four in total?
A. Let me be sure. That sounds right. Yes, four.
Q. When did you get contacted by plaintiff's counsel in this case to do a review? Do you have any notes of that?
A. I don't have notes, but I have correspondence, some correspondence from Ms. Taylor. I don't know if I have it all or not, but I see a letter from September 23rd, 1997. It's probably the first time.
Q. Well, you wrote a letter April -- excuse me, February 18 of '97, so it's got to be -- there's got to be correspondence before that. Have you brought all the correspondence from plaintiff's counsel that you've received in this case?
A. Here's February 5th of '97.

Q. Do you have anything that predates that letter?
A. Not with me. I brought everything I have. I guess it's possible I lost something, I suppose, but I thought I brought everything. I have -- I brought everything that I have.
Q. Can I see the letter -- correspondence from plaintiff's counsel, please?
A. All of them?
Q. Yes, please?
(Tendered.)
BY MR. HART:
Q. Thank you. Doctor, it appears that you were contacted sometime around early February of 1997 fram -- as a result of a phone call or something from plaintiff's counsel; is that right?
A. I believe so, yes.
Q. Had you ever had *any* professional dealings with Donna Taylor-Kolis before you got involved in the Dan Lavely *case?*
A. I don't believe so, no.
Q. How about the law firm of Friedman, Damiano and Smith, Cleveland firm?
A. It doesn't ring a bell.

Q. Do you know how Donna Taylor-Kolis had occasion to *ask* you to do the m e w in this *case9*
A. I believe so.
Q. How did the contact get made?
A. I believe she heard or read something about a *case* that I had testified in and someone contacted E through her reading or interactions with somebody on that *case.*
Q. All right. What case was that, do you know?
A. It was a child meningitis *case.* I don't remember the name.
Q. And what writing did she review that got you two connected?
A. I have no idea.
Q. You testified in that *case?* Did you testify as an infectious disease expert in that case?
A. No.
Q. As an emergency room physician?
A. Yes.
Q. What did she read that would have had your name in it that led to the contact, do you know? I mean was it a legal writing or was it a medical

report or what was it?
A. I believe it was a legal writing. Again I'm not even sure it was a writing. It may have been she just talked to somebody that may have been involved in the case that recommended me or suggested she call me if she needed an expert.
Q. And did you testify in that case?
A. If it's the one I'm thinking of, yes, I did.
Q. What was the result of that case when it went to the jury, do you know?
A. There was a verdict on behalf of the plaintiff.
Q. Is that a case where a child passed away as a result of undiagnosed streptococcal meningitis or whatever, if you recall?
A. It was streptococcal meningitis. I don't remember if I -- if he or she died or just had some severe disabilities.
Q. Did you testify against a physician in that case?
A. Yes.
Q. And what speciality of standard of care were you reviewing in that case as an emergency room

would be likely entities to be sued?
A. Well, I just told her my opinions on who I thought breached the standard of care and left the rest up to her.
Q. All right. I take it that your opinion was that Scott Campbell an emergency room physician breached the standard of care?
A. No. No.
Q. Well, he was sued in the case originally?
A. I don't remember having the opinion on Scott Campbell.
Q. Do you remember the name?
A. No.
Q. Do you remember there was an emergency room physician that was sued in this case?
A. I remember there was an emergency visit that -- by Mr. Lavely the day More. I'm assuming that was probably that Dr. Campbell was the doctor.
Q. well, he was the doctor. Did you have any -- did you have an opinion regarding the standard of care that he provided the day before?
A. I didn't have any opinion that he breached the standard of care.
Q. Do you know how it happened that he ended

physician?
A. I don't remember the training of the person.
Q. Family doctor?
A. But it was an emergency room physician, yes.
Q. Apparently you had some phone calls with Donna Taylor-Kolis before you wrote your report of February 18th of '97?
A. I'm sure I did, yes.
Q. Okay. When you wrote the report of February the 18th of '97, at that time had you developed an opinion about the standard of care of all the physicians who had involvement in Dan Lavely's care on April the 23rd of '96?
A. I'm sorry, could you say that again?
Q. Did you have -- had you developed an opinion regarding the standard of care of the physicians who were involved in Lavely's care on April the 23rd of '96?
A. Yes.
Q. Okay. And I take it, Doctor, that as a result of your review in this case you made recommendations to Donna Taylor-Kolis regarding who

up getting sued as a party defendant early on in the litigation then --
MS. TAYLOR-KOLIS: I'm going to object to the question. That's an attorney decision to make, not the doctor's decision to make.
MR. HART: well, the doctor is here and you have to make a good faith effort to have a reasonable basis to present a claim before the suit gets filed so I think I have a right to ask him any way.
MS. TAYLOR-KOLIS: Well, Jim, you know we can keep it on the record, I don't really care. If you want to waste our time arguing, that was an accidental filing. It was immediately dismissed.
MR. HART: Okay.
MS. TAYLOR-KOLIS: I think you know that.
MR. HART: I didn't know that.
MS. TAYLOR-KOLIS: well --
MR. HART: Okay. But now I do based upon what you've told me.
BY MR. HART:
Q. I take it that based upon the other defendants who got sued that you at least early on felt that there was deviation in the standard of

care provided by nursing personnel at Firelands Community Hospital, correct?
A. My initial opinions were that there was a deviation by Dr. Ahluwalia.
Q. Where does it say that in your letter of February 18th of 1997 that you have limited your opinions regarding deviation of Dr. Ahluwalia?
A. Well, it doesn't say explicitly. I just said that the care rendered on 4/23, was substandard and didn't meet acceptable standards.
Q. Well, one of the other treating physicians in this case was Dr. Lee and he ended up getting sued. You made reference to Dr. Lee in this letter. You're aware of the fact that Dr. Lee was sued, were you not?
A. I was aware that he was named, yes.
Q. Did you have an opinion on February the 18th of '97 about the standard of care provided by Dr. Lee in the case?
A. I don't remember exactly what my opinions were about Dr. Lee.
Q. Well, how about the nursing personnel with respect to your letter of February the 18th of '97?
A. At that time I don't believe I had read the

