

IN THE COURT OF COMMON PLEAS
OF LUCAS COUNTY, OHIO

DWIGHT MICKEL,	:	
ADMINISTRATOR OF THE	:	
ESTATE OF KIM MICKEL	:	
et al.,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	Case No: CI05-2523
	:	Judge Cook
THE TOLEDO HOSPITAL,	:	
et al.,	:	
	:	
Defendants.	:	

- - -

Videotape deposition of **INGRID**
ALCOVER, M.D., a Witness herein, called by the
Plaintiff as upon Direct Examination pursuant to
the Ohio Rules of Civil Procedure, taken before
Doris Carino, Court Reporter, Notary Public in and
for the State of Ohio, at the offices of Shumaker,
Loop & Kendrick, 1000 Jackson Street, Toledo, Ohio
on Monday, May 4, 2009, commencing at 1:15 p.m.

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**DWIGHT MICKEL ADMINS. OF THE ESTATE OF KIM MICKEL, ET AL. V. THE TOLEDO HOSPITAL, ET AL.
VIDEOTAPE DEPOSITION OF INGRID ALCOVER, M.D., 05/04/09**

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1 Q Dr. Alcover, would you kindly state your full name
2 for the record and spell your last name for the
3 record, give us your current address as well if you
4 would.
5 A My name -- I'm Dr. Ingrid Alcover, A-I-c-o-v-e-r.
6 And my current business address is 3333 Glendale
7 Avenue, Toledo, Ohio, and that's the VA, VA here in
8 Toledo.
9 Q Thank you, Doctor. I'm here to ask you some
10 questions about care that you provided to Kim
11 Mickel back in 2005. Hopefully we'll be rather
12 brief, but if you need to take a break for any
13 reason we can certainly accommodate that. Let me
14 start by having you at least introduce yourself to
15 the ladies and gentlemen of the jury by telling
16 them your specialty of medicine. What do you do at
17 the VA?
18 A I'm internal medicine and critical care medicine
19 or intensive care. Presently I am internal
20 medicine at the VA and I do primary internal
21 medicine, primary care.
22 Q Back in 2005 where were you working at?
23 A I had my office at 1050 Isaac Streets Drive and
24 that's in Oregon, Ohio. And I practiced in the
25 office but I would admit to various hospitals

3

1 APPEARANCES:
2 On behalf of the Plaintiffs:
3 BECKER & MISHKIND CO., LPA
4 David A. Kulwicki
5 1660 West 2nd Street, Suite #660
6 Cleveland, Ohio 44113 (419) 241-2600
7 On behalf of the Defendants James Young, M.D. and
8 Emergency Physicians of Northwest Ohio of Toledo,
9 Inc.
10 SHUMAKER, LOOP & KENDRICK, LLP:
11 John C. Barron
12 1000 Jackson Street
13 Toledo, Ohio 43624-1515 (419)321-1275
14 On behalf of the Defendants Stephen Vivian, M.D.
15 and The Toledo Clinic, Inc.,:
16 EASTMAN & SMITH, LTD.
17 Peter R. Casey
18 One SeaGate, 24th Floor
19 Toledo, Ohio 43624 (419) (419)241-6000
20 On behalf of the Defendants Dennis K. DeLapp, M.D.
21 and West Park Family Physicians, Inc.:
22 MARSHALL & MELHORN, LLC:
23 Elizabeth E. Baer
24 Four SeaGate, 8th Floor
25 Toledo, Ohio 43604 (419) 249-7100
Also present: David Bryan, Videographer

INGRID ALCOVER, M.D.,
being first duly sworn, as hereinafter certified,
testified and said as follows:
DIRECT EXAMINATION
BY MR. KULWICKI:

5

1 around the city.
2 Q Okay. I'm going to hand you, or I've already
3 handed you some records that we'll mark as Exhibit
4 1. Does that appear to be a complete copy of your
5 office chart from your Oregon, Ohio, office in 2005
6 for Kim Mickel?
7 A It appears to be, yes.
8 (Plaintiff's Exhibit 1 marked).
9 Q Okay. From looking through that it looks like you
10 saw Mrs. Mickel on three occasions: February of
11 '05, March of '05, and November of '05; and then it
12 also looks like maybe a nurse practitioner or a
13 nurse from your office --
14 A Correct.
15 Q -- saw her in April of '05. Is that true?
16 A Correct.
17 Q Okay. Let me just get some idea about the care
18 that you provided to Mrs. Mickel. First of all, do
19 you recall how she became a patient of yours?
20 A Yes. The husband made an appointment for her to
21 be seen and that's how I first met the two of them.
22 Q Do you recall Mr. and Mrs. Mickel?
23 A I do.
24 Q How did Mr. Mickel get her to your office,
25 physically how did he bring her?

