

COPY

1 IN THE CIRCUIT COURT OF CRAWFORD COUNTY, ARKANSAS  
2 CIVIL DIVISION II  
3 MARY HARTMAN, ET AL  
4 VS. NO. 17CV-10-425 (II)  
5 HENRY N. EDWARDS, M.D.

FILED

PLAINTIFF

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CRAWFORD COUNTY, VAN BUREN, AR

6 APPEAL TRANSCRIPT

7 TRIAL IN CHIEF

8 NOVEMBER 26, 27, 29, 30, 2012

9 VAN BUREN, ARKANSAS

10 \* \* \* \* \*

11 BEFORE THE HONORABLE MIKE MEDLOCK

12 CIRCUIT JUDGE

13 TWENTY-FIRST JUDICIAL DISTRICT - DIVISION II

14 \* \* \* \* \*

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22 **VOLUME VI OF VII**

23 (Pages 1279-1439)

In THE CIRCUIT COURT OF CRAWFORD COUNTY, ARKANSAS  
 MARY HARTMAN, the sister of Kenneth  
 Bieler, Individually, and as the  
 Administratrix of the Estate of  
 Kenneth L. Bieler, and Representing  
 the Wrongful Death Beneficiaries of  
 Kenneth Bieler and Doris Bieler,  
 the mother of Kenneth Bieler,  
 and Donna Dewey, the sister of  
 Kenneth Bieler, Individually, PLAINTIFF  
 Vs. Case No. CV2010-425-1  
 HENRY N. EDWARDS, M.D. DEFENDANT

VIDEOTAPED ORAL DEPOSITION OF  
 JOHN DANIELS, M.D.  
 Taken in Little Rock, Arkansas  
 November 17, 2012

INDEX	PAGE
Stipulations .....	4
Witness Sworn .....	5
Examination by Mr. Cox .....	5
Examination by Mr. Keever .....	42
Examination by Mr. Cox .....	123
Examination by Mr. Keever .....	128
Certificate of Court Reporter .....	132
EXHIBITS	
No. 1 "Standard of Care"	
No. 2 Curriculum Vitae John Daniels, M.D.	
No. 3 Curriculum Vitae Franklin Michota, M.D.	
No. 4 "Risk Factors"	
No. 5 "Activity of PT Usage Summary"	
No. 6 "Blood Counts"	
No. 7 "Blood loss and contributing factors in femoral fracture surgery"	
No. 8 Excerpt testimony of Shawn Imoof	
No. 10 Autopsy Report	
No. 11 American Airlines Confirmation	
No. 12 Illustration	

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 620 West Third Street, Suite 302  
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STIPULATIONS  
 THE ORAL DEPOSITION OF John Daniels, M.D. is being  
 taken on the 17th day of November, 2012, before Valarie D.  
 Flora, Certified Court Reporter and Notary Public in and  
 for Saline County, Arkansas, beginning at 9:00 a.m. at  
 the offices of Bushman Court Reporting, 620 West Third  
 Street, Suite 302, Little Rock, Arkansas, in accordance  
 with the following:  
 IT IS HEREBY AGREED AND STIPULATED by the parties in  
 the above cause, through their attorneys of record, that  
 the deposition of John Daniels, M.D. may be taken on oral  
 examination before Valarie D. Flora, CCR, RPR, pursuant to  
 the terms and provisions of the Arkansas Rules of Civil  
 Procedure for use as permitted by the Rules.

WHEREUPON, there being no further stipulations, the  
 following proceedings were had and done, to-wit:

1279



<p style="text-align: right;">5</p> <p>1 THE VIDEOGRAPHER: Today's date is November</p> <p>2 17th. The time is approximately 8:57 a.m. We're now</p> <p>3 on the record in the matter of Mary Hartman, sister</p> <p>4 of Kenneth Bieler, individually and as administrator</p> <p>5 of the estate of Kenneth L. Bieler, et al, versus</p> <p>6 Henry M. Edwards, M.D.</p> <p>7 This is the video recorded deposition of John</p> <p>8 Daniels being taken at Bushman Court Reporting in</p> <p>9 Little Rock, Arkansas.</p> <p>10 My name is Ronnie Fortham. I'll be your</p> <p>11 videographer today. The court reporter is Valarie</p> <p>12 Flora.</p> <p>13 Will the attorneys please identify themselves</p> <p>14 for the record?</p> <p>15 MR. COX: Walter Cox for Dr. Henry Edwards.</p> <p>16 MR. KEEVER: Jim Kever and Ken Swindle for the</p> <p>17 plaintiff.</p> <p>18 THE VIDEOGRAPHER: Will the witness be sworn?</p> <p>19 (The witness was sworn.)</p> <p>20 JOHN DANIELS, M.D.,</p> <p>21 having been duly sworn, was examined and testified as</p> <p>22 follows:</p> <p>23 EXAMINATION</p> <p>24 By MR. COX:</p> <p>25 Q. Dr. Daniels, would you state your full name, please?</p>	<p style="text-align: right;">7</p> <p>1 be a conflict?</p> <p>2 A. Well, I got an e-mail from you stating that you</p> <p>3 wanted me in Fort Smith or Van Buren sometime after the</p> <p>4 26th, and my jaw dropped. It just didn't register to me</p> <p>5 that -- for some reason I didn't -- it didn't register</p> <p>6 that I was going to be gone at the time of the trial. So</p> <p>7 I e-mailed you back and apologized that this trip had been</p> <p>8 planned for a long time and asked if the trial could be</p> <p>9 continued so I could testify at some later time.</p> <p>10 Q. Doctor, would it be an impossibility to cancel your</p> <p>11 trip that has been planned since February?</p> <p>12 A. My brother would lose a lot of money.</p> <p>13 Q. Did your brother pay for the trip?</p> <p>14 A. It was a birthday present, yes.</p> <p>15 Q. Doctor, so you have agreed to come to Little Rock,</p> <p>16 Arkansas, where we are today to give your deposition to be</p> <p>17 shown to the jury. Is that correct?</p> <p>18 A. That is correct, yes.</p> <p>19 Q. You understand that your testimony today by videotape</p> <p>20 that will be presented to the jury in Crawford County,</p> <p>21 Arkansas, is just as if you were before a jury. Do you</p> <p>22 understand that?</p> <p>23 A. I do understand that yes.</p> <p>24 Q. You understand that you're under oath to -- to</p> <p>25 testify truthfully in this case, correct?</p>
<p style="text-align: right;">6</p> <p>1 A. Yes. John S. Daniels.</p> <p>2 Q. Dr. Daniels, what is your occupation and profession?</p> <p>3 A. I am a doctor of medicine.</p> <p>4 Q. Where do you practice medicine, Doctor?</p> <p>5 A. I practice at Washington University Barnes Jewish</p> <p>6 Hospital in St. Louis, Missouri.</p> <p>7 Q. Doctor, before I get into your educational</p> <p>8 background, your training, and your experience as a</p> <p>9 physician, you are aware that this case is set for trial</p> <p>10 beginning on Monday, November 26, 2012, in Van Buren,</p> <p>11 Arkansas. Is that correct?</p> <p>12 A. I am. I'm aware of that, yes.</p> <p>13 Q. Where will you be on November 26?</p> <p>14 A. I will be in -- I think I'll just be leaving Dubai on</p> <p>15 a ship that's on its way to Singapore.</p> <p>16 Q. Doctor, how long have your plans been in existence to</p> <p>17 be outside of the United States the week of this trial?</p> <p>18 A. The plan was made in February of this year and -- but</p> <p>19 the trip had been planned for several -- since my 60th</p> <p>20 birthday.</p> <p>21 Q. Doctor, you became aware at or about the same time</p> <p>22 that this case was set for trial in November. Is that</p> <p>23 correct?</p> <p>24 A. That's correct.</p> <p>25 Q. And what happened on your calendar to cause there to</p>	<p style="text-align: right;">8</p> <p>1 A. Absolutely, yes.</p> <p>2 Q. Doctor, let's start with your early background.</p> <p>3 Where were you born and raised?</p> <p>4 A. I was born and raised in Fort Smith, Arkansas. Born</p> <p>5 in 1948.</p> <p>6 Q. So help me with the math. How old are you now?</p> <p>7 A. I'm 64 years old.</p> <p>8 Q. At what age did you leave Fort Smith?</p> <p>9 A. I actually left Fort Smith to go to college in St.</p> <p>10 Louis, Washington University, and graduated from</p> <p>11 Washington University in 1970. Graduated South Side High</p> <p>12 School in Fort Smith and then with Washington University</p> <p>13 and then I returned to Little Rock to go to medical</p> <p>14 school.</p> <p>15 Q. Let's talk about that in a minute. You indicated you</p> <p>16 graduated from Fort Smith, Arkansas, South Side High</p> <p>17 School. Is that correct?</p> <p>18 A. I was the first graduating class of South Side.</p> <p>19 Q. In what year did you graduate high school?</p> <p>20 A. 1966.</p> <p>21 Q. Then you said you went to college at Washington</p> <p>22 University in St. Louis?</p> <p>23 A. That is correct.</p> <p>24 Q. What was your major in college?</p> <p>25 A. Biology.</p>

1280

1 Q. After completing your undergraduate education, did  
2 you receive a degree?  
3 A. I received an A.B., basically a bachelor of arts  
4 degree from Washington University.  
5 Q. After receiving that degree, what did you then do to  
6 further your education?  
7 A. I then returned to Little Rock here in Little Rock  
8 and went to medical school here for four years.  
9 Q. When did you complete your medical school education  
10 here at UAMS?  
11 A. I completed that in 1974.  
12 Q. And received your doctor of medicine degree?  
13 A. I received a doctor of medicine as well as a master  
14 of -- masters in anatomy. I received a dual degree  
15 actually.  
16 Q. Did you then go on to receive some further or  
17 additional training after medical school?  
18 A. I did. I returned to St. Louis, Washington  
19 University, and did an internship in internal medicine in  
20 the Department of Medicine at Washington University.  
21 Q. How many years did your internal medicine residency  
22 take?  
23 A. I then -- I was -- did an internship in residency for  
24 a three-year period. That was followed by a two-year  
25 fellowship in endocrinology and metabolism. That's a

1 subspecialty of internal medicine. Then I finally  
2 completed my training by doing another year of chief  
3 residency in internal medicine, which I completed in 1979.  
4 Q. So you completed all of your training in 1979. Is  
5 that correct?  
6 A. That's correct.  
7 Q. Are you currently board certified in any medical  
8 specialty, Doctor?  
9 A. I'm board certified in internal medicine and  
10 endocrinology and metabolism.  
11 Q. The jury may not be familiar with endocrinology and  
12 metabolism. What does that field of medicine cover?  
13 A. That is a subspecialty of internal medicine, just  
14 like cardiology would be a subspecialty of internal  
15 medicine, or rheumatology or infectious disease. It is  
16 the study of hormonal disease. Diabetes would be the  
17 disease that would be the most common endocrine disease,  
18 thyroid disease, adrenal disease, those type of things.  
19 Q. Are you currently in full-time practice of medicine,  
20 Doctor?  
21 A. I am indeed, yes.  
22 Q. And what your current affiliation with St. Louis  
23 University?  
24 A. I have no affiliation with St. Louis University.  
25 That's a -- another medical school in St. Louis. My

1 affiliation --  
2 Q. I'm sorry. Washington.  
3 A. Washington University, yes. I'm associate professor  
4 of medicine at Washington University, on the staff of  
5 Barnes Jewish Hospital, which is the teaching hospital of  
6 Washington University.  
7 Q. Has Washington University school of medicine been  
8 known and have a good reputation in the field of internal  
9 medicine and the various subspecialties?  
10 A. I believe it does, yes.  
11 Q. And Barnes Jewish Hospital, you mentioned it was the  
12 teaching hospital of your medical school.  
13 A. Correct.  
14 Q. What privileges do you hold at Barnes?  
15 A. I'm an attending physician on the staff of Barnes  
16 Hospital. It's now called Barnes Jewish Hospital. Jewish  
17 Hospital and Barnes merged, so it's now called Barnes  
18 Jewish Hospital.  
19 Q. Doctor, would you tell the jury something about your  
20 day-to-day practice of medicine, the type of patients you  
21 see on a day-to-day basis?  
22 A. Well, we have a very busy practice. I have two --  
23 actually, now three partners. I see patients five days a  
24 week, eight hours a day in the office. We don't -- we're  
25 not typical in that we don't have a day off. I have

1 patients in the hospital. Now, I do -- I used to have a  
2 very, very active hospital practice. The last few years,  
3 we've used hospitalist now much of the time. I still do  
4 hospital work on a consultative basis, but -- still see  
5 patients in the hospital, but the bulk of my practice is  
6 outpatient medical practice.  
7 Q. In January of 2009, were you seeing more patients in  
8 the hospital than you do today?  
9 A. Yes. I, at any one time, had 20, 25 patients in the  
10 hospital. We had an extremely active hospital practice.  
11 We did for almost 30 years.  
12 Q. Was your practice then and now limited to patients  
13 who have only endocrine problems or metabolism problems?  
14 A. No, no. We really -- even with our diabetic  
15 patients, which comprise probably 50 percent of our  
16 medical practice, we do their primary care as well. So we  
17 really consider ourselves primary care physicians. So we  
18 took care of all of the internal medicine needs to the  
19 extent of our ability of our -- even our diabetic  
20 patients. So we, basically, were primary care physicians,  
21 much like Dr. Edwards is a primary care physician.  
22 Q. Doctor, are you board certified in your specialty? I  
23 may have asked you that and I apologize if I repeat  
24 myself.  
25 A. Yes, I am board certified.



1 Q. In what specialty?  
 2 A. Internal medicine and also in diabetes and  
 3 endocrinology.  
 4 Q. Doctor, in the patient population that you see on a  
 5 regular basis, do you have an occasion to diagnose and  
 6 treat venous thrombotic diseases?  
 7 A. Yes, I do. It's a very common problem in any  
 8 internal medicine practice. It's even probably more  
 9 common in our practice. We deal, as I've mentioned, with  
 10 a lot of individuals with diabetes and other endocrine  
 11 problems and there -- there is a higher incidence and  
 12 prevalence of venous thrombotic disease in that  
 13 population. So we have large numbers of patients with  
 14 deep vein thrombosis and pulmonary emboli.  
 15 Q. Doctor, for sake of brevity, from henceforth in this  
 16 deposition, can we abbreviate venous thromboembolic  
 17 disease as VTE?  
 18 A. Certainly, sure.  
 19 Q. You'll understand what we're asking and I'm asking  
 20 when I use that abbreviation?  
 21 A. Absolutely.  
 22 Q. Doctor, before we get into your opinions in this  
 23 case, let me ask you about your experience as an expert  
 24 witness. Have you testified in previous cases as an  
 25 expert witness?

1 A. Yes, I have.  
 2 Q. Have you testified both for plaintiffs and  
 3 defendants?  
 4 A. Yes, I have, yes.  
 5 Q. How many times would you estimate you have actually  
 6 testified live at a trial?  
 7 A. I believe this is the first -- there may have been an  
 8 earlier trial case this year. I believe this may be the  
 9 first time that I testified at a trial, assuming this is a  
 10 trial. But I would say on the average, over the last 20  
 11 years, I've testified in trial probably twice yearly. It  
 12 may be some years one time, some years three times, but on  
 13 the average two, two or so times.  
 14 Q. When you have testified, have you testified both for  
 15 plaintiff and defendant?  
 16 A. Yes, I have.  
 17 Q. What is the breakdown, would you estimate?  
 18 A. I would say approximately 80 percent for defendants,  
 19 20 percent for plaintiff.  
 20 Q. Are you open to reviewing cases from whomever asks  
 21 you to look at a case?  
 22 A. Certainly. If a plaintiff attorney asked me to look  
 23 at a case, I'm happy to do so.  
 24 Q. Do you charge for your time, Doctor?  
 25 A. Yes, I do.

1 Q. What do you charge?  
 2 A. I charge \$250 an hour for reviewing cases and I  
 3 charge \$400 an hour for deposition and trial testimony.  
 4 Q. Doctor, at my request, did you agree to review the  
 5 case involving the death of Mr. Kenneth Bieler against my  
 6 client, Dr. Henry Edwards?  
 7 A. Yes, I did.  
 8 Q. Prior to my contacting you about reviewing this case,  
 9 had you ever reviewed a case for me previously?  
 10 A. Not to my memory, no.  
 11 Q. Did you review records and other materials which I  
 12 provided to you in this case?  
 13 A. Yes, I did.  
 14 Q. Let me walk through the list of documents and ask if  
 15 you have reviewed them in preparation for giving your  
 16 opinions in this case.  
 17 Have you read the medical records for Mr. Bieler's  
 18 admission to Summit Medical Center on January 6, 2009, for  
 19 the treatment of a fractured femur?  
 20 A. Yes, I did.  
 21 Q. Did you have the entire records for that admission to  
 22 the Summit Medical Center?  
 23 A. I did in deed, yes.  
 24 Q. Did you also review records from the rehabilitation  
 25 facility known as the Ashton Place?

1 A. Yes, I did.  
 2 Q. Did you review those records in their entirety?  
 3 A. Yes, I did.  
 4 Q. Did you likewise read in their entirety the medical  
 5 records for Mr. Bieler's readmission to Summit Medical  
 6 Center around midnight on January 13, 2009?  
 7 A. Yes, I did.  
 8 Q. Are you aware of any other medical records that  
 9 pertain to Mr. Bieler?  
 10 A. I did read the autopsy report that was done a little  
 11 bit over a year later after Mr. Bieler's death, and then  
 12 there were various depositions I also reviewed.  
 13 Q. Let's talk about the depositions. Have you read the  
 14 deposition of Dr. Henry Edwards?  
 15 A. Yes, I did.  
 16 Q. Have you read the deposition of Dr. Franklin Michota?  
 17 A. I did, yes.  
 18 Q. Have you read any other depositions that would aid or  
 19 assist you in forming your opinions in this case?  
 20 A. No, I have not.  
 21 Q. Doctor, do you believe that you are sufficiently  
 22 familiar with the facts of this case in order to render  
 23 opinions concerning the care provided to Mr. Bieler by Dr.  
 24 Henry Edwards?  
 25 A. Yes, I am.

1 Q. Doctor, are you familiar with the level of care that  
2 is provided in communities such as Van Buren, Arkansas?

3 A. Yes, I am.

4 Q. Do you believe that a board certified internal  
5 medicine doctor, such as Dr. Edwards, practices any  
6 differently than, say, an internal medicine doctor in some  
7 other community whether larger or smaller than Van Buren,  
8 Arkansas?

9 A. No. I think his practice would be no different than  
10 the practice that we have at Barnes Jewish Hospital,  
11 Washington University.

12 Q. Doctor, I'm going to ask you an overall general  
13 opinion, and then we'll get down to some specifics in a  
14 moment. But based upon your background, your training,  
15 and your experience as a doctor of internal medicine and  
16 your review of the medical records and depositions that  
17 have been provided to you, have you formed an opinion as  
18 to whether or not Dr. Henry Edwards met the standard of  
19 care required of him in his care and treatment of Mr.  
20 Kenneth Bieler?

21 A. Yes, I have.

22 Q. What is that opinion?

23 A. I believe that Dr. Edwards met the standard of care;  
24 he took good care, made reasonable judgments; and that the  
25 standard of care was not breached at all. It was an

1 unfortunate tragic outcome, but I think Dr. Edwards  
2 practiced good medicine.

3 Q. Let's break that down a bit if we might. What is  
4 your understanding of the nature of the injuries sustained  
5 by Mr. Bieler?

6 A. He fell and fractured a femur, and that required  
7 surgery on the 6th of the month.

8 Q. Do you understand that Dr. Edwards was not involved  
9 in the care and treatment provided in connection with the  
10 surgical repair of his fracture?

11 A. That is correct. He did not see Mr. Bieler -- Dr.  
12 Edwards did not see Mr. Bieler during that admission.

13 Q. Do you have any knowledge as to whether or not Dr.  
14 Edwards saw Mr. Bieler while he was at the Ashton Place  
15 rehabilitation facility?

16 A. No. I have no evidence, and I think Dr. Edwards  
17 testified that he'd never seen Mr. Bieler until the 14th  
18 when -- following his admission to Summit.

19 Q. Who took care of Mr. Bieler during his first  
20 admission to Summit Medical Center?

21 A. The orthopedic surgeon, Dr. Rhomberg, and then also  
22 the hospitalist. And I'm blanking on the hospitalist's  
23 name.

24 Q. Dr. Niba?

25 A. Dr. Niba, yes. Dr. Niba. They were the two

1 physicians who cared for Mr. Bieler during that initial.

2 Q. Doctor, based upon your review of the medical  
3 records, how would you describe Mr. Bieler's overall  
4 condition upon his readmission to Summit Medical Center  
5 around midnight on January 13, 2009?