A. Like I said, I don't remember what my opinions were on Dr. Lee.
Q. And were you uncertain about the standard of care provided by nursing personnel when you authored this letter?
A. Again, same answer, I don't remember my opinions about the nurses.
Q. When Mr. Lavely was brought to the emergency room on April the 22nd of '96, are you with me?
A. Yes.
Q. He had a fever, correct?
A. I don't remember what his temperature was.
MS. TAYLOR-KOLIS: Your records are right there.
THE WITNESS: He had a temperature of 99.3.
BY MR. HART:
Q. Is that an elevated temperature?
A. It's arguable. Some people wouldn't call a temperature over -- under 100.5 elevated or not. So it's borderline whether you would call that a fever or not.
Q. You use the terminology chief complaint of bleeding from his mouth. Where did you receive that

nurses' depositions and I don't think I had an opinion on their care at that time.
Q. Are you telling me -- strike that.
Are you telling me that with respect to your first letter report of February the 18th of '97 that you intended to be critical only of the standard and care provided by Dr. Ahluwalia? Is that the point you were trying to make here in this?
A. My point on February 18th of '97 was that there was substandard care clearly on behalf of Dr. Ahluwalia and I didn't -- did not have any other further opinions on the other individuals and I had not reviewed any further depositions.
Q. Where in this letter does it -- where do you clearly state that you felt that Dr. Ahluwalia deviated from the standard of care?
A. Well, like I said before, it doesn't explicitly say that on that second to the last paragraph where it says based on. I said that the care on 4/23/96 was substandard and did not meet accepted standards.
Q. Did you -- at the time that you authored this letter were you still uncertain about the standard of care provided by Dr. Lee?

information?
A. Probably from the -- the dictated note by Dr. Campbell.
Q. Doesn't the presenting complaints show that he was coughing up blood?
A. In Dr. Campbell's note his chief complaint was bleeding from the mouth.
Q. Did you see the presenting complaint in the E.R. record?
A. Yes, I did.
Q. Does it say coughing up blood?
A. Yes.
Q. Did he also suffer from bronchitis?
A. That was one of the diagnosis given to him by Dr. Campbell.
Q. And he had a throat infection of a longstanding nature, did he not?
A. I'm not sure if he had a throat infection of a longstanding nature or not.
Q. A month long or so. Do you know if he had a chronic throat infection?
A. I'm not sure.
Q. And he had a cough, I take it?
A. According to that note, the nurse note that

you were referring to he did, but according to Dr. Campbell's note, he doesn't mention coughing.
Q. Well, you mentioned in your letter of February the 18th of '97 the patient had a cough. Who are you relying on there?
A. Probably that nurse note.
Q. Do you know why he was -- he, Mr. Lavely, was discharged from the hospital -- excuse me, released from the emergency room on April the 22nd of '96?
A. Do I know why he was released?
Q. Yes?
A. Yes.
Q. Why?
A. Because he didn't -- Dr. Campbell didn't feel like he needed to be admitted.
Q. And did Dr. Campbell order a chest x-ray?
A. I didn't -- I don't think so, but -- I don't think so.
Q. Had Dr. Campbell ordered a chest x-ray, would it have probably shown that Mr. Lavely had some form of pneumonia?
A. It may have, yes.
Q. Why do you say that?

A. Because his chest x-ray the next day did and so it may have shown up on the 22nd or may not have.
Q. Is it more likely than not that it would have shown up the day before given his other symptoms that he was complaining of?
A. It was a pretty fulminant pneumonia that took over pretty quickly. I just don't know if it would have on the 22nd or not.
Q. When you say fulminant, that came on quickly, what do you mean by that?
A. It was a severe devastating pneumonia that overtook him and killed him in a relatively short amount of time.
Q. And when was it that it began overtaking him, do you know? Could you pinpoint that time on the next day, on the 23rd?
A. I can't say exactly what time on the 23rd.
Q. Did you have a chance to look at Dr. Neskosta's report who responded to the code blue?
A. On the 23rd?
Q. Yes, sir?
A. Sure. I'm pretty sure I did, yes.

Q. Is that helpful to you in determining when the bronchopneumonia became fulminant?
A. I'm having trouble locating it.
Q. Me, too.
MS. TAYLOR-KOLIS: It's -- don't you have a section labeled code? Let's see if --
MR. HART: It's probably the back.
MS. TAYLOR-KOLIS: That's where we're looking.
(Whereupon a short break was taken.)
BY MR. HART:
Q. I guess my question was when did the disease become fulminant or what -- that catastrophic or vicious or whatever fulminant means?
A. Yes.
Q. Raging at that time. When did that happen based upon your review of anything in the file?
A. Like I said, I don't know when it happened. I think it happened -- began to happen before he arrived at Firelands on the 23rd.
Q. When do you think it would have happened before he arrived?
A. That I don't know.

Q. So had it begun to happen when he was at the emergency room an the 22nd?
A. No.
Q. So it happened sometime between his release from the emergency roam on the 22nd and his arrival back on the 23rd?
A. Yes.
Q. Can you pinpoint it any closer than that?
A. No.
Q. Do you know why Mr. Lavely was admitted to the psychiatric wing of Firelands's Community Hospital on April the 23rd?
A. Because somebody thought that he was having a decompensation of his psychiatric condition.
Q. I take it that you're not -- at this point in this case and your review you're not critical of any of the nursing personnel?
A. No, I'm not.
Q. You felt that all their -- all their care and treatment of Mr. Lavely was appropriate?
A. Yes.
Q. When a patient presents themselves with gray skin, what does that indicate?
A. Gray skin?

Q. Yes.
A. That's often a very ominous sign.
Q. Probably cyanotic?
A. Well, cyanotic is kind of a bluish color, it's not -- that's an ominous sign, too.
Q. What is the -- okay.
What is the ominous sign suggested by a patient that presents with gray skin?
A. It's a sign that they're probably not perfusing their skin very well, that they're likely to be in some kind of shock-like state and that's why their color is not better and it turns kind of a scary looking gray.
Q. Okay. And so what -- if untreated what happens to a patient that present themselves with that kind of skin coloration?
A. In general?
Q. Yes?
A. Depending on the cause. I mean often times patients get worse if it's not treated.
Q. What's the normal cause for grayness of skin coloration?
A. There's hundreds if not more. Any shock-like state, any -- very low blood pressure and