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<p style="text-align: center;">6</p> <p>1 A She was in a cart; and if my memory doesn't fail</p> <p>2 me, by ambulance, by way of ambulette they would</p> <p>3 bring her in.</p> <p>4 Q And what was the purpose of the various visits</p> <p>5 that he brought her to you for?</p> <p>6 A It was to be established initially, and to follow</p> <p>7 up on her care. I don't have to say that she was</p> <p>8 bedridden. And so I would make sure that she was</p> <p>9 feeling well, that her vital signs were well, that</p> <p>10 she had not aspirated or had had any kind of</p> <p>11 infection going on.</p> <p>12 Q And with respect to your encounters with</p> <p>13 Mrs. Mickel, can you tell us what sort of condition</p> <p>14 she was in at the time of the various visits that</p> <p>15 you had in 2005?</p> <p>16 A Well, she was, like I said, on a cart that she was</p> <p>17 brought in. She was not able to speak to me. She</p> <p>18 was making, if I remember well, some sounds but</p> <p>19 nothing that she could carry on a conversation with</p> <p>20 me. You could tell she had had a stroke. She was</p> <p>21 -- again I'm going from memory, please, four years</p> <p>22 ago. And she was pretty much -- she wasn't</p> <p>23 vegetative state but she was profoundly</p> <p>24 neurologically impaired.</p> <p>25 Q Okay. Now, did she come in at any point during</p>	<p style="text-align: center;">8</p> <p>1 boluses. As long as the patient didn't aspirate or</p> <p>2 it wasn't too much or it didn't distend the</p> <p>3 stomach, in which they would regurge, then it was</p> <p>4 okay. You just -- usually you don't start quickly</p> <p>5 and fill up the stomach because they could regurge.</p> <p>6 They have to be watched closely. They have to be</p> <p>7 kept upright and all that. So it's not an easy</p> <p>8 task. It's easier when you're doing it if the</p> <p>9 patient is fine. But you have to be mindful of all</p> <p>10 of that. And I know the nursing services were not</p> <p>11 too pleased with it.</p> <p>12 Q What was the outcome of your meeting with</p> <p>13 Mr. Mickel over this issue in November of 2005?</p> <p>14 A Well, he said that according to him everything</p> <p>15 appeared to be fine from what I remember and there</p> <p>16 were no problems, and he was already doing it. And</p> <p>17 so I told him, well, she's going to need according</p> <p>18 to the number of calories about six cans a day, six</p> <p>19 eight-ounce cans a day. Now, that you don't --</p> <p>20 that you put in six times a day.</p> <p>21 Q And based on your encounter with him would it be</p> <p>22 fair to say that you communicated that six cans a</p> <p>23 day would be appropriate nutrition for Kim?</p> <p>24 A Uh-huh. Yes. Mind you, we always also rely on</p> <p>25 the nutritionist and the nursing services that get</p>
<p style="text-align: center;">7</p> <p>1 2005 for any particular reason? In other words,</p> <p>2 was there a particular problem that she presented</p> <p>3 with on any of these three or four visits that --</p> <p>4 A I don't remember that she had anything. I thought</p> <p>5 it was just for just a regular visit.</p> <p>6 Q Would you describe her as well cared for during</p> <p>7 the period of time that you were her physician?</p> <p>8 A From what I remember, yes.</p> <p>9 Q Okay.</p> <p>10 MR. KULWICKI: Let's go off the record.</p> <p>11 (Off the record).</p> <p>12 Q Doctor, with respect to the last visit that you</p> <p>13 had with Mrs. Mickel November 7 of 2005 there's</p> <p>14 some discussion about how she was being tube fed.</p> <p>15 Could you just read the first note in that note for</p> <p>16 the ladies and gentlemen of the jury.</p> <p>17 A It said called by the nursing services. That</p> <p>18 means I was called by the nursing services, that</p> <p>19 the patient was getting tube feeding and her</p> <p>20 husband didn't want to use the pump, he wanted to</p> <p>21 use a syringe and feed her himself.</p> <p>22 Q Is that an appropriate way to feed a patient who</p> <p>23 has profound anoxic brain injury?</p> <p>24 A I've seen people for -- to make things easier for</p> <p>25 themselves instead of having a pump they would do</p>	<p style="text-align: center;">9</p> <p>1 a hold of the nutritionist, to see how many</p> <p>2 calories the patient needs because that could</p> <p>3 change. If the person gets an infection, if the</p> <p>4 person -- if anything that should happen that they</p> <p>5 get sick or they need more calories or more</p> <p>6 proteins, then that would change.</p> <p>7 Q Did Mr. Mickel appear to be concerned about his</p> <p>8 wife's welfare during these meetings?</p> <p>9 A He did. He did. That's what I remember the most</p> <p>10 how he was always, you know, guarding her and</p> <p>11 concerned about her health.</p> <p>12 Q If you would, tell the ladies and gentlemen of the</p> <p>13 jury what you recall about that.</p> <p>14 A He would -- he was always attentive to her needs</p> <p>15 and he would tell me that he was taking good care</p> <p>16 of her, that he was always watching her and that he</p> <p>17 wanted to take care of her. It was very apparent</p> <p>18 that he wanted to be the caretaker. And as the</p> <p>19 husband I didn't see anything wrong with that. And</p> <p>20 that he made it, or else he communicated to me that</p> <p>21 he was taking good care of her, that he would bathe</p> <p>22 her and feed her and do all her needs.</p> <p>23 Q And did she appear to be well cared for when you</p> <p>24 saw her?</p> <p>25 A She did. She did. She -- I didn't see anything</p>