6 A. Well, he was very ill. He had been in Ashton Place  
7 and started developing abdominal bloating, nausea, feeling  
8 very badly, had become dehydrated, and was taken to Summit  
9 to the emergency room where he was found to be in renal  
10 failure. He was found to be anemic, febrile, dehydrated,  
11 very ill. Very ill.

12 And the obvious problem, of course, was the dilated  
13 -- marked dilate bowel. Both small intestine and the  
14 large intestine were very dilated, suggested that there  
15 was some sort of obstructive dysfunctional problem with  
16 the -- with the bowel.

17 Q. Were other medical specialties consulted by the  
18 emergency room physician in addition to Dr. Henry Edwards?

19 A. Yes. A surgeon was called. Dr. Ruff came to see the  
20 patient in addition to the emergency room physician. And  
21 then, of course, Dr. Edwards was assigned Mr. Bieler and  
22 became involved in the case for the first time.

23 Q. You mentioned or said a term that the jury has  
24 probably heard by the time I ask this question of you and  
25 they hear your testimony about the condition known as renal

1 failure. Would you explain to the jury what that is,  
2 please?

3 A. Well, that means that the kidneys have failed. His  
4 creatinine was four when he was admitted to the hospital.  
5 A normal creatinine would be one. So -- and when he was  
6 in the hospital just a week prior, he had normal kidney  
7 function. So he -- basically, his kidneys had shut down.  
8 His kidneys were not working, and it was one of the things  
9 that had to be attended to during his hospitalization.

10 Q. Can that condition of renal failure be life  
11 threatening to a patient?

12 A. Certainly. I mean, if the -- if the condition is not  
13 corrected and it -- it's life threatening and the  
14 individual either will need to be dialyzed or receive a  
15 kidney transplant in order to survive.

16 Q. Jumping ahead, Doctor, was there ever any diagnosis  
17 made or could have been made in Mr. Bieler's case as to  
18 what caused his renal failure or kidney failure?

19 A. I don't think it was ever determined, you know, what  
20 the cause of the kidney failure was, whether it was just  
21 profound dehydration, whether some other systemic disease  
22 was going on that caused the kidney failure in addition to  
23 the, basically, the failure of the gastrointestinal  
24 system. The GI system was also failing. His liver also  
25 was being affected.



1 So there was something dramatic going on with Mr.  
 2 Bieler when he was readmitted that I don't think really  
 3 was ever discovered prior to his death exactly what --  
 4 what happened to him.  
 5 Q. You mentioned some liver issues. What liver problems  
 6 did he have upon admission to the hospital?  
 7 A. He had abnormal liver enzymes, meaning that he had an  
 8 inflammation in his liver, he was a bit jaundiced. And,  
 9 again, one always -- one of the things that we learn in  
 10 medicine is that there usually is one cause for a clinical  
 11 syndrome. And in Mr. Bieler's case, I don't think that  
 12 one cause was ever really determined.  
 13 Q. And based upon your review of the records, did you  
 14 ever come to any conclusion as to what was causing Mr.  
 15 Bieler's liver problem or his kidney failure?  
 16 A. No. Really, I don't think that anybody can tell what  
 17 causes kidney failure or his liver failure, if you will.  
 18 He did have improvement over -- it was -- with the good  
 19 supportive care that Dr. Edwards gave, hydration and the  
 20 nutritional things that Dr. Edwards did, he did have  
 21 improvement of these things. But in terms of what  
 22 actually caused the problems in the first place, I don't  
 23 think anybody ever got a handle on it. Even the autopsy  
 24 didn't shed any light on that.  
 25 Q. Doctor, another issue that you touched on a moment

1 ago was the issue of anemia. Would you explain to the  
 2 jury what you believe Mr. Bieler's presentation was with  
 3 regard to his blood counts?  
 4 A. Well, he presented, you know, quite anemic. His  
 5 hemoglobin was in the eight to nine percent range. When  
 6 he had been in the hospital previously, he had a normal  
 7 hemoglobin of about 14, so he lost nearly half of his  
 8 blood volume -- or nearly half of his red blood cells. I  
 9 mean, that is a pretty profound thing to happen in a  
 10 week's period of time. And I think, you know, obviously,  
 11 there's a concern that there's blood loss somewhere.  
 12 Q. Does that at least raise the suspicion that there is  
 13 internal bleeding somewhere?  
 14 A. Certainly. The blood went somewhere. You know, he  
 15 may have had some blood loss with the surgery that he  
 16 underwent, but this would be unusual amount of blood loss.  
 17 And usually within a week in an otherwise normally -- a  
 18 normal individual, that blood loss would be corrected just  
 19 by bone marrow replacement.  
 20 Q. Doctor, I'll represent to you that the surgeon  
 21 estimated the blood loss at 150 CCs during surgery for the  
 22 repair of the femur practice; the anesthesiologist  
 23 estimated 300 CCs of blood loss. Is either of those  
 24 amounts sufficient to account for the blood counts, the  
 25 hematocrit and hemoglobin counts that he had during his

1 admission to the hospital?  
 2 A. No. It doesn't come close. I mean, that would be  
 3 about equivalent to half a unit of blood. Going from a  
 4 hemoglobin of 14 down to a hemoglobin of nine would be  
 5 equivalent to five or six units of blood. So he lost  
 6 blood somewhere; and where it went, that would be a  
 7 concern to anybody taking care of Mr. Bieler.  
 8 Q. Did Dr. Edwards order appropriate tests to determine  
 9 if there was internal bleeding if that could be  
 10 determined?  
 11 A. He did. He ordered CT scan of the abdomen. Dr. Ruff  
 12 saw the patient and did a colonoscopy on Mr. Bieler.  
 13 Stool guaiac were done. So, yes, appropriate tests were  
 14 ordered.  
 15 Q. And based upon your review of the records, was there  
 16 ever any determination as to why his blood counts had  
 17 dropped subsequent to his admission to the hospital for  
 18 his femur fracture?  
 19 A. No, I don't think that there was ever a determination  
 20 made as to where this blood loss came from. He actually  
 21 was transfused a couple of units of blood, and even with  
 22 that, he did not correct appropriately. So he was  
 23 certainly losing blood somewhere.  
 24 Q. I won't go into detail about this, but you mentioned  
 25 that he required some IV feeding. Is that correct?

1 A. Yes. A central line was -- Mr. Bieler couldn't eat  
 2 because of his -- his intestines were not working. They  
 3 were very dilated and he couldn't eat. He was nauseated,  
 4 having a lot of diarrhea. So a central line was placed.  
 5 That means a catheter was placed in one of the large veins  
 6 going directly into his heart, and then he was fed high  
 7 nutritional materials through his vein.  
 8 Q. You mentioned the surgeon, Dr. Ruff. Did Dr. Ruff  
 9 continue to see the patient on more than one or two  
 10 occasions in the hospital?  
 11 A. Yes, Dr. Ruff saw the patient. Dr. Rhomberg also --  
 12 the orthopedist, also came and saw Mr. Bieler. Then, of  
 13 course, Dr. Edwards, and then also weekend, Dr. Edwards  
 14 partner, I believe, covered for him.  
 15 Q. Doctor, was Mr. Bieler at risk for developing a VTE  
 16 during his admission to the hospital?  
 17 A. Yes, he certainly was.  
 18 Q. Had he been at risk from the time he had orthopedic  
 19 surgery on January 7?  
 20 A. Yes. He was definitely a risk. He had some risk  
 21 factors, including a fracture that he had sustained.  
 22 Anybody who has a long bone fracture is at risk for  
 23 developing a deep vein thrombosis.  
 24 Q. Were there certain precautions and steps taken by the  
 25 orthopedic surgeon and the primary care doctor who



1 attended to Mr. Bieler during his first admission to  
 2 Summit?  
 3 A. Yes. He was placed in TED hose and he was gotten up  
 4 by physical therapy as soon as possible. Those would be  
 5 the two -- two major things that one would do to try and  
 6 prevent deep vein thrombosis.  
 7 Q. Was he also placed on a full aspirin per day?  
 8 A. He was placed on a full aspirin per day, yes.  
 9 Q. Were those the precautions that were taken by Dr.  
 10 Rhomberg, the orthopedic surgeon, and Dr. Niba, the  
 11 primary care physician?  
 12 A. Yes, that is correct.  
 13 Q. Do you have an opinion, Doctor, as to whether or not  
 14 Mr. Bieler was at risk for further complications if he had  
 15 been placed on anticoagulation medication by Dr. Edwards  
 16 upon his admission to the hospital?  
 17 A. Well, yes. He was at risk for a number of reasons.  
 18 One is that he become anemic, and there was some blood  
 19 loss from somewhere. So bleeding was the major concern,  
 20 and it's the concern that every internist who takes care  
 21 of patients requiring anticoagulation have. Every  
 22 internist has who is taking care of a lot of patients and  
 23 had patients that they've had on an anticoagulant who had  
 24 major bleeds and even deaths as a result, and it's a very  
 25 sobering experience. So that was the major concern was

1 that Mr. Bieler had blood loss from somewhere. He had a  
 2 dilated colon, and also may have required urgent surgery  
 3 from a possible obstruction. That would be a second  
 4 reason.  
 5 The third reason is that he was having problems with  
 6 his liver and problems with his kidneys, both of which  
 7 make anticoagulation a more complicated -- more  
 8 complicated task.  
 9 So for all of those reasons, I think any internist  
 10 would be very cautious about providing pharmacological  
 11 anticoagulation and, if possible, try to avoid it.  
 12 Q. Doctor, is there a risk of bleeding just in a normal  
 13 patient who receives the anticoagulant medication?  
 14 A. Absolutely. As I mentioned before, I take care of a  
 15 lot of patients who are on Coumadin and anticoagulation.  
 16 And every year, we will have patients who are on  
 17 appropriate anticoagulants, have appropriate doses as  
 18 measured by the tests that we do to measure blood  
 19 thinning, and yet they will have major bleeds and  
 20 occasionally even a death as a result of it. So it's a  
 21 very -- it's not something that one takes lightly.  
 22 Q. Do the risks of bleeding increase in patients who  
 23 have kidney problems, kidney failure problems?  
 24 A. The risks increase in patients with kidney problems  
 25 or liver problems absolutely, yes.

1 Q. Because of Mr. Bieler's kidney function status and  
 2 his liver function status, was he at even greater risk of  
 3 bleeding than the normal patient who does not have kidney  
 4 or liver function issues?  
 5 A. Yes, I believe he was.  
 6 Q. Doctor, this -- Dr. Edwards did not document in the  
 7 records his thought processes, did he, concerning his  
 8 assessment or evaluation of risk factors for bleeding or  
 9 other complications from the use of blood thinners. Is  
 10 that correct?  
 11 A. That is correct.  
 12 Q. Did Dr. Edwards, in your opinion, breach the standard  
 13 of care because he did not document his thought processes?  
 14 A. Absolutely not. I mean, I'll explain if you want.  
 15 Q. Please.  
 16 A. Mr. Bieler, I mean, he came in very, very ill, kidney  
 17 failure, liver problems, gastrointestinal failure if you  
 18 will. So he was a very ill patient with a number of  
 19 problems that Dr. Edwards had to attend to. And, you  
 20 know, obviously a deep vein thrombosis and pulmonary  
 21 embolism were not high on the priority list when Mr.  
 22 Bieler came in. So there are many things that we think  
 23 about when we admit very ill patients to the hospital. To  
 24 document everything about every potential problem, about a  
 25 -- a possible problem that might develop, you know,

1 internists, primary care doctors, hospitalists just don't  
 2 do that. There's not enough paper and not enough time.  
 3 So for -- in this particular circumstance where there  
 4 were many problems that Dr. Edwards had to deal with for  
 5 him not to document his thought processes regarding the  
 6 potential for deep vein thrombosis or pulmonary embolism  
 7 certainly did not breach the standard of care.  
 8 Q. Did you see a notation in Dr. Edwards' orders early  
 9 in the admission to go full speed ahead with physical  
 10 therapy?  
 11 A. Yes. There was specifically an order, I believe, on  
 12 the 16th that said exactly that, physical therapy full --  
 13 full force or full speed, I think was his wording.  
 14 Q. It may have been full force.  
 15 To you, what is the significance of that order,  
 16 Doctor?  
 17 A. Well, it meant that Dr. Edwards wanted him out of bed  
 18 and up and about and -- for a number of reasons that we  
 19 all -- any internist wants a patient out of, and bed one  
 20 is it prevents deep vein thrombosis. Obviously, Mr.  
 21 Bieler needed to get up to rehabilitate his hip and also  
 22 he needed to get up to, hopefully, get his  
 23 gastrointestinal system working again. Activity does tend  
 24 to make the GI system work better.  
 25 Q. Does physical activity, moving around, being mobile,



1 does that decrease the risks of the developing a deep vein  
2 thrombosis?

3 A. Yes, it does.

4 Q. Doctor, the records reflect that Mr. Bieler came to  
5 the hospital -- I should say left Summit Medical Center on  
6 January 9 and returned late on January 13 with TED hose in  
7 place. Would you explain to the jury what TED hose are?

8 A. TED hose are those white stockings that probably  
9 everybody on the jury has seen in hospitalized patients.  
10 They are very tight hose that fit on the patient's legs  
11 that are graduated. They are tighter at the bottom near  
12 the foot. And, although they remain very tight, the  
13 tightness decreases as one goes up the leg. And these TED  
14 hose, basically, keep the veins from dilating and from  
15 blood pooling in the veins of the lower extremities.

16 There are good studies to show that these TED hose --  
17 the simple TED hose will decrease the incidence of deep  
18 vein thrombosis by up to 40 percent in patients who are  
19 bedridden. So they are commonly used in patients who are  
20 hospitalized.

21 Q. Doctor, there is documentation that the TED hose were  
22 -- remained in place through at least the 18th and perhaps  
23 part of the 19th. Do you agree there's no further  
24 documentation one way or the other after that?

25 A. That is true, yes.

1 Q. Let's talk about the physical therapy that Dr.  
2 Edwards ordered. Did Mr. Bieler receive daily physical  
3 therapy from the therapist in the hospital up until the  
4 time it was stopped on, I believe, the 28th?

5 A. Yes. He was seen by the physical therapist on a  
6 daily basis and there are notes each day by the physical  
7 therapist.

8 Q. Describe, based on your review of the records, some  
9 of the activities that Mr. Bieler did with the physical  
10 therapist up until the time it was ended.

11 A. He was taught bed exercises to do, moving his shins  
12 over the opposite shin -- his heel over shin. So he was  
13 taught bed exercises to do, encouraged to do bed  
14 exercises. And the nurses' notes on a daily basis show  
15 that he self positioned himself in bed each day; that is,  
16 he was active, if you will, in bed. He was not bedridden  
17 to the extent that he was just simply lying there like  
18 somebody on a respirator or that type of thing. He self  
19 positioned.

20 The physical therapist would get him out of bed and  
21 walked him to varying degrees, depending upon how he was  
22 feeling that day. They would transfer him from bed to the  
23 bathroom or to bedside commode. He would get up to go to  
24 the bathroom. So he was not bedridden. He was up and  
25 also self positioning himself in bed.

1 Q. Doctor, was that consistent over the -- during the  
2 time of the admission up until the last full day, the 28th  
3 of January?

4 A. Yes, that's correct.

5 Q. Based upon your review of the nursing notes and the  
6 other medical records on Mr. Bieler, was there ever any  
7 documentation that he had any swelling or inflammation of  
8 his lower extremities?

9 A. No, there was not.

10 Q. In a patient who develops a deep vein thrombosis in  
11 the legs, do you frequently see some sign or some symptom  
12 of that?

13 A. Commonly, we'd see swelling in the lower extremity.

14 Q. Was there some indication or finding of some  
15 inflammation and swelling on the 28th?

16 A. On the last day, I believe there was. Finally, it  
17 was noted, yes.

18 Q. Doctor, does it appear, from your review of the  
19 records, that Mr. Bieler's condition had a change on or  
20 about the 20 -- late on the 26th or the 27th?

21 A. It does, yes.

22 Q. And what -- what change did you observe in the  
23 records in his condition?

24 A. Well, on the 26th, the physical therapist noted that  
25 he had had a chest pain when he had gotten him up. I

1 believe later that day, Dr. Edwards noted that he was  
2 having some shortness of breath when moving about. On the  
3 27th, he -- his blood pressure actually fell and he had  
4 several episodes of low blood pressure that were noted,  
5 and -- and then the same on the 28th.

6 Q. Doctor, let's talk about the 28th. Dr. Edwards  
7 ordered some tests to rule in or rule out a deep vein  
8 thrombosis; did he not?

9 A. That's correct.

10 Q. The test that he ordered was a venous Doppler  
11 examination?

12 A. That is correct, yes.

13 Q. Did he also order a VQ scan?

14 A. He did, yes.

15 Q. Was that test positive for deep vein thrombosis?

16 A. The venous Doppler was positive for deep vein  
17 thrombosis, yes.

18 Q. On the late afternoon of January 28th, Dr. Edwards  
19 gave an order, did he not, for some medication to thin the  
20 blood?

21 A. That is correct.

22 Q. What did he order?

23 A. He ordered Lovenox, which is a low molecular weight  
24 heparin.

25 Q. Did he also order the drug called Coumadin?

1 A. Yes. He ordered Coumadin, which is the oral --  
 2 Lovenox is the medication that's given by needle injected  
 3 underneath the skin, and that gives immediate thinning of  
 4 the blood, if you will. Coumadin is the oral medication  
 5 that one takes on a chronic basis, a long-term basis, and  
 6 that's given orally. And he ordered both medications to  
 7 be given.

8 Q. Doctor, you have read Dr. Michota's deposition  
 9 testimony; have you not?

10 A. I have, yes.

11 Q. And by the time the jury hears your testimony, I  
 12 believe they will have heard Dr. Michota testify as well.

13 A. Yes.

14 Q. Do you recall his opinion that Dr. Edwards gave an  
 15 inappropriate dose of Lovenox when he ordered it to be  
 16 given on the late afternoon of January 28?

17 A. Yes.

18 Q. Do you recall his testimony that it essentially  
 19 provided no benefit to Mr. Bieler because it was 60  
 20 milligrams as opposed to 120 milligrams, correct?

21 A. Yes.

22 Q. Do you agree or disagree with Dr. Michota that that  
 23 was an inappropriate dose of Lovenox?

24 A. I disagree with that.

25 Q. Do you have an opinion as to whether or not a lower

1 dose of Lovenox was required due to Mr. Bieler's kidney  
 2 function status?

3 A. Yes. His creatinine had increased, had doubled --  
 4 actually gone down to 1.1 the day prior and actually  
 5 doubled on the morning of the 28th. A doubling of a  
 6 creatinine in one day means kidney failure. So, you know,  
 7 it's well known that the low molecular weight heparins  
 8 like Lovenox, the dose has to be adjusted.

9 Dr. Michota believes that the patient should be  
 10 getting 120 milligrams initially and then once a day  
 11 thereafter. I think a dose of 60 milligrams twice a day,  
 12 which was what Dr. Edwards had ordered, is perfectly  
 13 appropriate, particularly when it's given in an individual  
 14 who is in acute renal failure and who has liver  
 15 abnormalities who also is being given Coumadin at the same  
 16 time.

17 So he was -- Dr. Edwards was, essentially, giving the  
 18 same dose of Lovenox but just splitting it up twice daily  
 19 rather than in one big dose.

20 Q. You've also read Dr. Michota's testimony that, had a  
 21 full dose of Lovenox been given prior to the time that Mr.  
 22 Bieler had a cardiorespiratory arrest, that his death  
 23 could have been prevented. Do you recall that?

24 A. I do, yes.

25 Q. Do you agree or disagree with that opinion of his?

1 A. I think that testimony particularly is outrageous.

2 Q. You also recall that Dr. Michota testified, did you  
 3 not, that Mr. Bieler had a 95 percent chance of survival  
 4 if he had been started on what Dr. Michota believes to  
 5 have been the appropriate dose of Lovenox.

6 A. Yes.

7 Q. Do you agree or disagree with that?

8 A. Totally disagree with that.

9 Q. Doctor, do you have an opinion as to when the deep  
 10 vein thrombosis first began to form in Mr. Bieler's leg?

11 A. You know, I don't think -- it's one of the few things  
 12 I do with Dr. Michota in his deposition testimony -- that  
 13 one can say definitively when this began. It could have  
 14 begun shortly after hip surgery and his first admission.  
 15 It could have begun at Ashton Place. It certainly began  
 16 before the 26th. I suspect that the chest pain and the  
 17 shortness of breath that Mr. Bieler had on the 26th was a  
 18 result of the pulmonary embolus that he had. So I think  
 19 that it could be said with a reasonable degree of medical  
 20 certainty that the blood clot certainly began before the  
 21 26th, probably days before the 26th.

22 Q. Had Dr. Edwards started Mr. Bieler on the Lovenox or  
 23 some other form of heparin prior to the 26th, do you have  
 24 an opinion to a reasonable degree of medical probability  
 25 as to whether or not his pulmonary embolus could have been

1 prevented?