poor perfusion to the skin.
Q. Does gray skin generally suggest a shock-like state in a patient?
A. Shock-like or impending shock or impending disaster, yes.
Q. So it does indicate -- it is suggestive of a pending acute problem?
A. Often times, yes.
Q. More often than not?
A. Yes.
Q. How about blowing and snorting respirations, what does that usually indicate?
A. Sounds like someone that's having respiratory difficulty.
Q. To what extent would a person have respiratory distress if they were blowing, having blowing and sonorous respirations, do you know?
A. Just with that fact alone, I mean it's hard to say. I'd like to know, you know, how fast the patient is breathing and if he appears to be in any distress.
Q. How about respiratory rate of 60 per minute?
A. Coupled with blowing and sonorous

respirations?
Q. Yes?
A. That's a red flag. I mean respiratory rate of 60 per minute is triple the normal respiratory rate and you've just painted a picture of somebody having acute respiratory difficulty.
Q. When was it that Mr. Lavely's respirations were first recorded in the record?
A. Well, when he was on the psychiatric floor and he had respiration recorded at 60 per minute. When he arrived at the unit around one p.m., I don't know exactly what time the vitals were taken, but probably shortly thereafter.
Q. So there were red flags going off at one o'clock in the afternoon when he presented himself either to the emergency manor was taken to the psychiatric floor?
A. Yeah, I don't think he was in the emergency room though.
Q. Why wasn't he in the emergency room, do you know? How did it happen that he was -- he went fram the outside world to the psychiatric floor without passing through the emergency room?
A. I'm not sure.

Q. Do you have -- is that unusual to have a patient admitted were it be to a psychiatric floor or medical floor without going through the emergency room, without going through that threshold?
A. That's not unusual at all.
Q. It is not?
A. No.
Q. In this case you do not know why Mr. Lavely did not pass through the emergency room?
A. Not -- no, I don't.
Q. But you're certain in your own mind that at one o'clock in the afternoon when he was on the psychiatric floor that he had respirations of 60 per minute and a temperature of what, 92.3 degrees?
A. Correct.
Q. And at that point those were red flags going off'
A. Yes.
Q. Red flags suggestive of what, pending acute respiratory distress?
A. Not pending. Respiratory --
Q. Ongoing?
A. Yes.
Q. And so from one o'clock until approximately

three o'clock, is it your impression that Mr. Lavely was in acute respiratory distress without Dr. Ahluwalia even knowing that the patient was in the hospital?

A. Yes, that's correct.

Q. So what happened during those two hours that doctor -- that Dr. Ahluwalia was not even aware of the fact that her patient was in the hospital?

A. During that time the patient was seen by Dr. Lee, tests were ordered and tests were completed.

Q. And when somebody presents with a 60 per minute respiratory rate, what do you normally recommend in the emergency room setting?

A. Depends on the cause.

Q. Well, if you've got symptoms suggestive of pneumonia like fever, bronchitis, throat infection, coughing, what do you do in that situation?

A. I get to the bedside or I get someone else to the bedside as fast as I can and do an immediate assessment of the patient.

Q. Okay. And was that done in this case?

A. I'm not sure exactly what happened in this case. I know that he was seen by Dr. Lee, that

Q. All right. And then what would you have done? What would you have learned fram an assessment that you didn't already learn from his respiratory rate and the other symptoms that were presenting themselves? What *else* would you have done?

A. I would have assessed him to see if he's able to maintain his airway. I would have placed him on 100 percent oxygen and I would have assessed the need for and a t e intubation.

Q. *And* you would have done that at one *o'clock* in the afternoon in this case?

A. If I was presented with him at one o'clock with those vital signs with those complaints, I would have gone as fast as I *can* to his bedside and done that asses —t, yes.

Q. Do you know why Mr. Lavely wasn't transferred from the psychiatric floor to the medical floor for abaut a 40-minute period? Were you aware of that, that Dr. Ahluwalia gave an order to have a transfer done and for whatever reason the transfer didn't take place for about 30 or 40 minutes?

A. I knew there was a delay there. And like

tests were ordered and arrangements were made for him to -- care to be transferred to Dr. Ahluwalia.

Q. Well, when the assessment is done, what do you then -- if you are presented with a patient with those symptoms, what do you then do in an emergency situation? What do you do? What action do you take?

A. I go immediately to the bedside and assess the patient.

Q. Okay.

A. And depending on what the situation is, I act accordingly.

Q. Well, at one o'clock in the afternoon on April the 23rd, clearly Dan Lavely had pneumonia, correct?

A. Yes.

Q. And it was -- and he was in an acute situation at that time, was he not?

A. Yes.

Q. Now, if you had been presented with Mr. Lavely on that date at that time, what would you have done as the emergency room physician?

A. I would have done a bedside assessment of him.

most things in the hospitals, unless you do it yourself, nothing happens instantaneously.

Q. Unless you do it yourself. Do you have occasion where you transfer patients from the emergency room to a medical floor?

A. I've assisted in the transport of patients from the emergency room to the medical floor, yes.

Q. Doctor you're not suggesting that anybody -- that Dr. Lee should have gone to the psychiatric floor or Dr. Ahluwalia and made the transfer themselves, are you?

A. I -- no, I think Dr. Ahluwalia should have gone to see doctor -- to see Mr. Lavely immediately when she first got a phone call about him.

Q. And what was the first phone call that she received?

A. I believe it was about three p.m. when Dr. Ahluwalia was first notified.

Q. *And* what was Dr. Ahluwalia notified of at that time? Do you know?

A. I don't know everything. I know she was notified of the results of the chest x-ray so obviously therefore she had to be notified that there was a patient that Dr. Lee was requesting her

to take care of. There was a call placed by a nurse, I believe.
Q. Was there an indication by the nursing staff that Mr. Lavely was in any kind of acute distress at that time?
A. Well, there's all kinds of notes from the nursing staff prior to that that he was in respiratory distress.
Q. Well, let's talk about the acute distress that was made known to Dr. Ahluwalia if you were able to determine that from review of records of the depositions?
A. Reading Dr. Ahluwalia's deposition, she a number of times says she does not remember exactly what was reported to her.
Q. And in fact you make a remark on your letter of April the 17th of 2000 that it is your opinion that even if Dr. Ahluwalia wasn't told of the abnormal respiratory rate, which you believe she was, it was her responsibility to ask and find out everything she needed to know; is that right?
A. Absolutely, yes.
Q. Why is that you say that you believe that she was told of the respiratory rate? Do you know