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<p style="text-align: right;">10</p> <p>1 wrong there. I -- period.</p> <p>2 Q Okay. Now, in November -- after November of '05</p> <p>3 you did not see Kim Mickel again?</p> <p>4 A No.</p> <p>5 Q And can you tell us when you started your position</p> <p>6 with the VA?</p> <p>7 A I started my position in 2006. After April 2006 I</p> <p>8 don't -- I didn't see anybody or else the office</p> <p>9 was closed.</p> <p>10 Q Okay.</p> <p>11 MR. KULWICKI: Doctor, that's all the</p> <p>12 questions I have. These other lawyers may</p> <p>13 have some questions for you. Why don't we</p> <p>14 go off the record.</p> <p>15 MR. BARRON: If we can just take a</p> <p>16 couple-minute break.</p> <p>17 (Recess taken).</p> <p>18 CROSS EXAMINATION</p> <p>19 BY MS. BAER:</p> <p>20 Q Hello, Doctor, we met earlier, but I will</p> <p>21 reintroduce myself again. My name is Lisa Baer;</p> <p>22 and I am the lawyer that represents Dr. Dennis</p> <p>23 DeLapp in this matter. I do just have a few</p> <p>24 follow-up questions for you. I want to clarify, is</p> <p>25 it your testimony that through April of 2006, was</p>	<p style="text-align: right;">12</p> <p>1 A No, I would not. No.</p> <p>2 Q Okay, all right. At any of the actual office</p> <p>3 visits that you had with Kim was there ever a</p> <p>4 complete head-to-toe assessment or was it more a</p> <p>5 visit to establish care and then just a couple</p> <p>6 follow-up visits for some specific things?</p> <p>7 A I examined her the first time I saw her pretty</p> <p>8 much from head-to-toe. It was a little bit</p> <p>9 difficult on the cart to do a lot of stuff. And</p> <p>10 afterwards I would do a general, you know, check</p> <p>11 her heart, her lungs, her abdomen and that.</p> <p>12 Complete neurological was not done by me.</p> <p>13 Q Because she, as I understand, was getting some</p> <p>14 neurologic services through another physician at</p> <p>15 that time, correct?</p> <p>16 A Correct, correct.</p> <p>17 Q All right. And as I look at your records, it</p> <p>18 appears as though when you first started seeing Kim</p> <p>19 that she was on Coumadin, correct?</p> <p>20 A That is correct.</p> <p>21 Q And for the jury, Coumadin is a blood thinner?</p> <p>22 A It's a blood thinner.</p> <p>23 Q And for a patient like Kim why is it -- what would</p> <p>24 be some of the reasons that a patient like Kim</p> <p>25 would require being on the blood thinner?</p>
<p style="text-align: right;">11</p> <p>1 that the end time frame in which you were in the</p> <p>2 office --</p> <p>3 A That's correct.</p> <p>4 Q -- on Isaac?</p> <p>5 A That's correct.</p> <p>6 Q All right. And so it was at that point that you</p> <p>7 began your practice at Glendale with the VA.</p> <p>8 A I actually began earlier than that. I began in</p> <p>9 December, but I was going to the office part time</p> <p>10 until I was -- you know, I was giving it a --</p> <p>11 Q Transition.</p> <p>12 A Transition, correct. Thank you.</p> <p>13 Q Okay, all right. But nonetheless, the last visit</p> <p>14 that you had with Kim Mickel was November 7th of</p> <p>15 2005?</p> <p>16 A You're correct.</p> <p>17 Q Okay, thank you. Prior to when Kim Mickel became</p> <p>18 your patient I will represent to you she was a</p> <p>19 patient for a number of months at Arbors of</p> <p>20 Sylvania. You never saw Kim Mickel at Arbors, did</p> <p>21 you?</p> <p>22 A I did not.</p> <p>23 Q Okay. So therefore it would be fair that you</p> <p>24 wouldn't have any way to compare her condition as</p> <p>25 it was at Arbors versus when you first saw her?</p>	<p style="text-align: right;">13</p> <p>1 A There's several reasons. One of the biggest ones,</p> <p>2 or the first one that would come to anybody's mind</p> <p>3 is she had a pulmonary emboli when she was first</p> <p>4 admitted. And because she does not move and she</p> <p>5 had the first pulmonary emboli the chances of</p> <p>6 getting another one would be very good. You also</p> <p>7 do it for other things which she doesn't have like</p> <p>8 valves and sometimes people when they have a</p> <p>9 stroke, not like hers, would also have this fear of</p> <p>10 having another stroke, they would be put on</p> <p>11 Coumadin. Her case, what I understood was because</p> <p>12 she had the pulmonary emboli.</p> <p>13 Q Okay. Now, we have had the opportunity to take</p> <p>14 Dwight Mickel's testimony and go through the facts</p> <p>15 of this case with him and take his sworn testimony.</p> <p>16 I want you to assume that it is Dwight Mickel's</p> <p>17 testimony that during the time period that Kim was</p> <p>18 your patient that Dwight made the decision to take</p> <p>19 Kim off all of her medications. Okay? I want you</p> <p>20 to assume for a moment that to be true.</p> <p>21 A Okay.</p> <p>22 Q Did you at any time give the medical</p> <p>23 recommendation to Mr. Mickel that he take his wife</p> <p>24 off all of her medications?</p> <p>25 A No.</p>