2 A. Well, here's what I would say. What I think can  
 3 generally be said is that the earlier one treats a deep  
 4 vein thrombosis, the less chance there is of developing a  
 5 pulmonary embolus. I believe there comes a time when it  
 6 doesn't matter any longer. I know from the autopsy this  
 7 was a huge pulmonary embolus and that already a large  
 8 pulmonary embolus occurred by the 26th most likely -- more  
 9 likely than not, and that I believe, certainly, by the  
 10 26th that administration of heparin or low molecular  
 11 weight heparin, Lovenox, would have made absolutely no  
 12 difference in terms of the outcome.

13 Is it conceivable on the 25th or the 24th, had  
 14 heparin been started that it would have prevented his  
 15 death, I don't think anybody can say for certain.  
 16 Probably his chances were somewhat increased that the  
 17 outcome would have been different, but -- but certainly  
 18 not by the 26th then.

19 Q. Doctor, based on your experience, can patients  
 20 develop deep vein thrombosis that progresses to a  
 21 pulmonary embolus even while on appropriate medication to  
 22 thin the blood?

23 A. Absolutely. I mean, one of the tragic things that  
 24 happens to patients who have pulmonary emboli and they're  
 25 treated appropriately, they are sent home, treated on



1 Coumadin, and within the first month, even though they're  
2 on appropriate doses and their blood is thinned  
3 appropriately, they die from another pulmonary embolus.  
4 The reason that occurs is because the thrombi that those  
5 individuals have formed have not stabilized and they break  
6 off subsequently and the individual dies as a result.

7 So there is a relatively high risk that, even though  
8 an individual is treated appropriately, that within the  
9 first month after a pulmonary embolus a recurrent  
10 pulmonary embolus can occur and with a relatively high  
11 frequency.

12 So I don't believe that -- I mean, my -- my true  
13 feeling is that, even had Mr. Bieler been treated even on  
14 the 20th or the 19th or 18th with heparin, it's very  
15 likely that the outcome would have been the same, but I  
16 don't think anybody can be definitive about that. What I  
17 can be definitive about is that, had he had treatment  
18 started by the -- been started on the 26th, that the  
19 outcome certainly would not have been different.

20 Q. Doctor, the jury has heard by this time about  
21 recommendations made by the American College of Chest  
22 Physicians in 2008. You're familiar with the  
23 recommendations of that group of doctors, correct?

24 A. I am, yes.

25 Q. Dr. Michota has opined in his deposition, and by this

1 time I'm sure has told the jury, that based upon those  
2 recommendations, that it was mandated that Dr. Edwards  
3 start Mr. Bieler on some form of heparin as soon as the  
4 decompressive colonoscopy was performed on the 15th of  
5 January. Do you recall that opinion of his?

6 A. I do.

7 Q. Do you agree or disagree with Dr. Michota that  
8 standard of care was determined by those recommendations  
9 and that Dr. Edwards was obligated to follow those  
10 recommendations?

11 A. Absolutely not. I would argue that those guidelines  
12 that Dr. Michota referred to actually mandate exactly the  
13 opposite; that he be treated exactly the way that Dr.  
14 Edwards treated him with mechanical means, getting the  
15 patient up. The article states over and over again that  
16 patients who are at risk for bleeding, who are suspected  
17 of bleeding, be treated with mechanical devices such as  
18 the TED hose and with ambulation. So I think that -- that  
19 those guidelines support exactly what Dr. Edwards did.

20 Q. The literature that Dr. Michota relies upon speaks in  
21 terms of recommendations; do they not?

22 A. That's correct.

23 Q. And they refer to themselves a guidelines; do they  
24 not?

25 A. Correct.

1 Q. Did those recommendations and guidelines again  
2 mandate that Dr. Edwards use some form of heparin to treat  
3 Mr. Bieler beginning on the 15th of January?

4 A. Absolutely not. In fact, I think you can argue the  
5 opposite; they mandated that he not use heparin or low  
6 molecular weight heparin.

7 Q. Dr. Daniels, when Dr. Edwards was taking care of Mr.  
8 Bieler in the hospital as were the other physicians  
9 involved, did those physicians, including Dr. Edwards,  
10 have to exercise their medical judgment as to what was  
11 appropriate for Mr. Bieler?

12 A. That's correct. That's correct.

13 Q. In this case, do you have an opinion as to whether or  
14 not Dr. Henry Edwards exercised appropriate judgment in  
15 his medical decisions for Mr. Bieler?

16 A. I believe that Dr. Edwards exercised appropriate  
17 medical judgment in everything that he did regarding the  
18 care of Mr. Bieler, yes.

19 Q. Now, do you agree that perhaps other physicians may  
20 have used different judgment with Mr. Bieler?

21 A. I think it's possible that other physicians would  
22 have used different judgments. I mean, that's why they  
23 call medicine an art and not an exact science. Different  
24 physicians will approach the same patient in different  
25 ways and those ways may be perfectly appropriate and

1 within the standard of care.

2 Q. In this case, did Dr. Henry Edwards have the benefit  
3 of hindsight in treating Mr. Bieler?

4 A. No. That's an unfortunate circumstance that we all  
5 face when we practice medicine. We don't have the crystal  
6 ball and we don't have the benefit of hindsight. So Dr.  
7 Edwards was dealing with a very complex individual with  
8 many different things going on. One small part of the  
9 thought process would have been deep vein thrombosis, but  
10 he was dealing with an individual with kidney failure,  
11 nutritional problems, gastrointestinal failure, a possible  
12 sepsis, infectious problems related to a central line, low  
13 blood pressures, all sorts of things. And so when you  
14 have a patient this complex, you know, there are many  
15 different ways of approaching a patient such as that.

16 Q. And in this case, do you have an opinion as to  
17 whether or not Dr. Edwards, again, made appropriate  
18 medical judgments in his care and treatment of Mr. Bieler?

19 A. Yes, I believe he did. You know, to -- I know Dr.  
20 Michota makes this a very simple case of an individual  
21 who, you know, has chest pains, shortness of breath, and  
22 risk factors for deep vein thrombosis. And all of that is  
23 true, but the case isn't -- that's not Mr. Bieler. It's  
24 not a simple case. This is an individual who has chest  
25 pain, shortness of breath the last few days of his life,



1 but he had many, many other things going on that were of  
2 great concern. And chest pain and shortness of breath are  
3 symptoms that occur in many other disease processes; for  
4 example, infection, sepsis, things that Dr. Edwards had to  
5 consider as very potential -- potentially lethal problems  
6 for Mr. Bieler.

7 So Mr. Bieler was not a simple case of deep vein  
8 thrombosis and pulmonary embolus. This was a very complex  
9 case. Dr. Edwards had to use judgments and,  
10 unfortunately, the outcome was tragic and -- but it was  
11 not because Dr. Edwards was substandard in his approach or  
12 care of Mr. Bieler.

13 Q. Doctor, to sum up, do you still have the opinion that  
14 Dr. Henry Edwards met the standard of care required of him  
15 as a board certified doctor of internal medicine?

16 A. Yes, he absolutely met standard of care.

17 Q. Doctor, have the opinions that you have expressed to  
18 the jury today been to a reasonable degree of medical  
19 probability?

20 A. Yes, they have.

21 Q. Are they based upon your background, your training,  
22 and your experience of being a doctor of internal medicine  
23 since 1979 when you completed your training?

24 A. That's correct, yes.

25 MR. COX: Pass the witness.

1 MR. KEEVER: Let's just take a short break if  
2 everyone is agreeable.

3 THE WITNESS: Certainly.

4 THE VIDEOGRAPHER: We're off the record at 9:59  
5 for a break.

6 (A recess was taken.)

7 THE VIDEOGRAPHER: We're back on the record at  
8 10:08 after a break.

9 EXAMINATION

10 BY MR. KEEVER:

11 Q. Dr. Daniels, my name is Jim Keever. We met just  
12 almost exactly four weeks ago in your office. Is that  
13 correct?

14 A. That is correct, yes.

15 Q. Now, in front of you is a large black binder -- and  
16 I'll just hold it up for the videographer -- and you  
17 testified about the records, but this is what represents  
18 Exhibit 1 at trial. I'm not going to attach it to the  
19 deposition, but it's the medical records for that last  
20 admission of January 19th. I just want you to feel free  
21 -- it's indexed and I wanted you to feel free to look  
22 through that if you need to confirm anything.

23 A. Thank you.

24 Q. The other thing that I'm going to use is, there is a  
25 screen over here and it will be PowerPoint slides. It's a

1 little bit back behind you. If you have a slide that you  
2 really want to look at without looking over your shoulder,  
3 Mr. Swindle will have a printout of it. So just ask for  
4 one if you want it in front of you. Is that a -- is that  
5 a fair thing?

6 A. Absolutely yes.

7 Q. Okay. Good.

8 What caused the death of Kenneth Bieler?

9 A. A large pulmonary embolus.

10 Q. That's a blood clot traveling to the lungs?

11 A. That is correct, yes.

12 Q. Doctor, you've been hired by the defense to be a  
13 medical witness in this case?

14 A. That is correct.

15 Q. And Mr. Cox talked about the fact that Frank Michota  
16 will be coming down from Cleveland as an expert for and  
17 testifying in our case. Is that correct?

18 A. That is correct, yes.

19 Q. Doctor, you talked about this with Mr. Cox, but it  
20 was only 12 days ago that we were told you weren't going  
21 to be coming to trial and the trial has been set for  
22 almost a year. Were you aware of that trial date in your  
23 record keeping?

24 A. If I was aware of it -- you know, it's possible that  
25 Mr. Cox told me when the trial was going to be, but it

1 certainly -- it just didn't register that I was going to  
2 be gone during that period of time.

3 Q. We asked you to bring some documentation that would  
4 show -- just show us about the trip, something that we  
5 could use to confirm that. Did you bring that?

6 A. I did, yes.

7 Q. And Mr. Cox is going to get what he has and I'll ask  
8 him to hand it to Mr. Swindle so that we can go on with  
9 our questions and if I have any other questions. But I'll  
10 attach that. And I'm going to mark it Exhibit Number 11  
11 because I already have my other exhibits premarked.

12 Would that be satisfactory, Mr. Cox? And just put an  
13 11 exhibit marker on that, Mr. Swindle.

14 Now, Doctor, I'm going to put up first slide. And do  
15 you agree with this, that this is kind of the time frame  
16 of what happened with Kenneth Bieler consistent with your  
17 testimony a while ago?

18 A. Yes. That is consistent, yes.

19 Q. Okay. And I want to be sure, is it your  
20 understanding -- and, Ken, out of that wad of paper, pull  
21 up this slide here so that the doctor doesn't have to look  
22 over his shoulder.

23 Is it your understanding that these are the  
24 allegations that the family is making against Dr. Edwards;  
25 that he failed to use preventive blood thinner to protect

1 from blood clots; number two, failure to make a timely  
2 diagnosis of blood clots traveling to the heart and lungs;  
3 three, failure to adequately treat blood clots traveling  
4 to the heart and lungs.

5 Here you are, Doctor, so you don't have to turn  
6 around.

7 And an allegation that those failures caused the  
8 death of Kenneth Bieler. Is that your understanding, sir?

9 A. Yes, sir, it is.

10 Q. Now, at -- at -- in our first deposition, you agreed  
11 that this is a reasonable definition of the standard of  
12 care. Are you still in agreement with that, Doctor?

13 A. Yes, I am.

14 Q. And do I understand your testimony to be that Dr.  
15 Edwards met the standard of care in what he did or did not  
16 do to prevent, diagnose, and treat blood clots in Kenneth?

17 A. That is correct, yes.

18 Q. Okay. Now, we've got marked as -- and I'm going to  
19 -- I am going to mark as Exhibit Number 1, and we'll place  
20 that over by the court reporter, this definition of  
21 standard of care.

22 Now, Exhibit Number 2 is your resume, what doctors  
23 call CVs.

24 A. Correct.

25 Q. And Exhibit Number 3 is Dr. Michota's CV.

1 A. Correct.

2 Q. I got to tell you, your -- your credentials are  
3 pretty impressive in the field of diabetes. Would you  
4 agree?

5 A. I -- you know, impressive. I don't know if they're  
6 impressive or not.

7 Q. Well, take my word for it, sir.

8 A. Yes.

9 Q. Would you compare -- comparing your credentials to  
10 Dr. Michota's, do you think they're comparable in terms of  
11 being an authority on blood disease, blood clot disease?

12 A. Blood clot disease. I honestly cannot speak to what  
13 Dr. Michota's expertise and authority is on blood clot  
14 disease. I don't know him professionally, so it's  
15 difficult for me to -- to compare myself to him. I can  
16 tell you that, based upon his deposition testimony,  
17 frankly, I'm not impressed. So that's all I can say.

18 Q. Well, you've got his CV there and you read his CV.  
19 Frank Michota is a member of two blood clot disease  
20 working groups at Cleveland Clinic, chairman of the -- VTE  
21 was your term -- blood clot disease prevention group.  
22 He's a member of the coalition to prevent deep vein  
23 thrombosis, society of the hospital medicine. He's a  
24 journal reviewer for a number of journals, including the  
25 Journal of Thrombosis and Hemostasis and the journal,

1 Chest. And he's been a consultant nationally on quality  
2 improvement of blood clot disease. He's edited or  
3 co-edited four internal medicine textbooks, contributed  
4 chapters to 15 more textbooks. He's authored or  
5 co-authored 42 peer reviewed articles, 12 of which deal  
6 with clot blood disease. And he has been invited as a  
7 lecturer on hundreds of occasions, and you went through  
8 that at your deposition.

9 Would you agree that -- that the majority of those  
10 were on blood clot disease?

11 A. Yes.

12 Q. Okay. Before -- before I ask some specific  
13 questions, maybe we can streamline things and just figure  
14 out if we agree on certain areas. Would that be okay?

15 A. Certainly.

16 Q. Okay. Do you agree a doctor should choose the  
17 treatment that carries the least risk for his patient?

18 A. Certainly. If they have the same outcome, yes.

19 Q. In other words, a doctor must never unnecessarily --  
20 and I emphasis "unnecessarily" -- put his patient at risk  
21 of harm.

22 A. I would agree with that, yes.

23 Q. And -- and that's actually kind of like the  
24 Hippocratic oath: First of all, the doctor should do no  
25 harm.

1 A. Correct.

2 Q. Now, do you agree that a patient has a right to  
3 expect his or her doctor to make medical decisions based  
4 upon the evidence available?

5 A. Absolutely, yes.

6 Q. And that evidence could include more than just the  
7 test on that individual patient; it would include  
8 guidelines that are published. And Mr. Cox asked you  
9 about -- about this book, and that's the -- that's what --  
10 that's the supplement from Chest that has those guidelines  
11 that the American College of Chest Physicians.

12 A. Yes.

13 Q. So that would be things like that, things like the  
14 Physicians Desk Reference, which is basically just a  
15 compilation of all of the drug inserts that are available.

16 A. Certainly. We rely on all of those things.

17 Q. Harrison's Textbook of Medicine?

18 A. Harrison's Textbook, journal articles, experience,  
19 all sorts of things.

20 Q. Now, and that's what doctors rely upon when they're  
21 treating an individual patient. Is that correct?

22 A. Certainly.

23 Q. Now, you've offered your opinions here today, and  
24 your opinions are based upon your personal experiences and  
25 what you remember of what you've read in the past, your



1 learning and training, correct?  
 2 A. That is correct.  
 3 Q. Are you familiar with the term, "evidence-based  
 4 medicine"?  
 5 A. Certainly.  
 6 Q. And when you -- when they talk about evidence-based  
 7 medicine, there's kind of tiers of how strong evidence is;  
 8 is that right?  
 9 A. That's correct.  
 10 Q. And kind of at the top tier is what they call a  
 11 randomized double-blind study?  
 12 A. Perspective, random -- double-blind perspective  
 13 study. That would be the best sort of clinical study to  
 14 try to determine an outcome, yes.  
 15 Q. And I don't want to go into it in detail, but that's  
 16 kind of like where patients walk in the door, one goes  
 17 left, one gets right, one gets treatment A, one gets  
 18 treatment B, and not even the doctor knows what treatment  
 19 A or treatment B is.  
 20 A. Correct.  
 21 Q. Then you go down to other studies based upon the  
 22 medical literature and depending on how reliable the  
 23 articles are.  
 24 A. Certainly.  
 25 Q. Right?

1 And that would be kind of how these guidelines from  
 2 the Chest were developed, by reviewing a number of  
 3 articles?  
 4 A. Correct.  
 5 Q. And, in fact, you brought to your deposition the  
 6 chapter in there on preventing blood clots. How many  
 7 articles did those authors grind through before they came  
 8 up with a recommendation?  
 9 A. They cited about 780 articles.  
 10 Q. Right. And then below that, I think -- tell me if  
 11 I'm wrong -- on the tier of how strong the evidence is, is  
 12 the -- are statements by respected authorities in the  
 13 field.  
 14 A. Correct.  
 15 Q. And then below that would be anecdotal experiences of  
 16 an individual doctor. Would that be correct?  
 17 A. I don't remember that particular sort of thing being  
 18 in the article, but I stand to be corrected there.  
 19 Q. Okay. Well, now, you're not -- you're not basing  
 20 your opinion on something that you brought to us up to  
 21 this time and said, this article by Dr. So-and-so says  
 22 this. I mean, like an example. You said that -- that  
 23 there are all sorts of evidence out there, articles that  
 24 show that the compressive stockings cut the rate of blood  
 25 clots in patients who can't get out of bed by up to 40

1 percent.  
 2 A. Correct.  
 3 Q. And that's -- that's what you remember from what  
 4 you've read in the literature?  
 5 A. Correct.  
 6 Q. Okay. Now, Doctor, we talked -- you talked about  
 7 this. I'm going to really be able to go fairly rapidly  
 8 because you and Mr. Cox covered a lot of this. But the  
 9 risk of blood clots like killed Kenneth varies from  
 10 patient to patient. Is that what you said?  
 11 A. Correct.  
 12 Q. And when you decide in an individual patient what his  
 13 risk is, it requires the doctor looking at what you call  
 14 risk factors in that individual patient.  
 15 A. Correct.  
 16 Q. And you went over that. That's really -- the risk  
 17 factors is a scientific determination, right?  
 18 Well, an example: Being overweight is considered a  
 19 risk factor for blood clots?  
 20 A. Correct.  
 21 Q. If you want to know if the patient has got that risk  
 22 factor, you got to look at his heights and his weight,  
 23 right?  
 24 A. Height, weight, muscle mass, those types of things.  
 25 Q. Scientific determination?

1 A. Correct.  
 2 Q. Okay. Now, do you agree -- could I have this one on  
 3 the recommendation?  
 4 Do you agree with the recommendation that a medical  
 5 patient admitted to the hospital who has more than one  
 6 risk factor for blood clot disease should be placed on  
 7 blood thinners unless there is a medical reason to  
 8 withhold the blood thinners?  
 9 A. That's a reasonable recommendation, yes.  
 10 Q. Okay. Do you agree with the second part of that,  
 11 that if a patient has more than one risk factor and  
 12 there's a medical reason to avoid blood thinners, the  
 13 patient should be protected by maximum mechanical  
 14 measures?  
 15 A. I agree with that.  
 16 Q. And, in fact, you talked a little bit about what we  
 17 see on the left. And the left is those what you call TED  
 18 hose.  
 19 A. Correct.  
 20 Q. What's TED mean anyway?  
 21 A. You know what? I'm not sure where that eponym comes  
 22 from.  
 23 Q. Called graduated compression --  
 24 A. They're graduated compression hose, but I'm not sure  
 25 where the term TED came from.