how things operate at Firelands Community Hospital?
A. Can I ask your first question, -- answer your first question?
Q. Sure.
A. I believe she was because the nurses said they did.
Q. Where does it say that the nurses told her of the respiratory rate and at what time?
A. It would be in the nurse's deposition and I'd have to find that.
Q. What nurse's deposition was it, do you know?
A. I believe it was Gerhardt, or --
MS. TAYLOR-KOLIS: You have -- we have time. You have time. I've waited. So enjoy.
BY MR. HART:
Q. Doctor, while you're finding it, are you aware of any other doctors that have reviewed, been involved in the review of this case on behalf of Mr. Lavely other than yourself?
A. I'm not aware of any, no.
Q. Are you perplexed by the fact that Dr. Lee and the Firelands Hospital and doctor -- well, we've already had some explanation about Dr. Campbell, but

that Dr. Lee and the hospital were sued in this case? Do you find that curious?
A. Curious that what? Say that again.
Q. That the hospital and Dr. Lee were sued in this case for malpractice?
A. Do I find that?
Q. Curious? If you're the only one that did a review in this case, do you find that curious?
A. No.
Q. Why not?
A. I'm really not that familiar with who was sued and When. I think that's a legal thing and --
Q. Well, Doctor, isn't --
A. I'm not lap.
Q. Doctor, what do you mean it's a legal thing. You've made suggestions to counsel as to whether or not certain doctors should be dropped from a case. You have made -- you've rendered an opinion with respect to Dr. Lee that you felt that he should be dropped as a defendant in the lawmt, didn't you?
A. Yes, I did.
Q. As a matter of fact, you wrote March 29 of 2000 that It is my recommendation that he be dropped

I as a defendant from the lawsuit. I take it that you also had. input in him being becoming a defendant in the lawsuit?
A. I don't remember me saying anything about that he should be a defendant.
Q. Well, then -- so what --
A. Can I finish my question?
Q. Yes, go ahead.
A. And Ms. Kolis at a later time asked me my opinions on Dr. Lee. I told her and she'd asked me if I would put that in writing and I did and that's how I ended up with that opinion letter on Dr. Lee.
Q. You said since he was not even at the hospital there was nothing more that he should or could have done. Where did you get the impression that Dr. Lee was not at the hospital?
A. I believe it was in his deposition or somewhere I read that he kind of just happened across Mr. Lavely when he was at the hospital right after Mr. Lavely had arrived, did take a look at him, saw there were some problems, ordered some tests and then I believe he left the hospital and I believe It was to go to his office to see patients.
Q. Doctor, I made reference to the fact that

you made a recommendation whether Dr. Lee -- that you thought Dr. Lee should be dropped as a defendant from the lawsuit. You did do that, didn't you?
A. Yes, I did.
Q. You made a recommendation to a lawyer about whether one party or another is a proper defendant in this lawsuit, didn't you?
A. Yes, I did.
Q. Okay. We're back on my question about Dr. Ahluwalia and when she was apprised of Mr. Lavely's respiratory rate. If you can find it in the record?
A. Well, like I said, it was in a deposition, I believe. One of the nurse's depositions that she told Dr. Ahluwalia of the elevated respiratory rate.
Q. Okay. And you think it was Nurse Gerhardt. Whether it's Gerhardt or somebody else, you think it was in the nurse's deposition?
A. I'm quite sure of that, yes.
Q. Have you completed your review in this case?
A. I have reviewed everything Ms. Kolis has asked me to look at. If she were to give me anything else I'd look at it.

Q. So your review of this case started in February of 1997 and it's still ongoing through at least your letter that you offered April 17 of 2000; is that right?
A. Correct.
Q. Now, are you going to review anything else between now and the trial of this case, if you know?
A. Not unless Ms. Kolis asks me to review something else.
Q. Is there anything else that you think you need to see as part of your review?
A. I don't believe so.
Q. Have you looked at any medical literature or any articles or any of that kind of stuff to help you develop your opinions in this case?
A. No, I haven't.
Q. Do you feel that at one o'clock in the afternoon Mr. Lavely should have been intubated?
A. There's a pretty good chance he would have needed to be intubated at one o'clock.
Q. That he did need to be intubated at that time?
A. Yes.
Q. And but for the fact that -- strike that.

He was not intubated at one o'clock. Had he been intubated at one o'clock, do you believe he would have survived in this case?
A. Definitely.
Q. With respect to your letter of February 18, '97, I'm going to go through chronologically and touch on some stuff. On the second page you indicate that at one o'clock Mr. Lavely was clearly in distress, and it wasn't until about four that he was transferred to the medical floor. Are you with me?
A. Correct.
Q. An? you say considering the patient's unstable condition, this transfer to the medical floor was inappropriate. What unstable condition are you referring to at that time?
A. His respiratory rate of 58 to 60, his color, his breathing pattern.
Q. An? you think that he should not have gone to the medical floor but rather to the ICU; is that what your're saying?
A. Yes.
Q. An? the breathing rate, the calor, those are things that were present upon his presentation

to the hospital approximately one o'clock in the afternoon?
A. Right.
Q. On your letter of July 22nd of '98, at that time you had a chance apparently to review Dr. Ahluwalia's deposition?
A. Yes.
Q. You had not seen it before that time of course; is that right?
A. I must have received it shortly before that, but I don't --
Q. Well, I —— but o had -- you hadn't -- you hadn't reviewed it Mors you authored your report of February the 18th of '97 of course, right?
A. Correct.
Q. All right. You state as a supplement to my original report I still believe that Dr. Ahluwalia deviated from accepted standards. Was there some question in your mind when you wrote the letter of February the 18th, '97 about whether or not Dr. Ahluwalia deviated or not? Were you unclear at that time in formulating a definitive opinion?
A. Well, I hadn't read anyone's depositions I don't think at all back in February of 1997.

Q. Yes?
A. And I don't believe I was unclear, but any time you have -- haven't reviewed all the materials, your opinions can change and mine didn't.
Q. To use your term life-threatening disease process, you've got that in your letter of July 22nd of '98, do you see that?
A. I'm sure it's here. I'm just not seeing it.
Q. Yes, it is. It's the third line from the bottom of your first paragraph. Instead of trying to manage a life-threatening disease process the phone. That life-threatening disease process was readily apparent when Mr. Lavely was brought to the hospital at one o'clock?
A. Yes.
Q. Any reason why a psychiatrist wouldn't be able to recognize a life-threatening disease process with respect to the symptoms that Mr. Lavely had?
A. Well, a psychiatrist doesn't deal with this kind of stuff and, you know, Dr. Lee recognized that there was something wrong, ordered a pretty complete thorough battery of tests and knew he needed the assistance of a medical doctor.