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1 Q Okay. Now, I want you to further assume that it
2 is Mr. Mickel's testimony that he took her off the
3 Coumadin because there was no follow-up from your
4 office as to how, if at all, he should be adjusting
5 the amount that she takes.
6 A No.
7 Q Okay. I want to explore that for just a moment.
8 I believe you have a copy of your chart there.
9 A Correct.
10 Q And within that chart are there a number of pages
11 in which there were laboratory studies that were
12 done in relation to her Coumadin, correct?
13 A Correct, that's correct.
14 Q And for the benefit of the jury you have lab
15 sheets in which blood is drawn and you check
16 something called a pro time or an INR; is that
17 correct?
18 A Exactly. That is correct.
19 Q And tell the ladies and gentlemen of the jury what
20 is it those studies will tell you for a patient
21 who's on Coumadin?
22 A When somebody is on Coumadin they have to be
23 therapeutic which is not the normal but it has to
24 be higher, it's usually 1 1/2, 2 1/2 times the
25 normal. So if somebody is 15, they would have to

15

1 be minimum of 18, 20 and that would be an INR
2 because the INR -- I'm sorry, the PT. The INR,
3 which is about 1, has to be 1 1/2, 2, 2 1/2,
4 depending on -- it depends really on what the
5 person has, how resistant they are. We try to keep
6 it within the level. If the person is a high risk
7 for other things, we sometimes up it to 3 but, you
8 know, that's not the usual case. Usually it's
9 1 1/2 to 2 1/2 times the normal.
10 Q So if we could look for a moment, if you have the
11 chart there, if you would look to the laboratory
12 sheets as just an example there was a study where
13 the blood was collected on February 22nd, 2005.
14 And I will show you it has some handwritten
15 notations on it.
16 A This one right here. Uh-huh.
17 Q All right. So, for example, at that point in time
18 what was Kim's, the INR that you've just been
19 talking about?
20 A The INR was 2.4.
21 Q And so is that higher than what you would ideally
22 like to see it be?
23 A No, that is fine.
24 Q Okay. So did it appear as though there was
25 information as to how much Coumadin Kim was taking

16

1 at the time, correct?
2 A Uh-huh.
3 Q And how much was she taking?
4 A She was taking 5 milligrams a day.
5 Q All right. And then do you have a notation on
6 that page as well?
7 A I did. I wanted at that time to just lower it a
8 little bit to 2. And usually I do that -- I'm
9 always concerned if they would be over coagulated
10 in which they would start bleeding. And so I
11 wanted her to have an INR, to lower it just 1
12 milligram to see.
13 Q All right. And would it have been the routine
14 protocol in your office at that time that someone
15 contact Mr. Mickel to notify him of how to adjust
16 the Coumadin?
17 A Correct. Correct.
18 Q All right. Do you have any information to suggest
19 that that didn't happen in this case?
20 A No. I didn't have any information.
21 Q All right.
22 A No, I had a nurse at that time who was really
23 good. My nurses are really good about calling.
24 Q And in fact if you'll go back a few pages, for
25 example there was another blood draw that was done

17

1 on April 19th of 2005.
2 A Uh-huh.
3 Q And at that time what was Kim's INR?
4 A April --
5 Q I'm sorry, April 19th of 2005. And again it has
6 some handwritten notations.
7 A It was too low. And so we opted, because it had
8 gone down, and we opted -- Coumadin is something
9 that's dependent on what you eat many times, if
10 you're consistently taking the medication. 1.2 was
11 totally low. And so sometimes I don't know if they
12 ate something, vitamin K or something, that could
13 have decreased the incidence. And so at that time
14 I said, well, this is too low so we upped it to 4
15 again. And when you don't know the patient
16 completely, you have to go until you know they're
17 adequate. And then after you have several repeats
18 then the person is easier to control because they
19 know what their dose is. But still they have to be
20 careful not to eat things that may contain vitamin
21 K that will alter the medication.
22 Q All right. And in fact is it on the April 19th
23 laboratory sheet, does it indicate whether or not
24 the patient was notified to change the dose of
25 Coumadin?