1 Q. Maybe Ted -- maybe Ted invented them?  
 2 A. Maybe Ted invented them. That's very possible.  
 3 Q. Then on the right is what we call sequential  
 4 compression devices.  
 5 A. Correct.  
 6 Q. Now, and those are the ones that I think, you know,  
 7 we've seen them in patients or maybe had them on where  
 8 they're balloons and they compress below and then they  
 9 compress up and they compress up to kind of pump the blood  
 10 up.  
 11 A. That's correct.  
 12 Q. Okay. Now, would you agree that the guidelines that  
 13 we looked at before, which you still have, really  
 14 represent the standard of care for an internal medicine  
 15 specialist admitting a seriously ill medical patient to  
 16 the hospital?  
 17 A. I'm sorry. Are you talking about these that I have  
 18 here?  
 19 Q. Yes, sir. I'm talking about the very same thing that  
 20 we looked at before.  
 21 A. I think that that represents a reasonable standard of  
 22 care, yes.  
 23 Q. Okay. Good.  
 24 Now, do you agree that blood clots represent the  
 25 single most common preventable cause of death in

1 hospitalized patients in our country?  
 2 A. Probably that's correct, yes.  
 3 Q. Yeah. And in your deposition we talked about this  
 4 and I think you agreed with me that using preventive blood  
 5 thinners can cut the rate of blood clots by up to  
 6 two-thirds, up to 65 percent?  
 7 A. Fifty to 60 percent is what I'm used to reading.  
 8 Q. Okay. Now, with Mr. Cox, you talked a little bit  
 9 about Kenneth's risk factors. And you talked about a  
 10 recent fracture of the long bone.  
 11 A. Correct.  
 12 Q. You talked about recent orthopedic surgery.  
 13 A. Correct.  
 14 Q. And Kenneth was -- he was a big old guy, six-foot  
 15 four, but he was technically overweight by the -- by what  
 16 you guys call the body mass index, correct?  
 17 A. Correct. What I don't know is what his waist size  
 18 was and what his muscle mass was. So I'm not prepared to  
 19 call him obese unless I knew that information.  
 20 Q. Dr. Edwards agreed that with a body mass index of  
 21 31.8 that he was obese. Is that fair?  
 22 A. If he said that, then I don't have any problems with  
 23 that.  
 24 Q. Okay. So we ticked off three risk factors.  
 25 We talked at the deposition about how age was a risk

1 factor and whether 40 was a cutoff or 50 was a cutoff, but  
 2 Kenneth was 58 years old.  
 3 A. Correct.  
 4 Q. So would you agree that's a fourth risk factor?  
 5 A. It might be a minor risk factor, yes.  
 6 Q. Not talking about the degree, minor versus major, but  
 7 we got four.  
 8 A. Yes.  
 9 Q. Okay. And then he had a serious medical illness, and  
 10 that would be five.  
 11 A. Correct.  
 12 Q. Now, and we'll probably want to talk about this at  
 13 some length, but -- and this just list them up there in.  
 14 The sixth one I listed is immobility.  
 15 A. Correct.  
 16 Q. To some degree, was immobility a risk factor in  
 17 Kenneth?  
 18 A. If it was, it was a minor risk factor. He was active  
 19 in bed. He was getting up with the physical therapist.  
 20 He would get up to go to the bathroom. So I think  
 21 immobility, if it was a risk factor, it was a minor risk  
 22 factor.  
 23 Q. Okay. But we got six risk factors. Is that fair?  
 24 MR. COX: I object to form.  
 25 BY MR. KEEVER:

1 Q. We have do -- do you agree that, to some degree or  
 2 another, there was six risk factors present in Kenneth?  
 3 A. To one degree or another, yes.  
 4 Q. Okay. And that's fair.  
 5 Now, I don't know if Mr. Cox asked you this, but,  
 6 from your review of the record, what was Kenneth's risk of  
 7 developing blood clot when he went into the hospital?  
 8 A. The first time or the second time?  
 9 Q. No. And thank you. I didn't make that clear.  
 10 When Dr. Edwards admitted him to the hospital.  
 11 A. You know, I think he -- as I said in my deposition  
 12 testimony, he was at a moderate risk for developing deep  
 13 vein thrombosis.  
 14 Q. Didn't you tell us that it was low to moderate in  
 15 your deposition?  
 16 A. Low to moderate.  
 17 Q. Okay. Now, this next slide -- and you're going to  
 18 need to get this one for the doctor because we might visit  
 19 with it a little bit.  
 20 This next slide is from an article by Doctors  
 21 Anderson and Spencer. We talked about this in your  
 22 deposition. And one interpretation of this that Dr.  
 23 Michota I think will testify to is that, if you have over  
 24 five risk factors, there's almost a certainty that you're  
 25 going to develop a blood clot. Do you agree with that?

1 A. As I said in my deposition testimony, I don't think  
2 that this slide is fair in terms of comparing it to Mr.  
3 Bieler. These are patients who were suspected of having  
4 deep vein thrombosis. They came into a hospital setting  
5 or a clinical setting with the suspicion of deep vein  
6 thrombosis. So these weren't patients like Mr. Bieler who  
7 had many, many other health issues going on.

8 So I just don't think this is a slide that can be  
9 used in talking about Mr. Bieler's risk for deep vein  
10 thrombosis.

11 Q. Have you read that article?

12 A. I read it to the extent that you showed it to me at  
13 the deposition.

14 Q. That was a month ago. You've not gone back to refine  
15 that?

16 A. No, I have not.

17 Q. And if Dr. Michota, who has read the article -- in  
18 fact, he used a slide like that in one of his lectures --  
19 testifies that, in fact, that this article supports the  
20 thesis that any patient with a serious medical admission  
21 with five or more risk factors has almost a certainty of  
22 developing blood clots, you would disagree with that?

23 A. I would absolutely disagree with that.

24 Q. Okay. But, Doctor, isn't the point -- now -- now,  
25 you also -- correct me if I'm wrong, and I can -- we can

1 play the video clip that clear it up -- but you said that  
2 these were patients whose doctors suspected them of having  
3 deep vein thrombosis and this wouldn't apply to Mr. Bieler  
4 because Dr. Edwards never suspected him of having a deep  
5 vein thrombosis.

6 A. Until the very end, yes.

7 Q. But, Doctor, isn't that the point? Shouldn't the  
8 doctor have a very high index of suspicion of suspecting a  
9 deep vein thrombosis in a patient like Kenneth who has six  
10 risk factors?

11 A. Well, there's no question that, when you increase  
12 risk factors, you increase your -- your risk of whatever  
13 the underlying problem you're discussing. But I'm just  
14 saying the point of an article like this -- to try and  
15 apply an article like this to an individual patient like  
16 Mr. Bieler is very hazardous, and I think it is not fair  
17 to say that, based upon this article, Mr. Bieler because  
18 he had six risk factors present, had a hundred percent  
19 chance of getting a deep vein thrombosis.

20 I can tell you based on my experience that I have  
21 patients admitted to the hospital all the time with five  
22 and six risk factors who are not treated with  
23 anticoagulants for a variety of reasons who never develop  
24 deep vein thrombosis. So I know a hundred percent is not  
25 right. I just don't think that you can apply a slide like

1 this to an individual situation.

2 Q. Well, some of those may have deep vein thrombosis  
3 that just doesn't go to the lungs and kill them?

4 A. It's a possibility.

5 Q. And, Doctor, I'm not specifically applying this  
6 article. My question to you is that, in a patient with  
7 six risk factors, doesn't the standard of care require  
8 that an internal medicine specialist have a high index of  
9 suspicion for blood clot?

10 A. Yes, absolutely. The more risk factors for blood  
11 clots or anything else, the higher the index of suspicion  
12 should be.

13 Q. There's nothing in the record that would suggest that  
14 Dr. Edwards ever considered blood clot disease until late  
15 on maybe the 27th, the next to the last day of the  
16 hospitalization. Is that fair?

17 A. No, I don't believe so. And, again, we talked about  
18 this in my deposition. He did get Mr. Bieler up on the  
19 16th, had the physical therapist go, quote, full force,  
20 and he was aware that Mr. Bieler had TED hose on.

21 So, you know, I can only accept those two issues, the  
22 fact that Dr. Edwards testified in his deposition that he  
23 was aware of a potential problem deep vein thrombosis. He  
24 didn't document it in the chart and the chart is what it  
25 is. He didn't document it.

1 Q. Yeah, well. His deposition was given well after  
2 Kenneth's death and after he'd been sued for medical  
3 negligence. Is that fair?

4 A. Right. My deposition and Dr. Michota's also long  
5 after his death.

6 Q. And, well, but, Doctor, you were using Dr. Edward's  
7 deposition I think as evidence that he did something  
8 right, and that's only his word after the fact. Fair  
9 enough?

10 A. Sure. But I do know how internal medicine doctors --  
11 how -- I know how we're trained and how we practice and  
12 his -- his practice is -- and his documentation, if  
13 anything, is better than my documentation. I know that  
14 when a doctor writes physical therapy, the intention of  
15 physical therapy, get the patient out of bed and prevent  
16 things like deep vein thrombosis.

17 Q. But, Doctor, you can't -- you told me at your  
18 deposition you couldn't get into Dr. Edwards' mind, didn't  
19 you?

20 A. Of course.

21 Q. So anything that you might say about you know what he  
22 was thinking, would be speculation, is that fair?

23 A. Absolutely, yes.

24 Q. Okay. We will agree, don't we, that there's nothing  
25 in the record of written note that Dr. Edwards was



1 considering blood clot disease in Kenneth, at least  
2 through the 26th?

3 A. Yes, that's correct.

4 Q. Okay. That's fair.

5 Now, let's talk a little bit about what Dr. Edwards  
6 did or did not do that might have prevented a blood clot  
7 for Kenneth regardless of the reasoning behind it. Is  
8 that fair?

9 A. Certainly.

10 Q. All right. Now, just be clear, from the time of  
11 admission up until the afternoon of the last day of  
12 Kenneth's life, there are no drug treatment measures  
13 ordered to prevent or treat blood clot.

14 A. That is correct.

15 Q. And if we -- I guess I could actually go back to this  
16 slide. But the second part of the slide was that -- that  
17 mechanical measures should be taken in a patient with more  
18 than one risk factor if the patient can't get blood clot  
19 -- blood thinners.

20 A. That is correct.

21 Q. My bad.

22 But Dr. Edwards wrote orders for neither blood  
23 thinners nor TED hose nor sequential compression device;  
24 didn't order any of those. Is that true?

25 A. He did not write the orders, but the TED hose were on

1 Mr. Bieler.

2 Q. The TED hose were on and there's evidence in the  
3 record, and we talked about this, he almost certainly came  
4 to the hospital on the 13th with TED hose that Dr.  
5 Rhomberg had ordered in the rehab place.

6 A. Correct.

7 Q. And there are nurses' notes up through the 19th that  
8 says that he was wearing them at least part of the time.

9 A. Correct.

10 Q. There's nothing after the 19th to show that he had  
11 the TED hose on at all?

12 A. That's correct.

13 Q. And there's never anything that shows that he had  
14 those sequential compression stockings?

15 A. That's correct.

16 Q. Doctor, you're not going to need this I guess, so I'm  
17 going to get it out of the way just to give me a little  
18 bit more desk room, but it's right here if you need it.

19 Could I have that chart? That.

20 Now, I want to look at, first of all, just the first  
21 -- the first 12 days of hospitalization. And I'm going  
22 have -- I have this and we'll leave this out here so again  
23 so you don't have to be turning around.

24 Now, the same six risk factors were present for the  
25 entire time we're talking about through the 25th. Recent

1 surgery, recent broken bone, overweight, over age 40,  
2 serious medical illness, and some degree of immobility.  
3 Is that fair?

4 A. Okay.

5 Q. So if we wanted to -- and again with the  
6 understanding that your opinion is that some of these  
7 might have been minor, some of them might have been major,  
8 but we got six all the way down. Is that fair?

9 A. Okay.

10 Q. I just filled in that line with six. And we also  
11 agree that, during this period of time, there were no  
12 blood thinners ordered or given.

13 A. That's correct.

14 Q. So that would be no. And we agree there was no order  
15 or use of sequential compression devices.

16 A. That's correct.

17 Q. I'm going to short cut and just put an arrow.

18 Now, the TED stockings, the 14th through the 19th,  
19 probably at least part of the time, he had TED stockings,  
20 right?

21 A. Yes, that's correct.

22 Q. So we can say yes on six days, but the evidence would  
23 be, it would be no after the 20th.

24 A. Well, I don't know. I don't know the answer to that.  
25 I mean, I can tell you my --

1 Q. The evidence in the chart.

2 A. I don't think there's evidence for or against there  
3 being TED hose. The -- I can tell you that my experience  
4 has been that TED hose is frequently on and never  
5 documented by anybody. Whether or not Mr. Bieler had TED  
6 hose on or not those last few days, I can't tell you  
7 whether he did or not.

8 Q. But Dr. Edwards couldn't either because he didn't  
9 remember, right?

10 A. That's correct.

11 Q. So what do you want me to put down, plus, minus?

12 A. Question mark.

13 Q. Question mark. Okay. So your opinion is question  
14 mark.

15 And I'm going to put an asterisk here. Can I put an  
16 asterisk and say, no documentation?

17 A. Certainly.

18 Q. Okay. So can you focus on that, Mr. Forthman, just  
19 to give the jury a look, and then I'm going to put it  
20 down. Tell me when.

21 Okay. Now, we'll come back to this when we start  
22 talking about some of those medical reasons.

23 Give me Exhibit Number 5, please. That should be the  
24 chart. Did we -- no, this is Exhibit Number 5. And I  
25 just want to be sure in our exhibits, we put the slide

1 about the recommendations 1 and 2 as Exhibit Number 4. Do  
2 you remember that?

3 A. Yes, I do.

4 Q. Okay. I'm just going to put that over there.

5 Exhibit Number 5, Doctor, I don't have a slide for,  
6 but I'll represent to you that that is information --

7 MR. KEEVER: Walter, I apologize, I don't have  
8 another one of those. Would you like to have a look  
9 at it after --

10 MR. COX: Let me take a look at it before you  
11 ask him any questions.

12 MR. KEEVER: Sure. Go ahead and pass it to  
13 counsel.

14 BY MR. KEEVER:

15 Q. And this is a summary that is taken from the records,  
16 and you can -- you got the records here and you can look  
17 at them. And it's from the physical therapy notes as they  
18 were interpreted by the physical therapist who did them,  
19 Kevin Elliott at his deposition.

20 By the way, did you read that deposition?

21 A. No, I didn't.

22 Q. And it's the nursing notes. And as we go through,  
23 them you'll see what the notations are. And if -- if you  
24 think they don't represent what the chart says, we'll go  
25 through the chart. Fair enough?

1 activity would protect a patient with five or six risk  
2 factors for blood clots?

3 A. Yeah. I mean, it's not only -- only that. He was  
4 repositioning himself in bed.

5 Q. Moving around in bed.

6 A. He was moving around in bed. And I have other notes  
7 in here, if you want me to go through them, from the  
8 nurses that, you know, may indicate further -- further  
9 walking and getting up from bed to go to the bathroom,  
10 those types of things.

11 Q. Sure. Well, you -- but -- but -- I'm sorry. I  
12 didn't mean to talk over you.

13 A. But, you know, basically, he was getting up on  
14 occasion, moving around in bed and --

15 Q. Okay. And well, how about on the 21st and the 22nd  
16 when he only walked two feet? Was -- I mean, would you  
17 agree -- you told Mr. Cox that he had -- if I remember you  
18 right, he had kind of a constant level of activity, but by  
19 the 21st and 22nd, he wasn't very active, was he?

20 A. Well, he was up in the chair, so he was getting up  
21 and down from the bed to the chair. So he wasn't getting  
22 up and walking very much, but getting up and down from the  
23 bed to the chair is considered activity.

24 Q. Okay. Fair enough. You know, I'm sure Dr. Michota  
25 will talk about that, too.

1 A. Certainly. I actually have -- if it's okay, I'll  
2 take out some of my own.

3 Q. Oh, yeah, sure.

4 A. Notes here.

5 Q. Sure.

6 Now, this is through the -- through the 25th. And on  
7 the 17th, according to the therapist and her notes,  
8 Kenneth walked three to four steps with a walker. Does  
9 that -- that sound right to you?

10 A. I'm sorry. You're talking now when?

11 Q. On the 17th.

12 A. On the 17th. Okay.

13 Q. I'm sorry. Yeah, it is the 17th. On the 17th, go  
14 down.

15 A. Walks occasionally, unstable gait, weakness, and  
16 bedfast, three to four steps with the walker.

17 Q. Right. That's the physical therapy notes.

18 A. Right.

19 Q. Okay. Now, there's no PT notes on the 18th because  
20 that's a Sunday. And then on the 19th, he walked four  
21 feet two separate times.

22 A. Okay.

23 Q. The 20th, he walked seven feet in the morning and 20  
24 feet in the afternoon.

25 And is it your opinion, Doctor, that that degree of

1 Now, do you recall -- you don't have to recall it.

2 You told Mr. Cox, didn't you, that the possibility that  
3 Kenneth might need surgery on his abdomen or belly was a  
4 reason to withhold blood thinners. Is that your  
5 testimony?

6 A. Well, you know, in 2008, my experience was that  
7 surgeons did not like to take patients to surgery if they  
8 were anticoagulated, particularly if they were in renal  
9 failure and had liver problems, so --

10 Q. I'm sorry. Are you saying that the surgeon in this  
11 case was reluctant to let Dr. Edwards start blood  
12 thinners? Is there any evidence of that in the chart?

13 A. No, except that Dr. Ruff did not suggest that he go  
14 on blood thinners nor did Dr. Rhomberg suggest he go on  
15 blood thinners.

16 Q. The two surgeons didn't tell the internist that the  
17 internist's patient should be on blood thinners?

18 A. Well, it was also an orthopedic patient. If anybody  
19 should know if a patient is at risk after a fracture, you  
20 would think the orthopedic surgeon would have been  
21 concerned about it or would have suggested blood thinners.

22 Q. All doctors are supposed to be aware of risk factors  
23 and how to take care of patients to prevent blood clots.  
24 Is that fair?

25 A. That is fair, yes.



1 Q. But the internist is kind of the guy who's supposed  
2 to tell the other guys when there's a problem. He's the  
3 -- if the orthopedist has a question about blood thinners,  
4 he's most likely to call an internist, is he not?  
5 A. I think you're giving us internists too much credit.  
6 I mean, I can tell you my experience with the orthopedic  
7 surgeons is that they call the shots when it comes to, you  
8 know, blood thinner administration. They -- it's not the  
9 internist that calls the shots.  
10 Q. Dr. Rhomberg was the orthopedist in this case?  
11 A. Correct.  
12 Q. He never saw Kenneth during this hospitalization, did  
13 he?  
14 A. Oh, yes, he did.  
15 Q. Oh, I'm sorry.  
16 A. He saw the patient several times.  
17 Q. He did?  
18 A. Yes.  
19 Q. Are you sure that -- wasn't that his physician's  
20 assistant, Mr. Logan, that made those notes?  
21 A. I think Dr. Rhomberg actually signed several orders  
22 and wrote a note or two.  
23 Q. Oh, okay. Well, the record will speak for itself.  
24 A. Sure.  
25 Q. And I don't want -- I know you got a plane to catch,

1 so I don't want to get into a record search.  
2 And Dr. Ruff -- Dr. Ruff -- actually, isn't it true  
3 that Dr. Ruff was consulted on the 15th by Dr. Edwards?  
4 A. Correct.  
5 Q. So he didn't see him in the emergency room like you  
6 testified before?  
7 A. No. The emergency room doctor consulted him, called  
8 him. And he didn't see him in the emergency room, but he  
9 consulted him.  
10 Q. Dr. Ruff was consulted in the emergency room?  
11 A. I think that it was the emergency room doctor who  
12 called Dr. Ruff to the patient. I could be wrong about  
13 that.  
14 Q. Well, I tell you, we're probably going to run over an  
15 hour and maybe want to take a little break and maybe we  
16 can look and maybe come back to that later.  
17 A. Sure.  
18 Q. Good. Now, but Dr. Edwards claimed in his deposition  
19 that the possibility that Kenneth might need surgery on  
20 his belly was a reason to withhold blood thinners. Is  
21 that true?  
22 A. Yes.  
23 Q. And do I take it from your testimony that you think  
24 that was a reasonable excuse to withhold blood thinners?  
25 A. Sure. I mean, He was anemic; the question was, was

1 he bleeding into his gastrointestinal track and elsewhere.  
2 I don't think Dr. Edwards or anybody had a handle on what  
3 was going on. So I think knowing that he could be losing  
4 blood and going to a surgery and putting him on blood  
5 thinners, making that decision not to put on blood  
6 thinners was absolutely rational.  
7 Q. Well, didn't we know on the 15th, when Dr. Ruff did  
8 the colonoscopy, that there wasn't any bleeding in the  
9 colon?  
10 A. Yes. So there was no bleeding in the colon, but that  
11 doesn't mean there's not bleeding elsewhere.  
12 Q. Well, was there ever any evidence of bleeding in the  
13 gastrointestinal tract from the stomach through the small  
14 bowel to the colon?  
15 A. No, there wasn't.  
16 Q. Okay. And Dr. Ruff, on the 15th in his consultation  
17 note, said, I see no indication for surgery.  
18 A. Correct.  
19 Q. And he never changed that -- that position, at least  
20 as far as we can tell in the record.  
21 A. That is correct.  
22 Q. Okay. So Dr. Edwards was asked in his deposition  
23 when he thought the surgery risk had kind of decreased.  
24 And do you remember he said when Kenneth was transferred  
25 from the intensive care unit? Do you remember that?