I don't know exactly what time Dr. Lee saw Mr. Lavely, so I'm not sure who was first.
Q. Dr. Ahluwalia was of the opinion at around three o'clock in the afternoon that Mr. Lavely had pneumonia, wasn't she?
A. Saythat ——— 7
Q. Based upon your review of Dr. Ahluwalia's deposition, she was of the opinion around three o'clock in the afternoon that Mr. Lavely had pneumonia?
A. Yes.
Q. Was she not?
A. Yes.
Q. And you feel that she should have ordered that he be intubated at that time?
A. I think with -- in the clinical scenario presented by Mr. Lavely, the patient needed to be immediately assessed by a doctor. And the care was now in the hands of Dr. Ahluwalia at three p.m. and either she or and if she couldn't do it, her designee or someone else should have immediately gone to the bedside and assessed Mr. Lavely and -- in -- is respiratory condition.
Q. When was it that Mr. Lavely began to crash

Q. How about the nursing personnel?
A. I think almost a similar opinion. They're even less used to taking care of anything but psychiatric patients and from their reading you could see that they were -- they knew something else was going on and the patient was in distress.
Q. Are you saying that between one o'clock and three o'clock there was no opportunity for any hospital personnel to recognize a life-threatening disease process in Mr. Lavely? There wasn't anybody qualified or competent to recognize that?
A. I don't know who was in the hospital at that time.
Q. Clearly if Mr. Lavely had been hospitalized the day before rather than sent home, admitted to a medical floor, he probably would have survived the disease process that we've been talking about?
A. Assuming someone had recognized what was going on, yes.
Q. Who was the first person in this case to recognize what was going on? Was it Dr. Lee? Was it Dr. Ahluwalia? Was it a nurse?
A. I'm not sure if it was Dr. Lee or the nurses on the psychiatric floor. It was probably --

or become fulminant, so to speak, time wise, do you know? I think we're back to that code blue report again?
A. I don't think the code blue report really tells us what time he began to crash.
Q. Do you know when he began to crash?
A. I mean at 16:30 there is a note that respiratory is labored at 60. He's in bad shape when he gets to the medical floor. You know, at 15:55 or thereabouts he had a pulse-ox of 53 percent. He's crashing there. I mean he's --
Q. Well, he was crashing at the time he came into the facility, wasn't he? Didn't he have a 57 respiratory rate at that time?
A. He's in respiratory distress, no doubt about it, when he first comes in the facility, yes.
Q. Where is it in the record or the deposition that Dr. Lee communicated to Dr. Ahluwalia that this was an emergent situation? Is there such an indication anywhere in the record?
A. That Dr. Lee communicated to Dr. Ahluwalia?
Q. Yes. Or at Dr. Lee's request that this was an emergent situation?
A. I don't know if that -- that exact

conversation happened. I mean there was a number of phone calls to Dr. Ahluwalia.

Q. Well, are there any phone calls from nursing personnel to indicate to Dr. Ahluwalia that this was an emergency situation and the patient was crashing?

A. I mean the nurses aren't -- don't often makes assessments of what the situation is. They report the facts, the patient's status to the doctor and there is lots of phone calls from nurses to Dr. Ahluwalia.

Q. Well, is there a phone call, at least one phone call, that puts Dr. Ahluwalia on notice that Mr. Lavely is in an acute respiratory distress situation?

A. Was a phone call at around three o'clock and like I said in my note, if -- that's when Dr. Ahluwalia's first notified, she is told that the patient has pneumonia, and I think it's her responsibility if she's not told everything she needs to know that she needs to ask. And that's when we talked about the respiratory rate being high.

Q. How did Dr. Ahluwalia react to the

the patient immediately.

Q. Okay. And if you had gone to see the patient immediately at three o'clock, would you have ordered anything different than what Dr. Ahluwalia ordered? If you had gone to ths bedside?

A. I would have ordered either an intubation if it needed to be done there, or I would have ordered a transfer to ths intensive care unit or some other critical care setting.

Q. You're --

A. I would have ordered a 100 percent o m .

Q. That's --

A. That's if ths patient was able to breaths adequately on his own. If not, I would have a tested his breathing with a bag belt mask.

Q. Anything else?

A. I don't believe so.

Q. Are you saying that at three o'clock Mr. Lavely needed to be intubated and because he was not that that was a deviation from the standard of care?

A. I believe at three o'clock he needed to be intubated. Whether he needed to be intubated right there on ths medical floor or he could have waited a

representation that Mr. Lavely had pneumonia? What did she order?

A. She ordered a diet, she ordered vital signs every two hours, she ordered some oxygen at 6 liters, she ordered blood gases, a blood culture, I believe that's sputum culture also, an I.V., some antibiotics, a Proventil.

Q. Is that for respiratory distress?

A. That's for wheezing usually in asthmatics. I'm not sure why she ordered that in this case. It doesn't make any sense to me at all.

Q. Okay.

A. And she ordered an S.M.A. 12, that's a blood test, a chest x-ray in the morning, and him to be put on his home medications. That was the initial set of orders.

Q. Any other -- strike that.

Any other orders that she should have given at that time in your opinion?

A. Well, my whole --

Q. Over the phone?

A. I don't think she should have been giving orders on the phone. I think she should have been going to see the patient or have someone else go see

few minutes for an immediate transfer, not -- an d a t e transfer to that the ICU, he may have been able to wait for that. But that's all. He needed to be intubated at three o'clock.

Q. And had he been intubated, what would have been the result?

A. I believe his respiratory status would have been stabilized and he would have been -- he would have been stabilized and with the -- with antibiotics I think he would have gotten better and survived.