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1 **A** **Correct, and it says there patient notified. And**
2 **a prescription was called in.**
3 **Q** Okay. If you will just take a look a moment at
4 the last few blood draws that were done for Kim's
5 PT and INR starting, for example, a date where
6 blood was drawn on July 19th, 2005.
7 **A** **Uh-huh.**
8 **Q** Starting at that point in time --
9 **A** **Yeah.**
10 **Q** Starting at that point in time through the last
11 laboratory value that you have on Kim was she ever
12 therapeutic?
13 **A** **No, she wasn't.**
14 **Q** In other words -- okay. So was her INR at a
15 number that you felt was acceptable?
16 **A** **Not at all. Not at all.**
17 **Q** Okay. Mr. Mickel has also given -- I want you to
18 assume has given some testimony in this case that
19 he interacted with you to try and obtain visiting
20 nurses services to care for Kim. You've had the
21 opportunity to go through your chart. Do you show
22 any record or indication, Doctor, that Mr. Mickel
23 made that request of you or asked you to help
24 obtain that referral?
25 **A** **I don't remember. I don't remember him telling me**

19

1 **that.**
2 **Q** Do you show any documentation in your chart that
3 would indicate that he had requested or that there
4 was a request for those services?
5 **A** **There was at first that -- they told me there was**
6 **a visiting nurse because they're the ones who said**
7 **on the last visit that he was giving the bolus. So**
8 **I had to assume, if my memory doesn't fail me, that**
9 **he was getting visiting nurse at that time.**
10 **Q** Do you have any recall that it was ever the case
11 that the visiting nurses were no longer coming and
12 that Mr. Mickel wanted help getting their services
13 to start back up again?
14 **A** **I don't remember that part.**
15 **Q** All right, fair enough.
16 **A** **I don't remember that.**
17 **Q** Okay.
18 MS. BAER: Doctor, that's all the
19 questions I have. Thank you very much.
20 The other lawyers will probably have some
21 questions for you.
22 **CROSS EXAMINATION**
23 **BY MR. BARRON:**
24 **Q** Hi, Doctor, my name is John Barron. We met just a
25 little bit before the deposition began. I have a

20

1 few questions for you. First I'd like to go back
2 to your very first contact with Mr. Mickel and his
3 wife Kim. As I understand it that involved an
4 office visit at your office over in Oregon on
5 February 10 of 2005.
6 **A** **That's correct.**
7 **Q** Okay. Prior to you providing care to Kim Mickel
8 she was receiving care from a Dr. Thomas Asher. I
9 don't know if you happen to know Dr. Asher.
10 **A** **Yes, I know of him. Yes, I know Dr. Asher.**
11 **Q** Do you have any understanding either from
12 conversations with Dwight Mickel or from anyone
13 else as to why Dwight Mickel decided not to have
14 Dr. Asher continue providing Kim Mickel's care?
15 **A** **I don't and I thought about that.**
16 **Q** Do you have any recollection of asking Dwight
17 Mickel, when this first request was made for you to
18 become involved in Kim Mickel's care did you make
19 any inquiry or question him at that time as to why
20 he was leaving, taking his wife away from
21 Dr. Asher's care?
22 **A** **I know I asked. I don't remember the answer. But**
23 **-- because I thought when she had that care she had**
24 **to have had a family doctor to follow her. And**
25 **that why, you know, obviously you're thinking why**

21

1 **is she here. So there are a lot of reasons why**
2 **patients change.**
3 **Q** But in terms of what, if anything, Mr. Mickel told
4 you in explanation, you have no memory?
5 **A** **No, he didn't speak badly about any physician.**
6 **Q** Okay. I'd like to now jump ahead to the last
7 visit, the visit of November 7, 2005. A couple of
8 questions about that. First, I'm understanding
9 from the charting that's in your chart for that
10 office visit, again November 7, 2005, that you or a
11 member of your office staff assessed her weight as
12 being in the 150 to 160 pound area.
13 **A** **Correct.**
14 **Q** Okay. Now, when Mr. Kulwicki was asking you some
15 questions about this visit he made reference to the
16 fact that you had been called by the visiting
17 nurses who were taking care -- providing some home
18 care to Kim; is that true?
19 **A** **Yes. That's correct.**
20 **Q** So you yourself took the call from the visiting
21 nurse --
22 **A** **No, not necessarily. It was the nurses -- my**
23 **nurse who picked up the call.**
24 **Q** So one of your staff received a telephone call
25 then --