1 A. I believe so, yes.  
2 Q. That would have been on the 17th, the Saturday.  
3 A. Correct.  
4 Q. So if we go to our chart here -- and I kind of  
5 apologize, it's not a very eye catching chart, but I got  
6 two columns on reasons to avoid blood thinners. And the  
7 first column is surgery and the second column I now see  
8 didn't print off, but the second column would be internal  
9 bleeding. But let's just deal with the first column.  
10 Do you agree that, after the 17th, that the possible  
11 need for surgery would not have been a reasonable excuse  
12 to withhold blood thinners?  
13 A. That sounds reasonable.  
14 Q. Okay. And how about after the 15th, after the  
15 colonoscopy and the -- and the surgeon said no indication;  
16 on the 16th and 17th, was the possible -- possibility of a  
17 belly surgery a reason to avoid blood thinners?  
18 A. You know, I would say the answer to that is yes  
19 because Dr. Edwards was concerned about that, and I am not  
20 going to presume to put myself in his situation. He was  
21 concerned about it. I think the concern --  
22 Q. He was in the trenches?  
23 A. He was in the trenches. His concern was reasonable  
24 and it may be that another internist wouldn't have had  
25 that concern. Dr. Edwards was concerned and it was a

1 reasonable concern.

2 Q. We'll say yes, yes, yes, yes for the first four days  
3 and say no thereafter.

4 A. Okay.

5 Q. Okay. Now, but there's nothing in the record during  
6 those first four days where Dr. Edwards makes a comment,  
7 I'm worried this man might need surgery. Is that fair, in  
8 the record?

9 A. There's no statement by him, this man may need  
10 surgery. He did consult a surgeon, so I think it was  
11 implicit in that he consulted a surgeon and was worried  
12 that he may need surgery.

13 Q. Well, he consulted the surgeon, didn't he, Doctor,  
14 and specifically asked him about doing a decompressive  
15 colonoscopy to put the scope up and tap off all of the gas  
16 that was in the bowel?

17 A. Usually an internist would consult a  
18 gastroenterologist for that, not a surgeon. I don't know  
19 if a gastroenterologist wasn't available at Summit at that  
20 time. But if I were an internist and was worried about  
21 surgery and needed a colon decompressed, I would consult a  
22 surgeon. If I were worried about just decompressing a  
23 colon, I would -- and not worried about surgery, I would  
24 consult a gastroenterologist.

25 Q. What's the record say? What does the record say

1 about the reasons that Dr. Edwards consulted Dr. Ruff?

2 A. I would have to go back and look specific. I can't  
3 remember what his statement was as to why. I just don't  
4 remember.

5 Q. You do remember, don't you, that in the death summary  
6 that Dr. Edwards dictated, he said no surgical abdomen to  
7 palpation.

8 A. Correct, yes.

9 Q. That would have meant on admission?

10 A. Correct, yes.

11 Q. Yeah. Okay. Now, we talked about that activity. Do  
12 you remember Dr. Edwards had a progress note on the 24th  
13 that Kenneth was too weak to get up to the bedside  
14 commode?

15 A. Yes.

16 Q. And either on the 25th or the 26th doesn't he have a  
17 note that says, still too weak to get up?

18 A. Yes.

19 Q. So is it your testimony -- we talked earlier about  
20 the front part of this, but is it your testimony that,  
21 with wiggling around in bed and the walking that he did,  
22 that the 14th through the 25th, Kenneth had enough  
23 activity to basically take care of or -- yeah, take care  
24 of the other five risk factors?

25 A. No. I never testified to that.

1 Q. Okay.

2 A. I just testified that immobility is relative and that  
3 he did have -- he's not immobile to the extent that we  
4 think of immobility as internists; that is being  
5 bedridden, not being active in bed, not moving  
6 extremities, not getting up to the bedside commode, that  
7 type of thing. So it's a -- I'm happy to admit to you  
8 that it's a relative risk factor. He was certainly not as  
9 mobile as you and me. He was more mobile than I am when I  
10 get a flu and am in bed with the flu, but he -- he  
11 certainly was relatively immobile.

12 Q. Okay. And -- and -- and you also agreed earlier, as  
13 we can see from the chart now that we've got the surgery  
14 thing filled in, that you agreed that, to some degree or  
15 another, that there was six risk factors all the way  
16 through. So I appreciate that.

17 Now, no sequential compression devices through this  
18 entire period of time.

19 A. Correct.

20 Q. Did the fact that Dr. Edwards provided no sequential  
21 compression devices during that period of time fall below  
22 the standard of care?

23 A. No, it didn't.

24 Q. It didn't?

25 A. No.

1 Q. Is it -- well, would sequential compression devices  
2 have been of any benefit to Mr. Bieler in preventing a  
3 blood clot?

4 A. Well, he had TED hose on. And, again, I don't -- I  
5 don't know about those last six days, whether he had TED  
6 hose on those six days or not. But in terms of sequential  
7 compression devices versus TED hose, I know of -- I know  
8 of no evidence that shows the sequential compression  
9 devices are anymore effective than TED hose.

10 Q. Well, but they were available. Is there a reason not  
11 to use them?

12 A. Just that he had TED hose on.

13 Q. So if he had TED hose on, he doesn't need sequential  
14 compression devices?

15 A. Correct.

16 Q. But we don't know that he had TED hose on for the  
17 last six days of this 12-day timespan.

18 A. Correct.

19 Q. And we can find a note somewhere in the nurses' notes  
20 about TED hose on every one of the first six days,  
21 correct?

22 A. I believe that's correct, yes.

23 Q. Okay. All right. Well, let's move on.

24 Now, we're going to talk about -- and I'm going to  
25 redo this just so it will show up. And the next column is



1 bleeding as a medical reason to avoid blood thinners. And  
 2 you said that the possibility that Kenneth might be  
 3 bleeding was a reason to withhold blood thinners.  
 4 A. Correct.  
 5 Q. All the way up through January 27th?  
 6 A. Correct.  
 7 Q. Well, let's look at the record. Mr. Cox asked you  
 8 about the CAT scan of the abdominal --  
 9 A. Correct.  
 10 Q. -- abdomen. And you agreed that there's no sign of  
 11 bleeding.  
 12 A. Correct.  
 13 Q. No pools of blood.  
 14 A. Correct.  
 15 Q. No internal organs that look like they're bleeding.  
 16 A. In the abdomen, yes.  
 17 Q. In the abdomen.  
 18 A. Yes.  
 19 Q. All right. And -- and that was the only thing that  
 20 Dr. Edwards looked at.  
 21 A. Correct.  
 22 Q. We've looked at the inside of the GI tract through  
 23 the colonoscopy; no evidence of bleeding.  
 24 A. Correct.  
 25 Q. And then you talked about Kenneth's blood count.

1 Anemia means low blood count?  
 2 A. Correct?  
 3 Q. And that can occur because of a loss of blood or a  
 4 failure to make blood?  
 5 A. A loss of blood in this case because it occurred over  
 6 a very short period of time.  
 7 Q. Okay. Let's see. Hand me that first -- in fact,  
 8 this will be an exhibit, Number 6.  
 9 MR. KEEVER: Mr. Cox, this is a summary of the  
 10 blood clot -- of blood count. Okay.  
 11 MR. COX: Okay.  
 12 BY MR. KEEVER:  
 13 Q. Okay. So what I've done is, I just made a summary  
 14 sheet to bring out the blood counts. The hemoglobin is  
 15 measured in grams. And you said that Kenneth was about 14  
 16 when he broke his hip.  
 17 A. That's correct.  
 18 Q. And then the hematocrit, that's a different reading,  
 19 like the percentage of red cells in volume.  
 20 A. That's correct, yes.  
 21 Q. Okay. And in -- after your deposition, I sent to Mr.  
 22 Cox -- and, well, wait a minute, before I get to that.  
 23 You testified that, in a man like Kenneth with a  
 24 broken bone like he had and the surgery that he had, that  
 25 you would expect a week after the broken bone and surgery

1 to have a normal blood count.  
 2 A. Correct. With a 150 to 250 CCs of blood loss at the  
 3 time of surgery, yes.  
 4 Q. Okay. Now, this is a picture of -- in fact, why  
 5 don't you get that X-ray picture.  
 6 But this is a picture of Kenneth's broken bone. And  
 7 I don't know, did you ever have a chance to see that  
 8 before today?  
 9 A. I don't believe so.  
 10 Q. Okay.  
 11 A. I just saw the reports. That's all.  
 12 Q. So this is -- the thigh bone is the biggest bone in  
 13 the body. Isn't that right?  
 14 A. I believe that's correct.  
 15 Q. Called femur.  
 16 A. Yes.  
 17 Q. And he has a break in it that goes -- starts a  
 18 hands's breadth below the hip joint and then goes down to  
 19 the middle of the thigh.  
 20 A. Correct.  
 21 Q. All right. Now, when surgeons measure blood loss in  
 22 metric measurement, CCs, but a unit of blood is roughly a  
 23 pint of blood?  
 24 A. That's correct.  
 25 Q. And there's about ten pints of blood in the human

1 body?  
 2 A. About 18. Eighteen pints.  
 3 Q. Eighteen pints?  
 4 A. Eighteen -- 18 units of blood. I'm not sure honestly  
 5 what a pint is. If a pint is similar to 500 CCs, there's  
 6 about 18 units of blood in the human body.  
 7 Q. Well, you know, we can -- we can pin that down, but  
 8 if -- if Dr. Michota says that the standard is more like  
 9 ten pints or ten units --  
 10 A. He's wrong.  
 11 Q. I beg your pardon then. I thought you used that  
 12 number with Mr. Cox earlier, but --  
 13 A. No, no, no.  
 14 Q. We'll see what it is later.  
 15 A. Sure.  
 16 Q. Anyway, after we had that discussion, I sent to Mr.  
 17 Cox and I know that he e-mailed to you a couple of  
 18 articles that say that, after hip fractures and after  
 19 femur fractures, that -- that the blood loss internally  
 20 and externally is three pints, averages around three  
 21 pints; can be more, can be less. Did you -- did you get  
 22 that?  
 23 A. I have not seen this article, actually. So I've not  
 24 seen this.  
 25 Q. Okay. Well, you told me that you -- you've helped

1 take care of men who had broken femurs, thigh bones.  
 2 A. Uh-huh.  
 3 Q. Does their leg get swollen up?  
 4 A. Occasionally.  
 5 Q. And is that from blood loss in the tissues?  
 6 A. Just -- it can be from blood loss, it can be from  
 7 inflammation.  
 8 Q. Okay. Well --  
 9 A. This is -- this is at 72 hours. This is three days,  
 10 and we're talking with Mr. Bieler a week.  
 11 Q. And in a patient who is making blood normally, your  
 12 statement, do I understand, that -- that a patient can  
 13 build up three pints of blood to five pints of blood  
 14 within a week?  
 15 A. My -- my experience is that a week after surgery --  
 16 after hip surgery, hip replacement, blood counts are  
 17 normal.  
 18 Q. Okay. Well, so that's your experience. And if the  
 19 literature that Dr. Michota points to is different, it is.  
 20 But here are the blood counts for the first four days  
 21 highlighted. Maybe you can give me that. And we can take  
 22 a break if you want to read that, but --  
 23 A. I'm just trying to see whether or not this applies at  
 24 all to Mr. Bieler, and I've not -- I've not seen this, but  
 25 I'm not certain that these are studies that, you know, go

1 for one and two days postoperatively. So I -- I'm just  
 2 not sure that -- sure that these articles apply in this  
 3 case.  
 4 Q. Okay. That's fair enough.  
 5 A. I'm happy to review them and --  
 6 Q. Well, it's -- you know, I'll accept your experience.  
 7 Now, we've highlighted blood counts for the first  
 8 four days. And I don't remember if we asked Dr. Edwards  
 9 about this, but isn't it fair to say that they're  
 10 relatively stable during the first four days?  
 11 A. They are.  
 12 Q. So during the first four days, there's no evidence  
 13 from that that there's any significant bleeding going on.  
 14 Would that be fair?  
 15 A. Any further bleeding, that is correct, yes.  
 16 Q. And so it's going to be a little bit more problematic  
 17 then in there's no evidence of any further bleeding. But  
 18 is a possibility of bleeding in your opinion a reason,  
 19 during those first four days, to withhold blood thinners?  
 20 A. Yes. I mean, he has lost blood, he's in acute renal  
 21 failure, he's got liver abnormalities and a markedly  
 22 dilated colon and no explanation for a hemoglobin like  
 23 that. And then two days later on the 19th, his hemoglobin  
 24 is down another -- he's already lost another one and a  
 25 half to two units of blood, so --

1 Q. Okay.  
 2 A. -- I think there is a concern that --  
 3 Q. So should I put yes for those first four days, that  
 4 you think --  
 5 A. I would be yes or the whole time.  
 6 Q. Yes for the whole time. We can just put yes for the  
 7 whole time.  
 8 Now, just to be sure that we know what you're saying,  
 9 are you saying that, in retrospect, looking back on it  
 10 with hindsight, you're glad he didn't get any -- any blood  
 11 thinners because he might have been bleeding, or are you  
 12 saying that Dr. Edwards had that concern at that time and  
 13 that was his reason for -- or one of his reasons for  
 14 withholding blood thinners?  
 15 MR. COX: Object to form.  
 16 BY MR. KEEVER:  
 17 Q. Do you understand the question? I can try it again.  
 18 A. I think so. I mean, I think that Dr. -- you know  
 19 assuming, that Dr. Edwards' testimony is true testimony of  
 20 his -- the way he was approaching the patient, that his  
 21 concern for bleeding was appropriate and reason enough to  
 22 withhold blood thinners.  
 23 Q. That was from his testimony at his deposition taken  
 24 well after Kenneth's death and when he's defending himself  
 25 in the lawsuit.

1 A. Correct.  
 2 Q. What does the record show? What does he say in his  
 3 progress notes about a concern about possible bleeding?  
 4 A. Well, he transfused the patient, I believe, on the  
 5 26th. That shows obviously a concern of blood loss. He  
 6 ordered multiple hemoglobin and hematocrits, so that shows  
 7 a genuine concern, you know, about blood loss and worried  
 8 about the expectation that there may be more blood loss;  
 9 otherwise, he wouldn't be doing daily  
 10 hemoglobin/hematocrits.  
 11 Q. So he had a low -- he had a low blood count and he's  
 12 getting -- he's looking at the blood count, but wouldn't  
 13 it just be speculation to go from there to say, that shows  
 14 he was concerned about bleeding?  
 15 A. Well, again, I can't put myself in Dr. Edwards' mind,  
 16 but I can tell you how internists think. We're trained  
 17 pretty much the same way. When I order a hemoglobin and  
 18 hematocrit on somebody comes in with an anemia, I'm  
 19 worried there may be changes day by day. And that means I  
 20 would be very concerned that there's blood loss, whether  
 21 it's bleeding or hemolysis or -- you know, we don't know  
 22 in this case, but the very fact that Dr. Edwards is  
 23 ordering daily blood counts certainly means that he's  
 24 concerned about his blood counts.  
 25 Q. Doctor, you're talking, I believe, about what you



1 think the standard of care is for internists. I'm asking  
2 about what Dr. Edwards was doing at the time and whether  
3 that met the standard of care. So let me just rephrase  
4 this.

5 A. Sure.

6 Q. No doubt that Dr. Edwards ordered a bunch of blood  
7 counts. But what documentation is there that he was  
8 worrying about -- ordering them because of a worry about  
9 blood loss as opposed to worrying about the fact that  
10 Kenneth wasn't making enough blood to replace his blood?  
11 What evidence is there?

12 A. Well, I mean, he -- if you're asking me if there are  
13 notes to that effect, he has no notes to that effect. But  
14 I think implicit in the orders is the -- is the fact that  
15 he was worried about his blood counts, whether he was  
16 worried about a nutritional problems -- he was getting  
17 nutrition. He was getting parenteral intravenous  
18 nutrition. So I think common sense would tell anybody  
19 that the fact that he's ordering daily blood counts is  
20 he's worried about blood loss.

21 Q. Do you remember him stating in his progress note on  
22 the 26th, his intake is so poor he can't nutritionally  
23 support recovery of red cell production?

24 A. He did -- he did say that.

25 Q. Isn't it evidence -- if we have to use evidence to

1 understand his reasons for doing things, isn't that  
2 evidence that he thought the low blood count that wasn't  
3 coming up was due to lack of blood production on Kenneth's  
4 part as opposed to bleeding?

5 A. Well, he said that he didn't have nutrition to  
6 replace the blood loss that he had had. The question is  
7 where is the blood loss coming from. So, again, I think  
8 Dr. Edwards will have to speak to that at trial. But to  
9 me, as an internist, you know ordering daily blood counts  
10 tells me that he's concerned about --

11 Q. And --

12 A. -- blood loss.

13 Q. And if to Dr. Michota, it says, combined with the  
14 record, this shows he was concerned about inability to  
15 make blood, that would be Dr. Michota's opinion.

16 MR. COX: That's argumentative. I object.

17 THE WITNESS: That's up to Dr. Michota, but I  
18 think that --

19 BY MR. KEEVER:

20 Q. Well, let me rephrase that because I think Mr. Cox  
21 probably had a good objection.

22 Different internists are going to look at this  
23 situation and come to different conclusions. Is that  
24 fair?

25 A. Well, I don't know how.

1 Q. Could come to different conclusions?

2 A. Obviously, Dr. Michota is going to come to a  
3 different conclusion than I am. So, yes, internists can  
4 come up with different conclusions. I don't know how one  
5 can come up with a conclusion that one cannot be worried  
6 about blood loss somewhere from these kinds of  
7 hemoglobins. I just don't know.

8 He clearly is losing more blood on the 19th. His  
9 hematocrit went down to 25 from 30, up to 33 at one point  
10 after admission. So he definitely -- definitely losing  
11 blood. And you can't explain that loss based on  
12 nutrition.

13 Again, what was going through Dr. Edwards' mind at  
14 the time, I have to rely on his testimony about that. But  
15 I can tell you that any reasonable internist is going to  
16 look at these numbers and say, the guy is losing blood  
17 somewhere.

18 Q. Okay. And so we'll just rely on that testimony. But  
19 you also told Mr. Cox a while ago that -- and he didn't  
20 respond to the transfusion, so that's a sign he was  
21 bleeding. Did I remember your testimony?

22 A. He responded initially to the transfusion, but if you  
23 look the day after that, he -- he -- his hematocrit went  
24 back down; he lost about a unit of the blood.

25 Q. Okay. Now, getting into Dr. Edwards' reasoning --

1 well, let me ask it this way.

2 If Dr. Edwards never considered whether or not  
3 Kenneth had internal bleeding during this period of time,  
4 would that be below the standard of care?

5 A. If -- if Dr. Edwards didn't -- was not concerned  
6 about blood loss and bleeding as being a potential  
7 complication for pharmacological therapy for heparin or --

8 Q. Blood thinners?

9 A. -- therapy, then, yes.

10 Q. All right. So let me ask you just one last question  
11 -- I promise this is the end -- on sequential compression  
12 devices.

13 Do you think the failure to order sequential  
14 compression devices was just an oversight or was it a  
15 conscious choice that Dr. Edwards made?

16 A. I would have no idea.

17 Q. You read his deposition. You made your -- pardon me,  
18 Doctor, but haven't you made a number of your statements  
19 and your opinions based upon what Dr. Edwards said in his  
20 deposition a year and a half after Kenneth died or  
21 whenever it was?

22 A. Right. I don't remember the specific testimony. He  
23 made have said that he made a conscious decision not to  
24 order that or I -- I honestly don't remember that  
25 deposition testimony. Whatever it was, it was, so I -- I

1 don't remember.  
 2 Q. By the way, Doctor, since -- since the jury won't  
 3 have to sit through it, we can take a break and go off the  
 4 record any time you would like to take a break.  
 5 A. No, I'm fine.  
 6 Q. You good?  
 7 A. I'm good.  
 8 Q. All right. Just a question that I didn't want to  
 9 forget to ask you. There are blood thinners that you can  
 10 use regardless of kidney function, aren't there?  
 11 A. That is true.  
 12 Q. And as you said, if you got other things going on, it  
 13 might be a little more complicated, but, I mean, like you  
 14 can give heparin and you can do blood test to determine  
 15 the correct load of intravenous heparin to give; it just  
 16 -- it just takes more time and effort, right?  
 17 A. That's correct.  
 18 Q. Now, let's go on to the those last three days of  
 19 life. And I believe that you agreed that something pretty  
 20 dramatic happened on the 26th.  
 21 A. Correct.  
 22 Q. What I wasn't really quite as clear on because --  
 23 well, let me rephrase that.  
 24 I think, did you not in your deposition, that you  
 25 said that that large blood clot that they saw on autopsy

1 that was in the arteries going to the lungs, is it your  
 2 opinion that broke loose on the 28th and that was kind of  
 3 the terminal thing that actually finally killed Kenneth?  
 4 A. I believe that's correct, yes.  
 5 Q. So if -- if I understood you right, you said that he  
 6 had a blood clot go to his lungs on the 26th, but that  
 7 would have been a separate blood clot.  
 8 A. Correct.  
 9 Q. So we're really talking about death from blood clots,  
 10 plural, instead of singular?  
 11 A. Yes.  
 12 Q. Okay. Good. Now, on the 26th -- and, yeah, why  
 13 don't you get that one up? It's the -- this is just out  
 14 of the physical therapy notes. Do you remember that?  
 15 A. Yes, I do.  
 16 Q. Okay. And the therapist makes a specific note that  
 17 is -- he times his note at 1007, and he says that Kenneth  
 18 transferred to BSC, bedside commode, and then ambulated a  
 19 total of 12 feet, complained of a sharp pain under his  
 20 left breast. 10:00 in the morning.  
 21 A. Correct.  
 22 Q. 10:07. Okay. Then Dr. Edwards, in his progress note  
 23 -- and, Ken, if you wouldn't mind -- in his progress note,  
 24 and it's a long note. Doctor, he writes long notes,  
 25 doesn't he?