Q. Have you ever had a patient die on you, Doctor, during your emergency room care?

A. Yes, I have.

Q. Have you ever had a patient die of respiratory arrest?

A. Yes.

Q. Have you ever had a patient die of respiratory arrest who you had intubated?

A. Say that -- have I ever had --

Q. Have you ever intubated a patient who died on you?

A. Yes.

Q. A patient who had bronchopneumonia who you

intubated who passed away despite intubation?
A. Never a young healthy patient like this, but older patients, yes.
Q. How much older are you talking about? Are you talking about geriatric patients or are you talking about people that are 30 or 35?
A. A bronchopneumonia, I don't -- right in front of me when they came in alive I don't think I've ever had any besides a geriatric patient die on me in the emergency room.
Q. Did you ever treat a patient who you saw after having been transferred from the psychiatric floor of a hospital?
A. Say that again?
Q. Have you ever seen a patient who just came from a psychiatric unit?
A. I've had people --
Q. In your whole medical career?
A. I've had people transferred to the emergency room from the psychiatric facility.
Q. Who suffered from acute respiratory distress?
A. Yes.
Q. How many times would that have happened in

your years of practice?
A. Probably quite a few because we treat so much asthma and C.O.P.D. these days. Probably happens quite frequently. I don't want to say every week or two, but --
Q. Why would -- people who are in acute respiratory distress are seen by you in the emergency room having been in a psychiatric floor?
A. No, if they're in the hospital already, they usually are not transferred to the emergency room.
Q. Right.
A. If they're coming from somewhere else, then they usually come to the emergency room.
Q. Have you ever seen a patient -- strike that.
It's your opinion that Dr. Ahluwalia should have given orders to have Mr. Lavely transferred to the intensive care unit, correct?
A. That's one of the things, yes.
Q. All right. And your reason -- or your basis for that is what? Why the intensive care unit rather than a medical floor?
A. Because with his vital signs, his clinical

status, his pulse oximetry, it's clear that he's too sick to be on the medical floor.
Q. Since you believe that Mr. Lavely was in an acute situation even as of one o'clock in the afternoon, is there any reason why Dr. Lee could not have asked another physician in the hospital to take a look at Mr. Lavely?
A. I wouldn't know if he could or couldn't. I don't have any idea. I think Dr. Ahluwalia was familiar with Mr. Lavely and that's prob -- that would have been the likely reason that he asked her.
Q. Well, Doctor, don't you often see a patient that presents some complications or an interesting history that you ask somebody in the hospital to take a look at mth you to get some input? That's not unusual, in your practice is it?
A. You mean to get like an unofficial curbside consult'
Q. Sure, have one of your people that you have respect for, om of your colleagues, hey, would you take a look at this gentleman with me or this lady, I've got a problem here, I want your input. That's not uncommon for you to do, is it?
A. No, it's not.

Q. Are you telling me that at one o'clock in the afternoon the nursing personnel at Firelands Community Hospital that you're familiar with were incapable of recognizing that Mr. Lavely was in a life-threatening situation?
A. Were incapable?
Q. Were incapable of it?
A. I think they did recognize that he was in respiratory distress and in a difficult situation.
Q. A life-threatening situation at one o'clock. Who recognized that he was in a life-threatening situation at om o'clock?
A. I believe the nurses saw signs that he was having problems breathing with his respiratoxy rate at 60, with his blowing and sonorous respirations, his color being gray, his temperature being 92. I think they recognized that there was a problem there.
Q. Okay. And what problem did they communicate to anybody between one o'clock and three o'clock in the afternoon when Dr. Ahluwalia got involved in the care?
A. What problems did they communicate?
Q. Yeah, who did they talk to? Who did they

say hey we've got this patient who is ready to crash, he's breathing 60 times a minute, he's huffing and puffing, he's blowing hard, he looks gray, he's in distress. Who did they tell that? Who did they communicate that to from one o'clock to three o'clock?

A. Well, they knew the patient had already been seen by Dr. Lee and the patient was probably off the floor for a while getting the chest x-ray and they were following on the orders that had been given to them by Dr. Lee.

Q. Okay. All right. Are the -- strike that.

Dr. Lee certainly recognized that Mr. Lavely was in some kind of acute distress at one o'clock in the afternoon, did he not?

A. I believe he was -- he recognized that there was a potential medical problem and having some kind of problems.

Q. Doctor, even though he's a psychiatrist he does have medical training, does he not?

A. Yes.

Q. All right. And if -- and it's I think like you suggest in one of your letters, if you don't know -- if you don't know the answer to a question,

or not sure what you're doing, it's certainly appropriate to get help?

A. Yes.

Q. Ask for input, correct?

A. Correct.

Q. Because if you don't know what's going on, at least you should find out, get somebody that can figure out what's going on, right?

A. Right.

Q. You recognize -- you believe that Mr. -- strike that.

You believe that Dr. Lee should have recognized that Mr. Lavely was in a very serious condition at one o'clock in the afternoon when he had this -- by-the-way discussion with him in the waiting room?

A. I believe that he did recognize there was a problem going on.

Q. And so then how do you account for the delay in communicating that to Dr. Ahluwalia?

A. Well, he ordered -- Dr. Lee ordered some appropriate testing to be done and I don't know what delay exactly you're talking about.

Q. Well, according to you if he had been

intubated at one o'clock Mr. Lavely would be here today?

A. Yes.

Q. What specialties are you board certified in?

A. Emergency medicine.

Q. Anything else?

A. No.

Q. Internal medicine?

A. No.

Q. Psychiatry?

A. No.

Q. Would you agree with me that there are some emergency room physicians who will say that based upon Mr. Lavely's presentation at three o'clock in the afternoon that intubation was not appropriate?

A. Say that again?

Q. That there are some emergency room physicians that will say yeah, intubation you could have done it, but it wasn't the standard of care? You recognize there is a difference of opinion in that regard?

A. I'm not aware that there is anybody that said that in this case.

Q. Do you think that intubation is mandatory when a person presents with the pulse ox of 53 percent?

A. Almost all the time. And in a condition of pneumonia, yes.

Q. Is that what you do?

A. If someone has pneumonia and a pulse ox of 53 percent?

Q. Yes'

A. I couldn't imagine doing anything else.

Q. Besides intubation what else do you do with a patient like Mr. Lavely?

A. Besides intubation?

Q. Yes'

A. I would do other diagnostic tests, other supportive care, antibiotics if there is a pneumonia or other kind of infection. Depends on the situation.

Q. what's the youngest patient that has passed away under your care from acute respiratory distress?

A. Well, I've seen asthmatics brought into the emergency department already arrested and -- and arrest in my presence in their 20's, 30's and 40's.