**DWIGHT MICKEL ADMINS. OF THE ESTATE OF KIM MICKEL, ET AL. V. THE TOLEDO HOSPITAL, ET AL.
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<p style="text-align: right;">22</p> <p>1 A Uh-huh.</p> <p>2 Q -- from the visiting nurse service who was</p> <p>3 providing some home health care to Kim Mickel as of</p> <p>4 November 7, 2005, true?</p> <p>5 A That is correct.</p> <p>6 Q And then pursuant to their duties they talked to</p> <p>7 you about the results of that phone call, true?</p> <p>8 A That's correct.</p> <p>9 Q And as I understand it the visiting nurse service</p> <p>10 through your staff member communicated to you that</p> <p>11 they were not at all pleased about the fact that</p> <p>12 Dwight Mickel had decided to stop using the pump to</p> <p>13 give a continuous supply of nutrition and was going</p> <p>14 to what you call a bolus feeding?</p> <p>15 A That is correct.</p> <p>16 Q Okay. Did your nurse communicate to you anything</p> <p>17 about the specifics of what the visiting nurse</p> <p>18 service was worried or upset about?</p> <p>19 A If she did, I don't remember.</p> <p>20 Q Now, Doctor, I want to hand you some photographs</p> <p>21 and there are about 24 in number. They were</p> <p>22 photographs that I'll indicate were taken by the</p> <p>23 coroner's office at the time the autopsy was</p> <p>24 performed on Ms. Mickel. Specifically the</p> <p>25 photographs were taken on or about October 26th,</p>	<p style="text-align: right;">24</p> <p>1 Dr. Camerota that's inappropriate. Taking</p> <p>2 opinions above and beyond what the witness</p> <p>3 is here for. This witness is here solely</p> <p>4 to talk about her care and treatment of</p> <p>5 the patient. And likewise when we</p> <p>6 attempted to examine Dr. Camerota above</p> <p>7 and beyond his care and treatment of the</p> <p>8 patient we were denied that opportunity by</p> <p>9 the Court after objections by counsel. So</p> <p>10 we similarly object to using or attempting</p> <p>11 to use this witness in that fashion. So</p> <p>12 --</p> <p>13 A Does that mean I look at it?</p> <p>14 Q Yes.</p> <p>15 A Okay.</p> <p>16 Q Doctor, just before I ask a couple of questions</p> <p>17 about those photographs, I want to back up for a</p> <p>18 moment and go back to a question that Ms. Baer</p> <p>19 asked you about your first visit, that being the</p> <p>20 visit of October 10, 2005. To my recollection</p> <p>21 she'd asked you whether or not you had done a</p> <p>22 head-to-toe assessment. And I just want to get</p> <p>23 maybe a little bit more specific about that. Is it</p> <p>24 your recollection that on the -- well, at any time</p> <p>25 that you saw Kim Mickel did you ever do a</p>
<p style="text-align: right;">23</p> <p>1 2006. October 26th, 2006.</p> <p>2 A Okay.</p> <p>3 Q With Ms. Mickel's date of death being October 18,</p> <p>4 2006.</p> <p>5 A Okay.</p> <p>6 Q I'm going to show you these photographs but before</p> <p>7 I ask you any questions I'm just going to give you</p> <p>8 an opportunity to look through the photographs and</p> <p>9 then I'll have some questions for you. As I say,</p> <p>10 there are I think about 24 in length.</p> <p>11 A Okay.</p> <p>12 Q And I've had them marked as Defendant's Exhibit A</p> <p>13 to this deposition.</p> <p>14 (Defendant's Exhibit A marked).</p> <p>15 MR. KULWICKI: I'm going to object to</p> <p>16 the presentation of these photographs on a</p> <p>17 number of reasons -- for a number of</p> <p>18 reasons: 1, the Court, I believe, has</p> <p>19 issued an order that only a couple of the</p> <p>20 photographs at most can be used. So</p> <p>21 that's number 1. And you're presenting</p> <p>22 all of them. Number 2, I think you are</p> <p>23 trying to convert this witness into an</p> <p>24 expert witness and I think based on the</p> <p>25 Court's previous rulings with respect to</p>	<p style="text-align: right;">25</p> <p>1 head-to-toe assessment?</p> <p>2 A Not completely, because of the difficulty that I</p> <p>3 had where she was laying. I examined her legs, her</p> <p>4 arms and things like that, and --</p> <p>5 Q When you examined her legs and arms was she</p> <p>6 clothed? Or what was the status of her --</p> <p>7 A It was clothed but you can -- except for the legs</p> <p>8 and the arms that you can check.</p> <p>9 Q So that you would have looked at her back, for</p> <p>10 instance?</p> <p>11 A I don't remember looking at her back so that's why</p> <p>12 I don't swear to it and I don't say it. I like to</p> <p>13 do that but because it's not written I'm not going</p> <p>14 to say it.</p> <p>15 Q Okay, fair enough. Now, circling back to your</p> <p>16 last visit of November 7, 2005, I would like to now</p> <p>17 ask a couple of questions regarding your review of</p> <p>18 those photographs taken on -- roughly a year after</p> <p>19 your final visit.</p> <p>20 A Correct.</p> <p>21 Q As I understand it in your last visit of November</p> <p>22 7, 2005 the estimated weight was about 150 to 160</p> <p>23 pounds, true?</p> <p>24 A Correct.</p> <p>25 Q I want you to assume that the records of the</p>