1 A. He does.  
 2 Q. In his progress note says, when he walked with the  
 3 therapist today, he went only a few steps before he,  
 4 quote, ran out of gas, exhausted and puffing, had to sit  
 5 down immediately. He's still too weak and unsteady to get  
 6 out of bed by himself.  
 7 Now, do you remember -- and we could find it in the  
 8 records, but that note was timed at 10:00 in the morning.  
 9 A. Dr. Edwards --  
 10 Q. Dr. Edwards' progress note.  
 11 A. Okay.  
 12 Q. Do you remember that?  
 13 A. I don't remember that.  
 14 Q. Would you like to confirm that?  
 15 A. I believe you.  
 16 Q. Okay. So how do you think chest pain and shortness  
 17 of breath coming on basically at the same time would fit  
 18 with the presumptive diagnosis of a blood clot going to  
 19 the lungs?  
 20 A. I think it's a perfect -- a perfect fit, but it's a  
 21 perfect fit for many other things as well. So, you know,  
 22 as I said before, you know, if you present Mr. Bieler as a  
 23 patient who had chest pain and shortness of breath, it's a  
 24 classic pulmonary embolus, but if you present him as a  
 25 patient who was very anemic, had kidney failure, liver

1 problems, colon problems, parenteral nutrition, possible  
 2 sepsis, then it's a whole other ball game.  
 3 Q. If you present Mr. Bieler as a patient who has been  
 4 in the hospital for 12 days, is -- we've talked about his  
 5 activity level, but he's certainly not walking up and down  
 6 the halls. He's got a total of six risk factors. And  
 7 that's information Dr. Edwards knew right at that time.  
 8 Is that correct?  
 9 A. That's correct.  
 10 Q. So at that time, if Dr. Edwards didn't at least  
 11 consider a blood clot going to the lungs, was that below  
 12 the standard of care?  
 13 A. If -- if he had no consideration for a blood clot,  
 14 yes, I think it would be the below the standard of care.  
 15 Q. Okay.  
 16 A. The fact that he didn't document it, that concern is  
 17 not below the standard of care. I don't believe that Dr.  
 18 Edwards did not not consider a diagnosis.  
 19 Q. Well, do you believe that, if he considered it, he  
 20 didn't do anything about it?  
 21 A. It just didn't rise to the suspicion that he thought  
 22 required intervention at that time.  
 23 Q. Did -- did you agree or disagree with the proposition  
 24 that, in a patient with six risk factors, that the doctor  
 25 should have a high index of suspicion about blood clot



1 disease?

2 A. The more risk factors, the higher the degree of

3 suspicion, absolutely.

4 Q. And that's the basis -- is that the basis for you

5 saying that you're pretty sure he must have at least

6 considered it?

7 A. The basis is that he stated in his deposition

8 testimony that it was all in his consideration, but it

9 simply didn't rise to the level that he judged it to be a

10 significant possibility at that time. That was his

11 judgment.

12 Q. And that's the point. Does the fact that he didn't

13 consider this to rise to the level of suspicion that he

14 needed to at least actively investigate it, would that be

15 below the standard of care?

16 A. No.

17 Q. No. Okay.

18 Now, you talked earlier with Mr. Cox, and I gathered

19 from your comments that there was some question in your

20 mind as to the timing of the chest pain and the timing of

21 the shortness of breath. Are you good on that, that they

22 happened at the same time?

23 A. I accept that, yes.

24 Q. Now, if we go back and look at that 26th progress

25 note, Dr. Edwards says he has a thought about what's

1 causing all of this, and he says, I think the most

2 contributory factor is his anemia.

3 A. Correct.

4 Q. Well, was -- you know, I'm -- at the time, with

5 everything he knew at the time, and we can look backward

6 all the way to admission, was believing anemia to be the

7 most contributory factor to having chest pain and

8 shortness of breath a reasonable medical decision based

9 upon the evidence available at that time?

10 A. I believe it was, yes.

11 Q. Well, I appreciate you following me through that

12 rambling question. I apologize. I'll try to make it more

13 concise.

14 Okay. Do you remember what Dr. Edwards said when I

15 asked him if he might have considered a diagnosis of a

16 blood clot on the 26th?

17 A. I don't remember his specific answer.

18 Q. Well, we can -- we can -- I've got his deposition for

19 you. But on page 66, line 21, he said he thought he might

20 have considered it. Does that ring a bell?

21 A. I believe that's correct, yes.

22 Q. Then do you remember my followup question was, if you

23 probably considered it, what would you probably have done.

24 And he said that, if he had had the availability on the

25 26th and the 27th of ultrasound and lung scans, he would

1 have done that. Do you remember that?

2 A. I do, yes.

3 Q. Now, you talked about that ultrasound with Mr. Cox.

4 That's that -- that venous ultrasound that they can

5 actually show a blood clot.

6 A. Correct.

7 Q. Doesn't have to inject anything, you don't really

8 even take any X-rays. It's a test done by the technician

9 either at the bedside -- can it be done at the bedside?

10 A. Yes.

11 Q. Okay. Do we find a progress note on the 26th or the

12 27th that Dr. Edwards tried to order a venous ultrasound?

13 A. No, he didn't.

14 Q. We find an order in the chart on the 26th or 27th for

15 a venous ultrasound?

16 A. No.

17 Q. And what was the reason Dr. Edwards gave for not

18 getting an ultrasound on the 26th and 27th?

19 A. I believe he mentioned in his deposition there was an

20 ice storm and that he didn't have the availability because

21 there was an ice storm.

22 Q. Do you remember his testimony was pretty explicit

23 that he tried to talk to someone in X-ray and they said

24 they couldn't do it? Is that -- do you remember that?

25 A. I believe so. That's correct.

1 Q. Exhibit Number 8. Do you know shoe Shawn Imhoof is?

2 A. No, I don't.

3 Q. He's -- I'll tell you that he was the head X-ray

4 technician at Summit at the time. And I suspect you know

5 the answer to this, but were you provided Mr. Imhoof's

6 deposition to review?

7 A. No, I wasn't.

8 Q. Exhibit Number 8 is just one page out of Mr. Imhoof's

9 deposition, page 5, Walter.

10 MR. COX: I'm going to object to use of a

11 witness deposition to impeach him.

12 MR. KEEVER: Okay. It's on the record. It's

13 on the record.

14 BY MR. KEEVER:

15 Q. Now, this is -- you haven't reviewed this, but I want

16 you to look at -- let's see. Let me get this up here --

17 that page. And if you would, go ahead and -- my -- I

18 apologize to you and the jury that I'm having trouble with

19 this. There we go. Would you read -- let's see, what is

20 it -- line 16 through 22. And I just have that testimony

21 up on the -- up on the chart.

22 A. "Question: Very good. Did your department have the

23 equipment and staffing available on the 26th, 2009, to

24 perform a duplex venous ultrasound on Kenneth Bieler?

25 "Answer: Yes.

1 "Question: How about on January 27th? Was the  
2 equipment and staffing available?

3 "Answer: Yes, sir."

4 Q. And -- and I will also represent that this deposition  
5 will have been read into the record in our case in chief,  
6 which is going to be a week and a half, but it will be  
7 before you give your testimony.

8 Doctor, Mr. Videographer said we only got five  
9 minutes on the tape. Would you be agreeable to taking a  
10 short break at this time?

11 A. Certainly.

12 THE VIDEOGRAPHER: We're off the record at  
13 11:24 for a break.

14 (A recess was taken.)

15 THE VIDEOGRAPHER: We're back on the record at  
16 11:33 after a break.

17 BY MR. KEEVER:

18 Q. I'm just getting that slide off so to make it --  
19 okay.

20 Now, Doctor, before we went on break, you had just  
21 finished reading a portion of Mr. Imhoof's deposition. Is  
22 there anything in the record, a progress note, a nursing  
23 note, an order, anything that would support Dr. Edwards'  
24 claim that he tried to get a venous ultrasound on the 26th  
25 and 27th?

1 MR. COX: Asked and answered.

2 THE WITNESS: I'm not aware of anything.

3 BY MR. KEEVER:

4 Q. The only evidence is the deposition.

5 A. Correct.

6 Q. Okay.

7 A. That I know about.

8 Q. And does the evidence in the record support the  
9 conclusion that he ever even considered a blood clot in  
10 his thinking on the 26th and 27th?

11 A. There's no note that directly talks about the  
12 possibility of a blood lot.

13 Q. Okay. Let's go on the 27th. And on the 27th -- and  
14 I've got that up here and here's a copy for you. It  
15 didn't come out with the highlighting. But he has a long  
16 note in the morning about Kenneth's bowel and his general  
17 condition. And then he says, physical therapist attempted  
18 to set him up and says the patient's color became ashen,  
19 mildly diaphoretic, and tachypneic, (panting like a  
20 puppy).

21 Diaphoretic means sweaty?

22 A. Correct.

23 Q. Tachypneic is a doctor word for breathing fast?

24 A. Correct.

25 Q. Isn't having an ashen appearance with sweating and

1 fast breathing consisting with a blood clot traveling to  
2 the lungs?

3 A. It could be consistent with that and many other  
4 things, yes.

5 Q. But it is consistent with a blood clot?

6 A. Yes.

7 Q. Is that learning that Dr. Edwards should have  
8 possessed?

9 A. Yes.

10 Q. Again, no mention in that morning note about a blood  
11 clot, is there?

12 A. That's correct.

13 Q. Now, Dr. Edwards was called back to see Kenneth that  
14 afternoon. Do you recall that?

15 A. I believe that's correct.

16 Q. And I've got that note up here and Mr. Swindle is  
17 going to give you a copy of it. This one has the  
18 highlighting. It's only part of the note because it was a  
19 longer note. Do you recall that?

20 A. Yes, uh-huh.

21 Q. So he talks about low blood pressure and he talks  
22 about Kenneth could be behind in his fluid. And then he  
23 concludes, today's changes are worrisome for some ongoing  
24 serious process in the abdomen that hasn't shown itself.

25 Is that what he said?

1 A. Correct.

2 Q. So over two days, 26th, 27th, you got chest pain, you  
3 got shortness of breath, you got weakness, and now we got  
4 a falling blood pressure. And Dr. Edwards is thinking  
5 that something in the belly could explain all of those?

6 A. That's obviously part of his thinking, yes.

7 Q. Well, Doctor, that's all that he puts down in that  
8 note in terms of what he's thinking about could be the  
9 cause, isn't it?

10 A. Right. There are many causes. He was, again, on --  
11 he had a central line in, he had a belly process going on,  
12 had been in kidney failure, liver problems, anemic. So  
13 there were a multitude of things that I'm sure he was  
14 considering. He may have not written them all down,  
15 but --

16 Q. Well, Doctor, you made several statements to the  
17 effect of, you know what internists do and you know how  
18 they do things and you know what they write down.  
19 Wouldn't it be fair to say that an internist is going to  
20 write down the number one suspect diagnosis in his mind?

21 A. Right. I think it -- what it's fair to say is that  
22 the possibility of pulmonary embolus did not rise,  
23 obviously, to a level that he considered it the most  
24 likely thing going on; otherwise, I'm sure I would have  
25 started the patient, Mr. Bieler, on anticoagulants.



1 Q. Well, so with all the things that we just listed,  
 2 he's going to put a -- a belly condition that hasn't shown  
 3 itself above a possible blood clot to the lungs in his  
 4 differential diagnosis?  
 5 A. That was his judgment. I mean, the man had a dilated  
 6 colon, he had kidney failure, liver failure, was  
 7 hypotensive, had a central line in. Again, it's not a  
 8 simple case of somebody who had bone fracture and was  
 9 relatively immobile and is short of breath with chest  
 10 pains. It's not just that simple.  
 11 Q. But he -- but he -- that he does in fact describe  
 12 what Kenneth had and Dr. Edwards knew that.  
 13 A. Certainly.  
 14 Q. So just to kind of cut to the chase, does the fact  
 15 that he didn't put a blood clot going to the lungs at the  
 16 top of his differential diagnosis list, does that fact  
 17 mean that he failed to meet the standard of care and show  
 18 that degree of learning expected to be used with  
 19 reasonable care -- possessed and used with reasonable care  
 20 in the practice as an intern?  
 21 A. Obviously, I believe that Dr. Edwards met the  
 22 standard of care in not making that his top diagnosis.  
 23 Q. Okay. 28th, last day. We're closing in. Last day  
 24 of Kenneth's life, too, wasn't it?  
 25 A. Yes.

1 Q. 11:00 in the morning on the 28th, Dr. Edwards ordered  
 2 a venous ultrasound. You remember?  
 3 A. Yes.  
 4 Q. That's checking for blood clot.  
 5 A. Correct.  
 6 Q. That would mean that he's now suspecting a blood  
 7 clot.  
 8 A. That's correct.  
 9 Q. Is that fair?  
 10 A. Yes.  
 11 Q. Now --  
 12 A. Suspected it -- suspected it to the point that he  
 13 wanted to get the test done.  
 14 Q. Well, he suspected it to the point that he got --  
 15 wanted to get the test done and now he has hindsight of  
 16 all of the things we've just talked about, including the  
 17 risk factors and all of the things that happened the 26th  
 18 and 27th. Is that true?  
 19 A. That is true.  
 20 Q. Why didn't he start blood thinners at that time?  
 21 A. Well, obviously, he was still very concerned about  
 22 the anemia, the blood loss, the renal failure, the liver  
 23 problems, the GI problems. And he wasn't convinced that  
 24 it was a -- it didn't rise to the level that he thought a  
 25 blood clot was so likely that he wanted to take the risk

1 to start anticoagulants. That's how I would interpret it;  
 2 otherwise, had he thought that blood clot was so likely  
 3 the -- and the situation was life threatening that he  
 4 should start blood thinners away, obviously, I think he  
 5 would have done that.  
 6 Q. Okay. Didn't rise to his personal -- what did you  
 7 say, rise to his level of suspicion?  
 8 A. Correct.  
 9 Q. His personal level of suspicion didn't rise to, and  
 10 your testimony is that that met the standard of care.  
 11 A. Correct, in view of all of the other things going on.  
 12 Again, had it been a simple case of a patient with a long  
 13 bone fracture and now complaining of chest pains and  
 14 shortness of breath and so forth, then it would be a  
 15 different situation. But we're talking about a very  
 16 complex patient a lot of other things going on.  
 17 Q. Oh, I forgot to mention one other thing. Do you  
 18 remember, after Dr. Edwards saw him on the 27th, his blood  
 19 oxygen level dropped suddenly?  
 20 A. Yes, it did.  
 21 Q. So in addition to all of the other things, we had a  
 22 drop in blood oxygen level. That would -- adding that  
 23 factor in, you're still saying not -- not starting blood  
 24 thinners met the standard of care?  
 25 A. Yes.

1 Q. Okay. Moving on. Now, thank you, Ken.  
 2 The ultrasound was completed and it was positive at  
 3 1:30 that afternoon.  
 4 A. Yes.  
 5 Q. Dr. Edwards knew about that by 2:40. Is that fair?  
 6 A. That's fair.  
 7 Q. Do you remember that in the chart?  
 8 A. Yes.  
 9 Q. He was at a nursing home I think.  
 10 A. Correct.  
 11 Q. He could have told the nurse right then, start blood  
 12 thinners right now. Is that true?  
 13 A. That is true.  
 14 Q. He did not do that.  
 15 A. That's correct.  
 16 Q. In fact, he waited until he came back at 5:30 that  
 17 afternoon and then he ordered the blood thinners.  
 18 A. Correct.  
 19 Q. And he could have said, I want you to give an  
 20 intravenous dose of that Lovenox. And we'll talk about  
 21 that drug, but it's a heparin-type drug, correct?  
 22 A. Correct.  
 23 Q. I want you to start with an intravenous dose to get  
 24 his blood level up and then we're going to give him so  
 25 much every so many hours. Could have done that?

1 A. Yes. You're talking about heparin now? You're  
2 talking about heparin I gather.  
3 Q. Oh, Doctor, are you saying the Lovenox cannot be  
4 given intravenously?  
5 A. I mean, it's usually given subcutaneously in a  
6 twice-daily dosage.  
7 Q. Well, but my question was, can Lovenox, the drug that  
8 he used, be given intravenously to get the blood levels up  
9 immediately?  
10 A. I suppose so. I'm not aware of that being the  
11 standard.  
12 Q. Okay. Okay. Well, I didn't ask if it was the  
13 standard. I just asked if it was a possibility.  
14 A. I suppose so.  
15 Q. Okay. Now, but Dr. Edwards didn't do that. He  
16 ordered the drug to be given routinely at -- which would  
17 have been at 8:00 at night.  
18 A. Correct.  
19 Q. It was given shortly after 8. Isn't that true?  
20 A. That is true.  
21 Q. Was the timing of the delivery of the blood thinners  
22 a reasonable medical decision based upon the information  
23 available at that time?  
24 A. You know, I think one could argue there was a delay.  
25 You know, I'm not prepared to say that it breached the

1 standard of care. My understanding is that Dr. Edwards  
2 wanted to see the patient before he -- before he decided  
3 to make the orders, and I think that's a reasonable  
4 decision on his part, but --  
5 Q. How about the decision to wait another three hours to  
6 start the medicine, is that reasonable?  
7 A. I -- I don't know if that was Dr. Edwards. I think  
8 that was a hospital -- a hospital thing. I'm not sure  
9 that --  
10 Q. Can a doctor say, start this right now? Isn't that  
11 called stat?  
12 A. Stat. I suppose he could have written a stat order.  
13 Q. But he didn't, did he?  
14 A. He did not, no.  
15 Q. Okay. And -- and we can look at -- the record will  
16 speak for itself whether he said start this evening.  
17 Now, you, I believe, just testified that -- well, let  
18 me do a little comparison. Dr. Michota testified, if  
19 Kenneth had been started on a full dose of blood thinners,  
20 heparin-like blood thinners, on the 22nd, 27th or the  
21 28th, he likely would have survived the hospitalization.  
22 Let's break it down day by day.  
23 Had Kenneth been given a full dose of blood thinner  
24 on the 26th, do you believe he would have survived?  
25 A. No.

1 Q. So I assume the answer is the same for the 27th and  
2 28th?  
3 A. Correct.  
4 Q. Is that because you think that fatal clot was already  
5 lurking, it was down there, and it would have broken lose  
6 no matter whether he had been on blood thinners or not.  
7 Is that fair?  
8 A. That is fair.  
9 Q. Okay. Now, we've used this word Lovenox because  
10 that's the blood thinner that Dr. Edwards actually gave.  
11 And you and Mr. Cox talked about heparin. So I think  
12 probably you've already educated the jury, but this is a  
13 form of heparin, a special form that's derived from  
14 other-than-human sources?  
15 A. It's a low molecular-weight heparin. It's a fraction  
16 of that molecule.  
17 Q. Okay. And the usual does, I believe that you told  
18 Mr. Cox, would -- for a guy Kenneth's size would be 120  
19 milligrams given every 12 hours.  
20 A. That's correct.  
21 Q. Assuming no other issues like kidney disease.  
22 A. Correct.  
23 Q. And Dr. Edwards ordered only half of that dose given  
24 twice a day.  
25 A. That's correct.