Q. I'm not talking about asthmatics. I'm talking about people that have pneumonia or other kinds of respiratory distress. What's the youngest age of a patient that you recall passed away under your care and treatment?
A. In my presence?
Q. Yes, while you were -- while you were treating the patient?
A. Like I said earlier, 50, 60, 70. Much older.
Q. How many doctors -- strike that.
Where do you do most of your work, which hospital?
A. U.I.C., University of Illinois at Chicago.
Q. How many emergency room physicians are working on the unit at the same time in that facility?
A. Depends on the time of day.
Q. Well, let's say right now, today? How many physicians would there be right now?
A. Right now at 5:15 p.m.?
Q. Yes?
A. There would be two attending physicians, two adult -- two attending physicians taking care of

A. I don't believe so.
Q. You're not aware of reviewing any other charts for her up to this point; is that right?
A. I don't believe so.
Q. I take it that your opinion if Mr. Lavely had been transferred to ICU that they would have intubated him there?
A. At what time?
Q. Well, whenever --
A. Any
Q. Whenever he was transferred there?
A. Yes.
Q. They would have intubated him?
A. Yes.
Q. You said 6 liters is 44 percent oxygen; is that right?
A. It's an approximation.
Q. Do you think on April the 22nd that Mr. Lavely presented signs and symptoms of bronchopneumonia?
A. Reading the doctor's note I would say no. The nursing -- coughing up blood is a symptom of pneumonia, but I think the doctor made a reasonable conclusion where this blood was coming from so I

adults and one pediatrician. Plus there'd be -- there's residents in training also.
Q. Would the nursing personnel in your facility be able to recognize acute respiratory distress?
A. In my emergency department?
Q. Yes?
A. To this -- like this?
Q. A patient that presents himself like Mr. Lavely, would they be able to recognize acute respiratory distress?
A. I hope so. I believe so.
Q. They require some emergent care?
A. Yes.
Q. You've been to Ohio twice to testify against doctors; is that right?
A. I believe I was there twice, right.
Q. Ever been there for pleasure?
A. Yes.
Q. Okay. Ever been to Sandusky, Ohio or the Cedar Point Amusement Park?
A. No.
Q. You have not reviewed a case for Donna Kolis before; is that right?

really don't think he did.
Q. Pulse of 107, is that elevated?
A. Yes.
Q. What's that suggestive of?
A. Many, many things.
Q. Such as?
A. Fever, infection, dehydration, hypovolemia, any shock-like state, myocardial infarction, pneumonia, sepsis,
Q. And you believe in this case that Mr. Lavely presented himself as being in a kind of a shock-like state when he came back to the hospital on April the 23rd?
A. Yes. He was in a shock-like state.
Q. Have you looked at any records other than the hospital chart, the depositions of the nurses and Dr. Lee and Dr. Ahluwalia in this case? Have you looked at any other records regarding Dan Lavely?
A. No, except -- well, the psychiatric facility or wherever he came from there was I think maybe a couple notes.
MS. TAYLOR-KOLIS: The pre-screening notes from Firelands are part of the hospital charts.

THE WITNESS: That's all.
BY MR. HART:
Q. But that was part of the chart?
A. Yes.
Q. Are you have you talked to any other colleagues about your opinions in this case?
A. No, I haven't.
Q. And you indicated already that you didn't review any other medical sources or journals, Harrison's or anything like that; is that right?
A. Correct.
Q. What's the bible for emergency room medicine?
A. There really isn't one bible. There are a few well known textbooks.
Q. Well, tell me what you would refer to? What would you -- what's your, you know, your primary source for emergency care medicine information?
A. The book I use most often is Rosens Textbook of Emergency Medicine.
Q. Okay. What else do you use?
A. I use Tintinellis' Study Guide. That's the primary ones I use. Dr. Hamilton and Dr. Strange

Q. Are you married?
A. Yes.
Q. How often are you presented with a mentally retarded patient in the emergency room?
A. Not very often. Once in a while.
Q. Like once or twice a year maybe?
A. Maybe five or six a year.
Q. Ever see the same patient twice?
A. Ever in my life for anything?
Q. Yes?
A. Sure.
Q. Ever see the same psychiatric patient twice in your professional career since '83?
A. Sure.
Q. You're still an assistant professor; is that right?
A. Right.
Q. You're telling me today under oath that you did not have input on implicating Dr. Lee and Firelands Community Hospital in this lawsuit as defendants?
A. Well, I don't know if I had input, you know, what Ms. Kolis --
Q. I'm not talking about what you did. You

have authored a book or edited a book on emergency room medicine and I've used that. And occasionally I'll use a pediatric or internal medicine textbook like Harrison's or Cecil's Textbook of Internal Medicine, Nelson's Textbook of Pediatrics.
Q. Have you done any writings in the areas that are presented in this case here involving Dan Lavely?
A. No.
Q. Are you still an assistant professor at U.I.C.
MS. TAYLOR-KOLIS: Jim, you want his updated C.V.
MR. HART: I've got one from '96.
THE WITNESS: I have one updated in March.
MR. HART: Can I have this?
THE WITNESS: Yes.
MS. TAYLOR-KOLIS: Sorry. Should have given it to you in the beginning.
BY MR. HART:
Q. How many children do you have, by the way?
A. How many children?
Q. Yes?
A. None.

did not render an opinion and convey it to counsel that you felt that Dr. Lee or the nursing staff deviated from *any* standards of *care* in this *case?*
A. Specifically, no, I did not.
Q. How about not specifically?
A. Well, in my first letter, I said that there were -- that there were deviations. I didn't implicate one person specifically in the letter. But I did not mean to target Dr. Lee nor the nurses as deviating from the standard of *care.*
Q. Your letter that you wrote that will become an exhibit in this *case* if this goes to trial was intended solely to be critical of the *care* rendered by Dr. Ahluwalia, exclusively Dr. Ahluwalia?
A. At that point in time having read -- reviewed just what I had reviewed, no depositions or anything like that, it was clear to me that there was deviations from the standard of care and I did not have information or I did not have opinions specifically about a Dr. Lee or the nurses at that time.
Q. So how much time did you spend developing in your opinions after your initial review after you authored this letter, how much time did you spend *on*

this case?
A. As long as it took me to read all those further depositions, probably close to two hours a piece.
Q. All right.
A. So I don't know, four --
Q. Another eight or ten hours of review and analysis?
A. Sounds about right.
Q. I don't understand something here. You write a letter to the lawyer saying to drop Dr. Lee from the lawsuit, but you're also telling me you weren't critical of Dr. Lee in this first letter. You can't have it both ways. Were you intending to implicate Dr. Lee early on in your review of this case?
A. I don't remember being critical of Dr. Lee and implicating him when I first wrote that letter, no.
Q. Well, how did Dr. Lee become a defendant in this lawsuit then?
MS. TAYLOR-KOLIS: Objection. How would the doctor know how he became a defendant?
THE WITNESS: I don't know how he did.