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1 coroner's office will indicate that at the time
2 those photographs were taken Kim's body weighed 93
3 pounds.
4 **A I can believe it.**
5 MR. KULWICKI: Objection.
6 **Q** In other words, there's nothing -- that number
7 looks to fit with what you're seeing of the body in
8 the photographs.
9 MR. KULWICKI: Objection.
10 **Q** Is that true?
11 **A Yes, sir.**
12 **Q** Okay. Would it be fair to say that the condition
13 that you see reflected in those photographs marked
14 in Defendant's Exhibit A is a radically different
15 condition of Kim Mickel's body, her situation as it
16 was when you last saw her roughly a year before her
17 death?
18 MR. KULWICKI: Objection.
19 **A Yes.**
20 MR. BARRON: Those are all the
21 questions I have. Thank you very much.
22 MR. CASEY: I have no questions on
23 behalf of Dr. Vivian.
24 THE WITNESS: Do I give this back to
25 you?

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1 MR. BARRON: Keep them. We'll just
2 wait. We have perhaps some questions
3 coming from other lawyers in follow-up.
4 Eventually those will go to the court
5 reporter.
6 **REDIRECT EXAMINATION**
7 **BY MR. KULWICKI:**
8 **Q** Dr. Alcover, I have a few follow-up questions for
9 you, three different points I want to make. Topic
10 number one, with respect to the nutritional needs
11 of a patient in a permanent vegetative state, you
12 testified earlier that those can change over time.
13 **A They do.**
14 **Q** Is one of the things that can make a patient need
15 more nutrition when they get an infection like a
16 pneumonia?
17 **A You're correct.**
18 **Q** Okay. Topic number 2, with respect to the weight
19 in November of '05, normally when I see a weight
20 it's an exact weight like 210 pounds or 211 pounds.
21 This says 150 to 160 or 150 or 160, something -- it
22 gives a range. Can you tell us why that is, why
23 there's not an exact weight?
24 **A We could not put her on the scale. This makes me**
25 **think I think it was a guesstimate, or an estimated**

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1 **weight from the nurse.**
2 **Q** Last topic, Doctor. You mentioned the use of
3 Coumadin to treat for a pulmonary embolism. Do you
4 know where you got the information that the patient
5 had had a pulmonary embolism in the past from?
6 **A From the discharge summary in the emergency room.**
7 **It's over here. It was a discharge summary. Let**
8 **me get it here. Okay, maybe not. I show**
9 **somewhere. I know she had post anoxic brain**
10 **damage. That I do know, and that's a known fact.**
11 **Q** I may be able to save you. Irrespective of where
12 you got that information from, would you -- did you
13 make an independent determination or an independent
14 diagnosis that the patient either had or had in the
15 past had a pulmonary embolism? Or did you get that
16 information from some other source?
17 **A I relied on the information before me because I**
18 **wasn't there when she had it. So I relied on this**
19 **that she was admitted for shortness of breath due**
20 **to pulmonary emboli.**
21 **Q** And can you tell us what you're referring to?
22 **A Oh, I'm sorry. The Toledo Hospital Discharge**
23 **Summary.**
24 **Q** In addition to pulmonary embolism does it list
25 other diagnoses from that admission?

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1 **A It sure does. It says septi coccal septicemia,**
2 **which is an infection that starts in the blood --**
3 **or that's in the blood, it doesn't start. Acute**
4 **respiratory failure, which means she stopped**
5 **breathing in which case that's why she was on a**
6 **respirator. Septic shock, which means the**
7 **infection in the body was so severe that she went**
8 **into shock. And then she had disseminated**
9 **candidiasis, and that's a fungal infection that**
10 **more likely than not she got in the hospital. She**
11 **had a cardiac arrest. And I have to assume -- she**
12 **had a cardiac arrest, it has to be from the**
13 **respiratory problem that she had. Or when you go**
14 **into septic shock you can't breathe and you have to**
15 **be intubated. She had the cardiac dysrhythmia,**
16 **diabetes and hypokalemia, and a --**
17 **Q** And I know there's more there, we have that
18 exhibit; but just for purposes of clarification
19 with regard to one of the diagnoses listed there
20 amongst others was pulmonary embolism and that's
21 why you treated with the Coumadin. Is that what
22 you were telling us?
23 **A Correct.**
24 MR. KULWICKI: That's all I have.
25 Thank you, Doctor.