1 Q. And you talked about the concern about the kidney  
2 function.  
3 A. Correct.  
4 Q. Well, Doctor, I believe you told me in your  
5 deposition that you agreed that the drug insert said that  
6 in severe kidney disease, you don't cut the dose in half  
7 and give it twice a day; you give the full dose, but only  
8 give it once a day. Isn't that right?  
9 A. That's what the insert says, yes.  
10 Q. And that's what the -- that big, red book I got a  
11 copy of, that Physician's Desk Reference that says?  
12 A. Correct.  
13 Q. All right. Now, what did Dr. Edwards think was going  
14 on with Kenneth's kidneys that day?  
15 A. He was concerned that Mr. Bieler was going into acute  
16 renal failure.  
17 Q. You talked about how one of these blood tests,  
18 chemistry test, creatinine had doubled?  
19 A. That's correct.  
20 Q. But didn't we agree in your deposition that the test  
21 that was done that morning showed the kidneys were  
22 functioning at a level that the recommended dose would  
23 have been the full 120 milligrams twice a day?  
24 A. Well, if you accept that -- if you accept that  
25 creatinine clearance as an estimate based upon the



1 creatinine, if you accept that, but it's a dynamic  
 2 situation. If you have a -- you can have a patient who  
 3 has a creatinine of two who has no kidney function. In  
 4 other words, if -- assuming -- I'll make an example of  
 5 you. Assuming you have a normal creatinine of 1.0 and I  
 6 go in and grab your kidneys and take them out, tomorrow --  
 7 so you have no kidneys. Tomorrow you'll have --  
 8 Q. Don't do that.  
 9 A. No, I won't. Tomorrow you'll have a creatinine of 2.  
 10 So a doubling of creatinine from 1 to 2 can mean zero --  
 11 zero kidney function. So I presume that that was Dr.  
 12 Edwards' concern.  
 13 Q. You presume?  
 14 A. Correct.  
 15 Q. Okay. Well, he did say in the note that he was  
 16 worried about renal --  
 17 A. Correct.  
 18 Q. We're working off a blood test that was done at 5:00  
 19 in the morning.  
 20 A. Correct.  
 21 Q. The creatinine level of the day before was 1.1, which  
 22 is normal in this lab, and it had gone up to 2.0.  
 23 A. Correct.  
 24 Q. So if he was concerned that the kidneys might be  
 25 getting worse, wouldn't it have made sense to ask the lab

1 to come draw another blood test and see what is it at 5:30  
 2 in the afternoon?  
 3 A. It would be a reasonable thing to do.  
 4 Q. Or you could just guess that it's gone up and cut the  
 5 Lovenox dose in half?  
 6 A. That, too.  
 7 Q. What safer, guessing or testing? It only takes an  
 8 hour, doesn't it?  
 9 A. I don't know what the turn around time is. Probably  
 10 an hour would be a reasonable turn around time. He -- Dr.  
 11 Edwards could have done that.  
 12 Q. What would have been safer?  
 13 A. I think what Dr. Edwards did was a reasonable --  
 14 reasonable thing.  
 15 Q. Well, I'm sure you do, Doctor. But my question was,  
 16 what's safer for the patient?  
 17 A. In this particular case, I don't think it would have  
 18 made one iota bit of difference.  
 19 Q. Because he was going to die anyway?  
 20 A. Unfortunately, that's the case.  
 21 Q. Okay. Now, in your deposition and I think the  
 22 testimony you gave Mr. Cox is that -- we just talked about  
 23 it, that massive blood clot that killed him cut loose,  
 24 traveled to his heart and lungs around midnight, and that  
 25 was all there was. That was the fatal thing.

1 A. Correct.  
 2 Q. Okay. Now, in your deposition, you stated, I  
 3 believe, that heparin does nothing to prevent the  
 4 dislodgement of blood clots that have not been stabilized  
 5 by the body's natural ability to scar those clots to bind  
 6 them to the wall.  
 7 A. That's correct.  
 8 Q. Well, does that scarring down and binding to the  
 9 wall, does that take a little bit of time?  
 10 A. It takes a good ten days to start getting a good  
 11 stabilization of a blood clot.  
 12 Q. Certainly, any stabilization would take more than a  
 13 few seconds or few minutes, right?  
 14 A. Certainly.  
 15 Q. Now, I apologize for the break in the action.  
 16 So, if a blood thinner like heparin had been started  
 17 on the 26th, would that have made any difference at all in  
 18 Kenneth on blood clots that had formed before the 26th?  
 19 A. No, it would not have.  
 20 Q. And we're talking about a blood thinner that's called  
 21 heparin.  
 22 A. Correct.  
 23 Q. Now, Doctor, doesn't the body make at least three  
 24 different kinds of natural blood thinners?  
 25 A. Well, the body has ways of breaking down small clots

1 that we all form, but in terms of -- of thrombus  
 2 formation, large thrombi, a blood vessel, I'm not aware of  
 3 any evidence to show that natural mechanisms break those  
 4 blood clots down.  
 5 Q. Have you ever heard of protein C, protein S, and  
 6 antithrombin?  
 7 A. Of course.  
 8 Q. Those are natural blood thinners in the body, right?  
 9 A. Correct.  
 10 Q. And that's the body's natural defenses against blood  
 11 clot disease. And --  
 12 A. Not this kind of blood clot disease, but, yes,  
 13 against blood clot disease.  
 14 Q. So you don't think that they have anything to do to  
 15 help stabilize a clot that's already present?  
 16 A. Large clot in the -- in the large veins of the leg  
 17 and pelvis, no.  
 18 Q. They don't make -- they don't stabilize the size of  
 19 the clot so it doesn't keep getting bigger and bigger and  
 20 bigger and bigger?  
 21 A. I'm not aware of any good evidence to show that that  
 22 is the case.  
 23 Q. Well, Doctor, doesn't heparin act in conjunction with  
 24 the body's natural defenses?  
 25 A. Well, heparin has its own action against blood clot

1 formation independent of the body's own natural defenses.  
 2 Q. Doctor, isn't there evidence that -- good, scientific  
 3 evidence that heparin actually activates the body's own  
 4 natural defenses, those proteins I just mentioned?  
 5 A. There may be some interaction there, but in terms of  
 6 breaking down blood clots, I am unaware of any clinical  
 7 evidence that shows that heparin results in decreased size  
 8 of blood clots or increases the stabilization, meaning the  
 9 binding to the venous wall of the clots.  
 10 I'm -- I mean, I have looked many times for articles  
 11 that would support such a thesis, and I'm simply not aware  
 12 of any -- any articles. Maybe Dr. Michota has --  
 13 Q. Yes. I may have asked a bad question. What did you  
 14 understand my question to be? Let me repeat.  
 15 My question is, isn't there good, scientific evidence  
 16 that one of the important ways heparin works is to  
 17 activate the body's natural defenses, those three proteins  
 18 and others?  
 19 A. I don't think it's major action is on those three  
 20 proteins.  
 21 Q. Okay. You don't think the major action is. Do you  
 22 think that it has some action to activate those proteins?  
 23 A. There may be some minor -- minor actions.  
 24 Q. Now, a blood clot can cause an inflammation, right?  
 25 A. A blood clot can cause inflammation.

1 Q. An inflammatory response in the vein.  
 2 A. I suppose there could be an inflammatory response.  
 3 Q. Well, when you have a blood clot in the superficial  
 4 veins, isn't it often red and warm just like an  
 5 inflammation?  
 6 A. Right, but I'm not -- the question is whether it's  
 7 the chicken or the egg. You get -- you can get an  
 8 inflammation around a vein that causes a blood clot. I'm  
 9 not -- I could be wrong, but I'm not aware of blood clots  
 10 per se resulting in an inflammatory response.  
 11 Q. Okay. Well, does -- is another way that heparin  
 12 works is to calm the inflammation that -- if it is there?  
 13 A. I don't know the answer to that.  
 14 Q. Okay. Would you agree that, if Kenneth had been on a  
 15 full dose of heparin or Lovenox, that new blood clots were  
 16 not likely to form?  
 17 A. I think, yes. If he were placed on a full or even a  
 18 renal dose of Lovenox like he was on the 28th, new blood  
 19 clots would not form. That's correct.  
 20 Q. All right. And Dr. Michota said that, if Kenneth had  
 21 been started on a form of heparin on 26th, he said there  
 22 was a 99 percent probability that Kenneth would have  
 23 survived. Just so that we can compare the two opinions,  
 24 you agree or disagree with that?  
 25 A. Totally disagree with that.

1 Q. I thought I knew the answer to that.  
 2 Okay. Now, let's -- I want to look at the autopsy  
 3 report and we got a copy of that to put into evidence.  
 4 You -- you had a chance to see the autopsy report,  
 5 right?  
 6 A. I did.  
 7 Q. I want the exhibit, the full report, which is an  
 8 exhibit. We're not going to have an Exhibit Number 9.  
 9 And marked as Exhibit Number 10 is the autopsy report.  
 10 Now, let's see. May I have that back, Doctor? I'll  
 11 get you to the right page and it might be quicker where I  
 12 want to go to. And I am going to page 4 of Exhibit 10,  
 13 which is internal examination. And we're going to start  
 14 up at the top, and I'm going to just -- I'll kind of  
 15 bracket this to make it easier for you. Okay.  
 16 And then I'm going to -- we'll start with this one.  
 17 And this is examination of the heart. Do you see where I  
 18 got it bracketed there?  
 19 A. Yes, sir.  
 20 Q. And it talks about the heart and then it says --  
 21 there's an area that comes down and says, except the right  
 22 ventricle.  
 23 Now, the ventricle is a pumping chamber of the heart  
 24 that puts blood -- pumps it into the lungs.  
 25 A. That is correct.

1 Q. Exception of the right ventricle at the outflow tract  
 2 where there is a "U" shaped cylindrical portion of  
 3 relatively smooth surface and slightly "U" shaped clot  
 4 that appears consistent with antemortem thrombus.  
 5 Does that mean there was a fresh, free-floating clot  
 6 in the heart that looked like it had formed before  
 7 Kenneth's death?  
 8 A. Correct.  
 9 Q. Now, let's go down to the -- I think there is a  
 10 little short paragraph and then we're going to -- there's  
 11 a paragraph about the lungs.  
 12 A. Yes, uh-huh.  
 13 Q. And you see where it says, In the pulmonary trunk and  
 14 the pulmonary artery branches of each lung is firm,  
 15 cylindrical, coherent clot as well as some friable reddish  
 16 material about the areas of firm clot. The firm clot  
 17 appears on transection to have some areas of laminar  
 18 structure.  
 19 Now, laminar structure, doesn't that mean that that  
 20 is a mature blood clot that has been somewhere else as it  
 21 formed and grew and it dislodged and went to the heart and  
 22 lungs just like you said?  
 23 A. Yes.  
 24 Q. In fact, it even says it's got little branches off of  
 25 it that aren't consistent with the lungs, doesn't it?



1 A. Correct.  
 2 Q. Where do you think that came from?  
 3 A. Probably his leg.  
 4 Q. And then if you go down a few sentences, it says, The  
 5 clot varies from approximately 1 centimeter to 2  
 6 centimeters in diameter.  
 7 Do you see that?  
 8 A. Yes, sir.  
 9 Q. And focally in the left lung appears adherent to the  
 10 pulmonary artery wall.  
 11 So let me have the next exhibit, please. And give me  
 12 the exhibit and then the copy of that that's in the other  
 13 thing, please give to Mr. Cox.  
 14 Doctor, I'm going to show you what we've marked as  
 15 Exhibit 11.  
 16 MR. SWINDLE: We started with 11. Maybe we  
 17 should make 11 Number 9. That we skip --  
 18 MR. KEEVER: No, we will make this Number 12  
 19 just to kind of keep the record going. I'm going to  
 20 mark that out and make it Exhibit Number 12.  
 21 BY MR. KEEVER:  
 22 Q. This is an artist rendition, which we expect Dr.  
 23 Michota to testify is an accurate depiction of the autopsy  
 24 findings. As you look at it, do you think the artist did  
 25 a reasonably good job of depicting the findings we talked

1 about?  
 2 A. I suppose so.  
 3 Q. Not exact. I mean, we don't have a picture, but it's  
 4 an artist rendition.  
 5 Now, go back to that phrase, "appears adherent to the  
 6 pulmonary artery wall." So that would be that process of  
 7 scarring down and trying to bind itself to the vein wall,  
 8 right?  
 9 A. Correct.  
 10 Q. And that takes some time.  
 11 A. Yes.  
 12 Q. Like maybe could have that been the 27th when that  
 13 blood clot went up there when Kenneth started having low  
 14 blood pressure and low blood oxygen?  
 15 A. It's possible.  
 16 Q. Do you think it's likely?  
 17 A. I don't know.  
 18 Q. And I just -- you know, I just want to get one other  
 19 thing in the record, and I apologize for this. I meant to  
 20 say that's -- that's a fair and accurate representation of  
 21 the autopsy findings, isn't it?  
 22 A. I can't testify to that. I don't know the answer to  
 23 that.  
 24 Q. Do you think it's unfair?  
 25 A. I don't know.

1 Q. Okay.  
 2 A. I just don't know.  
 3 Q. Okay. Now, so, Doctor, get back to this it takes  
 4 some time. My question was, and I don't remember whether  
 5 you answer it or not, and I apologize if I'm asking again,  
 6 but could that big clot have come up there on the 27th  
 7 and, you know, we had the drop in blood oxygen, we had the  
 8 drop in blood pressure, and would that be enough time to  
 9 have it form some adherence by late on the 28th?  
 10 A. It would be very unlikely in one day's time to  
 11 adhere, and I don't think that you could say that entire  
 12 clot was there on the 27th. That would have killed Mr.  
 13 Bieler. I think that's what ultimately killed -- killed  
 14 Mr. Bieler.  
 15 Q. Okay. Well, and so my -- my question was, if -- if  
 16 the clot came late on the 28th, it wouldn't have had time  
 17 to adhere to the wall. Would you agree with that?  
 18 A. Right. I'm not sure from the autopsy report. The  
 19 pathologist says, "appears to be adherent." This was an  
 20 autopsy that was done a year -- over a year later. So I  
 21 don't -- I would have to have a pathologist really say  
 22 whether or not that's meaningful or not, so I'm --  
 23 Q. But we have the records. That's the records we have  
 24 to go on.  
 25 A. Right. I wouldn't -- I would be skeptical that that

1 clot was truly adherent to the --  
 2 Q. You would?  
 3 A. -- to the walls.  
 4 Q. Well, we know that there's a fresher -- a fresher  
 5 clot in the right ventricle because it doesn't have the  
 6 laminations and so forth.  
 7 A. Right.  
 8 Q. So, Doctor, what do you think the chances are that  
 9 what happened on the 27th, was you had this big clot that  
 10 occluded most of the outflow and caused the symptoms, and  
 11 then late on the 28th you have another fresh clot that  
 12 blocks out flow of that pumping chamber, and with the  
 13 combination of the two, Kenneth just couldn't -- his heart  
 14 couldn't keep it going?  
 15 A. I mean, that is possible.  
 16 Q. Now, I want to go back to the written record. And I  
 17 want to specifically go to the 26th.  
 18 If Dr. Edwards never considered a blood clot on the  
 19 26th, would that have been below the standard of care?  
 20 MR. COX: Asked and answered.  
 21 THE WITNESS: Again, you know, the physical  
 22 therapist, he has written down here about the chest  
 23 pain. He also says no complaints of shortness of  
 24 breath at the beginning of his note.  
 25 BY MR. KEEVER:

1 Q. Of course, he was short of breath at the end of his  
2 note, right?

3 MR. COX: Object.

4 BY MR. KEEVER:

5 Q. Was he short of breath at the end of his note?

6 A. Dr. Edwards said that -- mentioned that he was  
7 puffing or panting.

8 Q. Panting like a puppy, is that --

9 A. I think that was on the 27th.

10 Q. Oh, okay.

11 A. Again, I can only tell you what I've testified to.

12 Q. The suspicion of a blood clot obviously did not rise  
13 to the level that would make him want to investigate that  
14 on the 26th?

15 A. Exactly. It was a judgment call. And, again, we're  
16 focusing all on these -- the shortness of breath and the  
17 chest pains and the things that are all classic, but we're  
18 leaving out all of the other things that were going on  
19 with Mr. Bieler so --

20 Q. But we had all of these things going on, including  
21 all of the symptoms that we've listed time and time again.  
22 I don't want to put them back up.

23 A. Absolutely.

24 Q. Okay. And on the 27th -- now, the 27th morning and  
25 afternoon, is there anything in the record that would

1 suggest Dr. Edwards was thinking blood clot going to the  
2 lungs?

3 A. Again, you've asked me that, and there is nothing  
4 that Dr. Edwards wrote specifically about blood clots.

5 Q. And if -- if Dr. Edwards on the 27th, if he never  
6 even considered a blood clot going to the lungs, did that  
7 fall below the standard of care?

8 A. If he absolutely never considered it, I would say it  
9 fell below the standard of care. But with the caveat  
10 that, if it didn't rise to the level of acting on that  
11 consideration, no, that does not fall below the standard  
12 of care.

13 Q. So if he even suspected a little bit then, then --  
14 but it just wasn't enough to tip him over into doing  
15 something, that met the standard of care?

16 A. That is correct, yes.

17 Q. Okay. Now, you made the comment to Mr. Cox, I  
18 believe several times, that Dr. Edwards made his decisions  
19 based upon reasonable judgments.

20 A. That's correct.

21 Q. Doctor, do you agree that, if a doctor is making his  
22 judgment call and that goes against the scientific  
23 evidence that's available, just because it's his judgment  
24 doesn't make that meet the standard of care, does it?

25 A. There's certainly judgments that are inappropriate

1 and don't make sense and that would fall below the  
2 standard of care, absolutely, yes.

3 Q. In fact, do you remember on page 99 of your  
4 deposition that you told me, and I'm going quote from it,  
5 obviously the judgment that were made turned out not to be  
6 correct judgments, but I think not making the correct  
7 judgment doesn't necessarily mean you breach the standard  
8 of care?

9 Do you remember that statement?

10 A. Yes.

11 Q. Well, Doctor, you been a very cooperative witness,  
12 and I'm going to pass the witness at this time. Thank  
13 you.

14 A. You've been very nice as well. Thank you.

#### 15 EXAMINATION

16 BY MR. COX:

17 Q. I have just a few questions.

18 Would you look at the physical therapy notes of the  
19 26th?

20 MR. KEEVER: The full note?

21 MR. COX: Yes, the full note, not just what Mr.  
22 Keever showed you.

23 MR. KEEVER: Do you have it?

24 THE WITNESS: I may have it here.

25 MR. KEEVER: Then I'm going to look at it

1 myself.

2 THE WITNESS: I'm sorry. I don't have it here.

3 MR. COX: Let me just hand it to you and you  
4 can --

5 MR. KEEVER: Oh, good. Thank you, Walter.

6 BY MR. COX:

7 Q. Would you read that entire note from the physical  
8 therapist that morning?

9 A. Yes. It says -- it's at 10:07, 1/26/09 at 10:07 in  
10 the morning. Patient agreeable to therapy, improved  
11 transferring today. No complaints of shortness of breath.  
12 Patient transferred to bedside commode then ambulated a  
13 total of 12 feet. Patient complained of sharp pain under  
14 the left breast, patient returned to room and sat in  
15 chair. Something has improved. I'm sorry I can't --  
16 treatment -- oh, I'm sorry. Treatment has improved gait  
17 -- gait ability, but has very poor endurance.

18 Q. Is there any comment from the physical therapist on  
19 that physical therapy visit of the 26th that the patient,  
20 Mr. Bieler, was short of breath?

21 A. No. On the contrary, he says there's no complaint of  
22 shortness of breath.

23 Q. And would you look, is there a second physical  
24 therapy note later that day?

25 A. Yes.



1 Q. And would you tell the time of that note?  
 2 A. That is at 2:20 in the afternoon.  
 3 Q. And could you read that note into the record, please?  
 4 A. Yes. It says, patient still very weak but willing to  
 5 do exercises. See above for listed exercises. All  
 6 unassisted exercises 15 to 20 reps. Assisted exercises  
 7 were ten to 15 secondary complex movements. Patient  
 8 tolerated exercises well.  
 9 Q. Any comment there about shortness of breath on the  
 10 26th?  
 11 A. No, sir.  
 12 Q. There is a comment, is there not, on the 27th about  
 13 the patient becoming short of breath?  
 14 A. Yes.  
 15 Q. Not on the 26th as you were asked earlier.  
 16 A. That's correct.  
 17 Q. And the chest pain in the patient's chest on the  
 18 26th, is there any notation that that was accompanied by  
 19 shortness of breath?  
 20 A. No. It actually said there was no complaints of  
 21 shortness of breath.  
 22 Q. Doctor, I realize you're not a pathologist. Do you  
 23 put much stock in findings done one year after the death  
 24 of a person who passed?  
 25 MR. KEEVER: Objection to form.