BY MR. HART:
Q. How about the hospital? You have never been critical of the care provided by the hospital in this case since your initial review of this case; is that right?
A. That is right.
Q. Have you ever had any question in your mind about hey, what the nurses did, let's -- let me get some more information before I reach a final decision on this?
A. I was curious to read the nurses' depositions, absolutely.
Q. So you did have some questions about whether or not there were deviations by nursing personnel until you read their depositions?
A. Yes.
Q. Would that be fair to say?
A. Yes, that's fair to say.
Q. It's also fair to say the same thing about Dr. Lee, is that right, you were awaiting -- you were going to make your final conclusion about Dr. Lee and whether he deviated from the standard until you read his deposition?
A. Yeah, I didn't want to make any final

opinions until I had read everything.
Q. So there was a question mark in your mind about Dr. Lee and the hospital folks until you read depositions?
A. There were lots of question marks until I read all the depositions.
Q. Okay. But there were questions in your mind about whether Dr. Lee acted appropriately until you read his deposition, correct?
A. I didn't have opinions until I read his deposition. And the nurse's deposition.
Q. There was a question whether or not he deviated up until the time you read the deposition?
A. The way you're saying that, you're -- you're kind of implying or I feel like you're implying that I was kind of pointing the finger at Dr. Lee or the nurses or both, but I didn't quite have enough information to do that. I didn't know. I didn't --
Q. Exactly. That's *exactly* what I'm saying because that's what you say in your letter of February the 17th. You --
A. I believe -- I believe you're misinterpreting the my letter of February 17th.

Q. You implicate everybody in that letter, don't you?
A. That's your take *on* the letter. Maybe I -- you know, if could I write this letter again I'd be more explicit.
Q. Okay. Why did you feel the need to write a fourth report absolving Dr. Lee of responsibility in this case? What compelled you to write a report absolving him a couple months ago?
A. After I read his deposition, I talked to Ms. Kolis about it, she asked me if I thought he had departed from the standard of *care.* I told her no; she asked me if I would put it in writing.
Q. She had not asked you that question before?
A. She may have. I mean -- she may have in general said what do you think of this *case,* who do you -- what do you think of the actions by all the parties involved. I don't remember exactly if she asked -- what she asked me about Dr. Lee. She may have.
Q. When you have a temperature of 92.3, what does that suggest?
A. I'd like to know how that 92.3 was taken. That would be my first question.

Q. Do you think that that was an error?
A. Possibly. But sometimes people with bad infections that are septic can become what we call hypothermic, low temperature and if that was a rectal temperature, I by all means believe it.
Q. Doctor, if Mr. Lavely had presented himself to the emergency room on April the 22nd of '96 with a history of coughing up blood, slightly elevated temperature, pulse rate of 107, would you have ordered a chest x-ray?
A. If that's all the information I had, yeah, I probably would have. But there was also this other history on Mr. Lavely about self-induced trauma to his mouth. On physical exam there was some scratches on his posterior pharynx and taking all that into consideration, if I believed that were -- that were the history and he weren't coughing in front of me and I didn't get that history myself that he was coughing up blood, I may not have. I probably wouldn't have done a chest x-ray.
Q. Well, a nurse -- strike that.
How many active cases do you have right now where you're reviewing medical negligence

claims?
A. Sometimes I don't know that they're not active any more because a lot of times attorneys don't get back to me, so I would estimate two or three.
Q. Two or three total?
A. That are actively going on right now?
Q. Yes. Where your deposition is scheduled or about to be scheduled or there is a trial coming up or you're engaged in meaningful discussions with plaintiff's counsel or defense counsel?
A. No more than five.
Q. I'm getting charged $350 an hour. Is that what you charge plaintiff's counsel for review of records?
A. For review of records I charge $300 an hour.
MR. HART: Okay. That's it. Thank you. We'll get you paid right away. You send me a bill or send it to Donna and we'll get you paid right away.
(WITNESS EXCUSED.)

IN THE COURT OF COMMON PLEAS
ERIE COUNTY, OHIO

JAMES D. LAVELY,
Admr. Est. of Daniel J. Lavely,
Plaintiffs,
-VS- NO. 99 CV 049
SHAVIN AHLUWALIA, M.D.
Defendant.

CERTIFICATION

I hereby certify that I have read the foregoing transcript of my deposition consisting of pages 1 through _____, inclusive. Subject to the changes set forth on the preceding pages, the foregoing is a true and correct transcript of my deposition taken on May 10, 2000.

(signed) _____ *
John L. Zauticke, M.D.

*Please initial here if there were no corrections. _____

SUBSCRIBED AND SWORN TO
before me this _____ day
of _____, 2000.

_____
NOTARY PUBLIC

STATE OF ILLINOIS)
COUNTY OF C O O K) SS.

I, JOAN NOLTE-BURKE, Certified Shorthand Reporter and Notary Public in and for the County of Cook, State of Illinois, do hereby certify that on the 17th day of May, 2000, the deposition of the witness, JOHN L. ZAUTICKE, M.D., called by the Defendant, was taken before me, reported stenographically and was thereafter reduced to typewriting under my direction.
The said deposition was taken at the Hyatt Rosemont, 6350 N. River Road, Rosemont, Illinois, and there were present counsel as previously set forth.
The said witness, JOHN L. ZAUTICKE, M.D., was first duly sworn to tell the truth, the whole truth, and nothing but the truth, and was then examined upon oral interrogatories.
I further certify that the foregoing is a true, accurate and complete record of the questions asked of and answers made by said witness, JOHN L. ZAUTICKE, M.D., at the time and place hereinabove referred to.

The undersigned is not interested in the within case, nor of kin or counsel to any of the parties.

Witness my official signature and seal as Notary Public, in and for the County of Cook, State of Illinois, on the _____ day of May, 2000.

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