<p style="text-align: right;">30</p> <p>1 CROSS EXAMINATION</p> <p>2 BY MS. BAER:</p> <p>3 Q Just a couple of other questions briefly, Doctor.</p> <p>4 Mr. Kulwicki had just asked you whether an</p> <p>5 infection such as a pneumonia could alter a</p> <p>6 patient's need for a change or an increase in their</p> <p>7 caloric intake.</p> <p>8 A That is correct.</p> <p>9 Q Am I correct that really any type of infection,</p> <p>10 whether it be a pneumonia, whether it be a severe</p> <p>11 decubiti, whether it be from a variety of sources,</p> <p>12 that that can alter a patient's need to need a</p> <p>13 higher calorie requirement in someone who's in a</p> <p>14 state such as Kim's?</p> <p>15 MR. KULWICKI: Objection.</p> <p>16 Q Is that correct?</p> <p>17 A That's correct, because they have a higher need</p> <p>18 for protein for the tissue breakdown and such. A</p> <p>19 lot of things can make a change.</p> <p>20 Q Okay. And you went through some of the noted</p> <p>21 events on the discharge summary; but certainly</p> <p>22 you're not here today to delineate any particular</p> <p>23 opinions as to specifically what transpired or what</p> <p>24 happened to Kim Mickel during the time she was at</p> <p>25 the emergency department and later admitted to</p>	<p style="text-align: right;">32</p> <p>1 on the occasion that you examined Ms. Mickel's arms</p> <p>2 and legs on the occasion of her first visit?</p> <p>3 A No.</p> <p>4 Q That's the only time you did an examination of --</p> <p>5 A No.</p> <p>6 Q -- of her limbs, is it?</p> <p>7 A No. I checked her every time she came and I did</p> <p>8 not see --</p> <p>9 Q Always the observable portions of her body --</p> <p>10 A Correct.</p> <p>11 Q -- as opposed to having her disrobe or be</p> <p>12 disrobed?</p> <p>13 A Correct.</p> <p>14 Q Thank you.</p> <p>15 MR. CASEY: No further questions.</p> <p>16 MR. KULWICKI: I don't have anything</p> <p>17 else. Doctor, you have a right to review</p> <p>18 this transcript and make --</p> <p>19 THE WITNESS: No, thank you. I'll</p> <p>20 sign today.</p> <p>21 MR. KULWICKI: Okay.</p> <p>22 (Off the record).</p> <p>23 MR. KULWICKI: And you can also review</p> <p>24 your videotape, but you can waive that</p> <p>25 right as well.</p>
<p style="text-align: right;">31</p> <p>1 Toledo Hospital, true?</p> <p>2 A No, I don't have all the records to be able to</p> <p>3 make that determination. If I had it in front of</p> <p>4 me --</p> <p>5 Q Fair enough. Thank you so much, Doctor.</p> <p>6 MS. BAER: That's all I have.</p> <p>7 MR. BARRON: Nothing further here,</p> <p>8 thank you, Doctor.</p> <p>9 THE WITNESS: Thank you.</p> <p>10 CROSS EXAMINATION</p> <p>11 BY MR. CASEY:</p> <p>12 Q Doctor, in the -- Mrs. Baer just asked you about</p> <p>13 decubitus ulcers, bed sores, perhaps causing a need</p> <p>14 for change in nutrition.</p> <p>15 A That's correct.</p> <p>16 Q In the photographs --</p> <p>17 MR. KULWICKI: Objection. Move to</p> <p>18 strike. Go ahead.</p> <p>19 Q In the photographs that you observed at</p> <p>20 Mr. Barron's request did you observe any bed sores</p> <p>21 or decubitus ulcers?</p> <p>22 MR. KULWICKI: Objection. You may</p> <p>23 answer.</p> <p>24 A Yes.</p> <p>25 Q Did you observe any bed sores or decubitus ulcers</p>	<p style="text-align: right;">33</p> <p>1 THE WITNESS: No thank you, even less.</p> <p>2 (Deposition concluded at 1:58 p.m.)</p> <p>3 (Signature waived.)</p> <p>4 - - -</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

C E R T I F I C A T E

STATE OF OHIO)

) SS.

COUNTY OF LUCAS)

I, Doris Carino, Court Reporter and Notary
Public in and for the State of Ohio, duly commissioned
and qualified, do hereby certify that **INGRID
ALCOVER, M.D.** was by me first duly sworn; that the
testimony then given was by me reduced to stenotype,
afterwards transcribed upon a computer; that the
foregoing is a true and correct transcript of the
testimony so given as aforesaid; that this deposition
was taken at the time and place in the foregoing
caption specified.

I do further certify that I am not a relative,
employee, or attorney of any of the parties or counsel
employed by the parties hereto or financially
interested in this action, **nor am I, or the court
reporting firm with which I am affiliated, under a
contract as defined in Civil Rule 28(D).**

IN WITNESS WHEREOF, I have hereunto set my
hand and affixed my notarial seal of office at Toledo,
Ohio, this ____ day of May, 2009.

DORIS CARINO

Notary Public in and for the
State of Ohio

My Commission expires August 1, 2011

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