1 THE WITNESS: I mean, my experience has been  
 2 that postmortem autopsies I mean of long duration are  
 3 not as accurate and are more difficult to interpret.  
 4 BY MR. COX:  
 5 Q. You were asked a lot of questions about the body's  
 6 natural ability to thin blood and to break up clots.  
 7 Where does that -- where do those proteins come from, what  
 8 part of the body?  
 9 A. They're made by the liver.  
 10 Q. And if the liver is dysfunctional, is not functioning  
 11 normally, would that affect the liver's ability to  
 12 generate those enzymes or those proteins?  
 13 A. Yes, it would.  
 14 Q. And, in fact, did Mr. Bieler have abnormal liver  
 15 function studies virtually every day he was in the  
 16 hospital?  
 17 A. Yes, he did.  
 18 Q. Doctor, you were asked a lot of questions about those  
 19 guidelines from the American College of Chest Physicians.  
 20 Is there anywhere in that long book of guidelines that  
 21 speaks to the person of Mr. Bieler with all of his  
 22 problems that he presented with on January 14th?  
 23 A. No. That is exactly the major point I've tried to  
 24 make in my testimony, and that is that there are no  
 25 guidelines that speak to Mr. Bieler's case. And these

1 guidelines have to be used in that context, that a man who  
 2 presents with dilated colon and small intestine, renal  
 3 failure, liver failure, all of the things that were going  
 4 on with Mr. Bieler, there are no guidelines or algorithms  
 5 that would direct a doctor to treat such an individual in  
 6 a very specific way. And one has to use judgment and  
 7 judgments can vary from doctor to doctor.  
 8 Q. Dr. Daniels, you were asked a question about who  
 9 actually consulted with the surgeon Dr. Lloyd Ruff. There  
 10 was some doubt that the emergency room physician had  
 11 ordered such a surgical consultation.  
 12 Would you look at Dr. Ruff's admitting orders on the  
 13 night of admission from the emergency department? What is  
 14 the very last order that Dr. Ruff -- excuse me -- Dr.  
 15 Silver wrote?  
 16 A. Right. It said -- I thought I remembered this. It  
 17 was, consult Dr. Ruff in the a.m., so it was written by  
 18 the emergency room doctor.  
 19 Q. So it was the emergency room physician who first  
 20 thought there needed to be a surgical consult. Is that  
 21 correct?  
 22 A. That's correct.  
 23 Q. And in deed that's what happened?  
 24 A. Yes, sir.  
 25 Q. Doctor, in light of all of the questions that you've

1 been asked by Mr. Kever, do you still hold to the  
 2 opinions you've expressed on direct examination?  
 3 A. I believe very firmly that, despite the tragic  
 4 outcome of this case, Dr. Edwards acted responsibly and  
 5 practiced good medicine and did not breach the standard of  
 6 care.  
 7 MR. COX: Thank you. That's all I have.  
 8 EXAMINATION  
 9 BY MR. KEEVER:  
 10 Q. Doctor, I will be very brief, I promise you.  
 11 You got that PT note there. It's written  
 12 chronological. First, no shortness of breath, then  
 13 talking about the transfer, then the sharp chest pain.  
 14 A. Yes.  
 15 Q. He didn't break it down 10:00, no shortness of  
 16 breath; 10:05, chest pain. So we don't know that real  
 17 chronology, right?  
 18 A. Well, I think he -- I mean, I think this was all  
 19 during -- I mean, I think one can say that this was his  
 20 evaluation during the period of time that he spent with  
 21 Mr. Bieler at that time.  
 22 Q. Well, but, Doctor, if the point of the question is,  
 23 was the shortness of breath relatively contemporaneous,  
 24 happening at the same time as the chest pain, we know that  
 25 Dr. Edwards described shortness of breath that was

described to him by the physical therapist, and his note is timed at 10:00. Is that right?

MR. COX: On the next day, the 27th.

BY MR. KEEVER:

Q. Let's go to -- well, I think -- let's just go to that and go to the Dr. Edwards note on the 26th. Do you have that handy so I can use mine, sir? If I'm wrong, I sure want to -- I want to know that. Let's see. Look at -- on my page, it is page 38 of batch 1. And I'm going to want to put this back into this exhibit, but read the first two lines up there and read the date and the time.

A. It's 1/26/09 page 2. It doesn't have a time up here. The time is 10 a.m. When he walked with therapist today, he went only a few steps before he ran out of gas, exhausted and puffing, had to sit down immediately.

Q. That was on the 26th, not the 27th?

A. Yes.

Q. Okay. Good. Thank you.

Now, you said that there are no guidelines that list every condition that Kenneth Bieler had, right?

A. No guidelines that would -- that speak specifically to a patient like Kenneth Bieler.

Q. Sure. Because he's really a unique individual in all of his medical needs?

A. Correct.

Q. Now, but, Doctor, you called a paradigm, that's kind of like a check list you do, first this, then that, then that, then that, then that.

A. Algorithm.

Q. Algorithm. I'm sorry. And an algorithm is something that you have to do. A guideline is something that you use to form the algorithm that you're going to use in an individual patient. Isn't that true?

A. That is true.

Q. Okay. I thought that.

Now, the ER doctor, I'm going to have to get to the records probably on the orders, but didn't Dr. Edwards -- do you think Dr. Edwards asked ER doctor to put in a consult for Dr. Ruff in the morning?

A. I don't know the answer.

Q. You don't know the answer to that. We can talk to Dr. Edwards about that.

A. Yes, sir.

Q. But Dr. Ruff didn't come in and see Kenneth in the emergency room. Can we agree with that?

A. That's true.

Q. Okay. Good.

You retain -- you're standing by your opinions despite, as Mr. Cox said, all of our discussion and you still believe that -- you still believe that the

judgments, the medical decision that Dr. Edwards made were reasonable, even though in your own words, obviously, the judgments that were made turned out not to be correct judgments, but that doesn't mean you've breached the standard of care.

A. That is correct.

MR. KEEVER: Thank you, Doctor. I think you're going to make your flight.

THE WITNESS: Thank you.

MR. COX: I have no other questions.

THE VIDEOGRAPHER: We're off the record at 12:19.

(The deposition was concluded at 12:19 p.m.)

CERTIFICATE  
IN THE CIRCUIT COURT OF CRAWFORD COUNTY, ARKANSAS  
MARY HARTMAN, et al PLAINTIFF  
Vs. Case No. CV2010-425-1  
HENRY N. EDWARDS, M.D. DEFENDANT  
Re: Videotaped Deposition of John Daniels, M.D.  
Date: November 17, 2012

STATE OF ARKANSAS )

COUNTY OF SALINE )

I, VALARIE D. FLORA, a Certified Court Reporter and Notary Public in and for the aforesaid county and state, do hereby certify that the facts as stated by me in the caption hereof are true; that the foregoing answers in response to the questions asked were made before me by the witness after said witness had been by me cautioned and sworn to testify to the truth, the whole truth, and nothing but the truth; that the deposition was taken in accordance with the Rules of Civil Procedure; that the statements were recorded by me in machine shorthand; and that the questions and answers were thereafter reduced to typewriting by me.

I FURTHER CERTIFY THAT the above and foregoing deposition as set forth in typewriting is a full, true, correct, and complete transcription of the proceeding had at the time of taking of the deposition; and that I am not of counsel for, nor related to any of the parties in this suit, nor otherwise interest therein.

WITNESS MY HAND AND SEAL on this the 20th day of November, 2012.

VALARIE D. FLORA, CCR, RPR  
Certificate No. 516



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<b>abbreviate</b> 13:16 <b>abbreviation</b> 13:20 <b>abdomen</b> 23:11 68:3 74:6 77:10 77:16,17 99:24 <b>abdominal</b> 19:7 77:8 <b>ability</b> 12:19 111:5 124:17 126:6,11 <b>able</b> 51:7 <b>abnormal</b> 21:7 126:14 <b>abnormalities</b> 34:15 82:21 <b>absolutely</b> 8:1 13:21 26:14,25 27:14 36:11,23 38:11 39:4 41:16 43:6 48:5 57:23 59:10 60:23 71:6 93:3 121:23 122:8 123:2 <b>accept</b> 59:21 82:6 93:23 108:24,24 109:1 <b>accompanied</b> 125:18 <b>account</b> 22:24 <b>accurate</b> 117:23 118:20 126:3 <b>act</b> 112:23 <b>acted</b> 128:4 <b>acting</b> 122:10 <b>action</b> 111:15 112:25 113:19,21 113:22 <b>actions</b> 113:23 <b>activate</b> 113:17,22 <b>activates</b> 113:3 <b>active</b> 12:2,10 30:16 55:18 67:19 75:5 <b>actively</b> 93:14 <b>activities</b> 30:9 <b>activity</b> 3:14 28:23 28:25 67:1,18,23 74:11,23 92:5	<b>acute</b> 34:14 82:20 108:15 <b>adding</b> 103:22 <b>addition</b> 19:18,20 20:22 103:21 <b>additional</b> 9:17 <b>adequately</b> 45:3 <b>adhere</b> 119:11,17 <b>adherence</b> 119:9 <b>adherent</b> 117:9 118:5 119:19 120:1 <b>adjusted</b> 34:8 <b>administration</b> 36:10 69:8 <b>administrator</b> 5:4 <b>administratrix</b> 1:3 <b>admission</b> 15:18 15:21 18:12,18 18:20 21:6 23:1 23:17 24:16 25:1 25:16 28:9 31:2 35:14 42:20 57:20 61:11 74:9 87:10 94:6 127:13 <b>admit</b> 27:23 75:7 <b>admitted</b> 20:4 52:5 56:10 58:21 <b>admitting</b> 53:15 127:12 <b>adrenal</b> 10:18 <b>affect</b> 126:11 <b>affiliation</b> 10:22 10:24 11:1 <b>aforesaid</b> 132:9 <b>afternoon</b> 32:18 33:16 61:11 66:24 99:14 104:3,17 110:2 121:25 125:2 <b>age</b> 8:8 54:25 63:1 <b>ago</b> 22:1 42:12 43:20 44:17 57:14 87:19 <b>agree</b> 15:4 29:23 33:22 34:25 35:7 38:7 39:19 44:15 46:4 47:9,14,16	47:22 48:2 52:2 52:4,10,15 53:12 53:24 55:4 56:1 56:25 60:24 63:11,14 67:17 72:10 92:23 108:20 114:14,24 119:17 122:21 130:20 <b>agreeable</b> 42:2 97:9 124:10 <b>agreed</b> 4:6 7:15 45:10 54:4,20 75:12,14 77:10 89:19 108:5 <b>agreement</b> 45:12 <b>ahead</b> 20:16 28:9 65:12 96:17 <b>aid</b> 16:18 <b>airlines</b> 3:20 <b>al</b> 5:5 132:3 <b>algorithm</b> 130:4,5 130:5,7 <b>algorithms</b> 127:4 <b>allegation</b> 45:7 <b>allegations</b> 44:24 <b>ambulated</b> 90:18 124:12 <b>ambulation</b> 38:18 <b>american</b> 3:20 37:21 48:11 126:19 <b>amount</b> 22:16 <b>amounts</b> 22:24 <b>anatomy</b> 9:14 <b>anderson</b> 56:21 <b>anecdotal</b> 50:15 <b>anemia</b> 22:1 78:1 84:18 94:2,6 102:22 <b>anemic</b> 19:10 22:4 25:18 70:25 91:25 100:12 <b>anesthesiologist</b> 22:22 <b>answer</b> 63:24 72:18 94:17 96:5 96:25 97:3 107:1 114:13 115:1	118:22 119:5 130:15,16 <b>answered</b> 98:1 120:20 <b>answers</b> 132:10,13 <b>antemortem</b> 116:4 <b>anticoagulant</b> 25:23 26:13 <b>anticoagulants</b> 26:17 58:23 100:25 103:1 <b>anticoagulated</b> 68:8 <b>anticoagulation</b> 25:15,21 26:7,11 26:15 <b>antithrombin</b> 112:6 <b>anybody</b> 21:16,23 23:7 24:22 36:15 37:16 64:5 68:18 71:2 85:18 <b>anymore</b> 76:9 <b>anyway</b> 52:20 80:16 110:19 <b>apologize</b> 12:23 65:7 72:5 94:12 96:18 111:15 118:19 119:5 <b>apologized</b> 7:7 <b>appear</b> 31:18 <b>appearance</b> 98:25 <b>appears</b> 116:4,17 117:9 118:5 119:19 <b>applies</b> 81:23 <b>apply</b> 58:3,15,25 82:2 <b>applying</b> 59:5 <b>appreciate</b> 75:16 94:11 <b>approach</b> 39:24 41:11 <b>approaching</b> 40:15 83:20 <b>appropriate</b> 23:8 23:13 26:17,17 34:13 35:5 36:21 37:2 39:11,14,16	39:25 40:17 83:21 <b>appropriately</b> 23:22 36:25 37:3 37:8 <b>approximately</b> 5:2 14:18 117:5 <b>area</b> 115:21 <b>areas</b> 47:14 116:16 116:17 <b>arent</b> 89:10 116:25 <b>argue</b> 38:11 39:4 105:24 <b>argumentative</b> 86:16 <b>arkansas</b> 1:1,15 2:7,10,14 4:3,4,8 5:9 6:11 7:16,21 8:4,16 17:2,8 132:2,6 <b>arrest</b> 34:22 <b>arrow</b> 63:17 <b>art</b> 39:23 <b>arteries</b> 90:1 <b>artery</b> 116:14 117:10 118:6 <b>article</b> 38:15 50:18 50:21 56:20 57:11,17,19 58:14,15,17 59:6 80:23 <b>articles</b> 47:5 48:18 49:23 50:3,7,9,23 80:18 82:2 113:10,12 <b>artist</b> 117:22,24 118:4 <b>arts</b> 9:3 <b>ashen</b> 98:18,25 <b>ashton</b> 15:25 18:14 19:6 35:15 <b>asked</b> 7:8 12:23 14:22 44:3 48:8 56:5 71:22 73:14 77:7 82:8 94:15 98:1 105:13 113:13 120:20 122:3 125:15 126:5,18 127:8



128:1 130:13 132:10 <b>asking</b> 13:19,19 85:1,12 119:5 <b>asks</b> 14:20 <b>aspirin</b> 25:7,8 <b>assessment</b> 27:8 <b>assigned</b> 19:21 <b>assist</b> 16:19 <b>assistant</b> 69:20 <b>assisted</b> 125:6 <b>associate</b> 11:3 <b>assume</b> 107:1 <b>assuming</b> 14:9 83:19 107:21 109:4,5 <b>asterisk</b> 64:15,16 <b>attach</b> 42:18 44:10 <b>attempted</b> 98:17 <b>attend</b> 27:19 <b>attended</b> 20:9 25:1 <b>attending</b> 11:15 <b>attorney</b> 2:3,6 14:22 <b>attorneys</b> 4:6 5:13 <b>authored</b> 47:4 <b>authorities</b> 50:12 <b>authority</b> 46:11,13 <b>authors</b> 50:7 <b>autopsies</b> 126:2 <b>autopsy</b> 3:19 16:10 21:23 36:6 89:25 115:2,4,9 117:23 118:21 119:18,20 <b>availability</b> 94:24 95:20 <b>available</b> 48:4,15 73:19 76:10 94:9 96:23 97:2 105:23 122:23 <b>average</b> 14:10,13 <b>averages</b> 80:20 <b>avoid</b> 26:11 52:12 72:6,17 77:1 <b>aware</b> 6:9,12,21 16:8 43:22,24 59:20,23 68:22 98:2 105:10	112:2,21 113:11 114:9 <hr/> <b>B</b> <b>b</b> 2:9 3:9 9:3 49:18 49:19 <b>bachelor</b> 9:3 <b>back</b> 7:7 42:7 43:1 57:14 61:15 64:21 70:16 74:2 83:9 87:24 93:24 97:15 99:13 104:16 115:10 118:5 119:3 120:16 121:22 129:10 <b>background</b> 6:8 8:2 17:14 41:21 <b>backward</b> 94:5 <b>bad</b> 61:21 113:13 <b>badly</b> 19:8 <b>ball</b> 40:6 92:2 <b>balloons</b> 53:8 <b>barnes</b> 6:5 11:5,11 11:14,15,16,17 11:17 17:10 <b>based</b> 17:14 19:2 21:13 23:15 30:8 31:5 36:19 38:1 41:21 46:16 48:3 48:24 49:21 58:17,20 87:11 88:19 94:8 105:22 108:25 122:19 <b>basically</b> 9:3 12:20 20:7,23 29:14 48:14 67:13 74:23 91:17 <b>basing</b> 50:19 <b>basis</b> 11:21 12:4 13:5 30:6,14 33:5,5 93:4,4,7 <b>batch</b> 129:9 <b>bathroom</b> 30:23 30:24 55:20 67:9 <b>becoming</b> 125:13 <b>bed</b> 28:17,19 30:11 30:13,13,15,16	30:20,22,25 50:25 55:19 60:15 67:4,5,6,9 67:14,21,23 74:21 75:5,10 91:6 <b>bedfast</b> 66:16 <b>bedridden</b> 29:19 30:16,24 75:5 <b>bedside</b> 30:23 74:13 75:6 90:18 95:9,9 124:12 <b>beg</b> 80:11 <b>began</b> 35:10,13,15 35:20 <b>beginning</b> 4:3 6:10 39:3 120:24 <b>begun</b> 35:14,15 <b>believe</b> 11:10 14:7 14:8 16:21 17:4 17:23 22:2 24:14 27:5 28:11 30:4 31:16 32:1 33:12 36:5,9 37:12 40:19 59:17 72:1 76:22 79:9,14 84:4,25 89:19 90:4 91:15 92:17 92:19 94:10,21 95:19,25 99:15 101:21 106:17,24 107:17 108:4 111:3 122:18 128:3 130:25,25 <b>believer</b> 39:16 <b>believes</b> 34:9 35:4 <b>believing</b> 94:6 <b>bell</b> 94:20 <b>belly</b> 68:3 70:20 72:17 100:5,11 101:2 <b>beneficiaries</b> 1:4 <b>benefit</b> 33:19 40:2 40:6 76:2 <b>best</b> 49:13 <b>better</b> 28:24 60:13 <b>bieler</b> 1:2,3,4,4,5,6 5:4,5 15:5 16:9 16:23 17:20 18:5	18:11,12,14,17 18:19 19:1,21 21:2 23:7,12 24:1,12,15 25:1 25:14 26:1 27:16 27:22 28:21 29:4 30:2,9 31:6 33:19 34:22 35:3 35:17,22 37:13 38:3 39:3,8,11,15 39:18,20 40:3,18 40:23 41:6,7,12 43:8 44:16 45:8 57:3,6 58:3,16,17 59:18,20 62:1 64:5 76:2 81:10 81:24 91:22 92:3 96:24 100:25 108:15 119:13,14 121:19 124:20 126:14,21 127:4 128:21 129:20,22 <b>bielers</b> 15:17 16:5 16:11 19:3 20:17 21:11,15 22:2 27:1 31:19 34:1 35:10 57:9 126:25 <b>big</b> 34:19 54:14 108:10 119:6 120:9 <b>bigger</b> 112:19,19 112:20,20 <b>biggest</b> 79:12 <b>bind</b> 111:5 118:7 <b>binder</b> 42:15 <b>binding</b> 111:8 113:9 <b>biology</b> 8:25 <b>birthday</b> 6:20 7:14 <b>bit</b> 16:11 18:3 21:8 43:1 52:16 54:8 56:19 61:5 62:18 82:16 110:18 111:9 122:13 <b>black</b> 42:15 <b>blanking</b> 18:22 <b>bleeding</b> 22:13 23:9 25:19 26:12	26:22 27:3,8 38:16,17 71:1,8 71:10,11,12 72:9 77:1,3,11,15,23 82:13,15,17,18 83:11,21 84:3,14 84:21 86:4 87:21 88:3,6 <b>bleeds</b> 25:24 26:19 <b>bloating</b> 19:7 <b>blocks</b> 120:12 <b>blood</b> 3:15,16 22:3 22:8,8,11,14,15 22:16,18,21,23 22:24 23:3,5,6,16 23:20,21,23 25:18 26:1,18 27:9 29:15 32:3 32:4,20 33:4 35:20 36:22 37:2 40:13 43:10 44:25 45:1,2,3,16 46:11,11,12,13 46:19,21 47:2,6 47:10 50:6,24 51:9,19 52:6,7,8 52:12 53:9,24 54:4,5 56:7,25 57:22 59:9,10,14 61:1,6,13,18,19 61:22 63:12 67:2 68:4,11,14,15,17 68:21,23 69:3,8 70:20,24 71:4,4,5 72:6,12,17 76:3 77:1,3,13,25 78:1 78:3,4,5,10,10,14 79:1,2,21,22,23 79:25 80:4,6,19 81:5,6,11,13,13 81:16,20 82:7,19 82:20,25 83:10 83:14,22 84:5,7,8 84:11,12,20,23 84:24 85:6,9,10 85:10,15,19,20 86:2,3,6,7,9,12 86:15 87:6,8,11 87:16,24 88:6,8
--	---	--	---	--



89:9,14,25 90:6,7 90:9 91:18 92:11 92:13,25 94:16 95:5 98:9,12 99:1,5,10,21 100:4 101:3,15 102:4,6,20,22,25 103:2,4,18,22,23 104:11,17,24 105:8,21 106:19 106:20,23 107:6 107:10 108:17 109:18 110:1,23 111:4,11,16,18 111:20,24 112:2 112:4,8,10,12,13 112:25 113:6,8 113:24,25 114:3 114:8,9,15,18 115:24 116:20 118:13,14,14 119:7,8 120:18 121:12 122:1,4,6 126:6 <b>board</b> 10:7,9 12:22 12:25 17:4 41:15 <b>body</b> 54:16,20 79:13 80:1,6 111:23,25 112:8 126:8 <b>bodys</b> 111:5 112:10,24 113:1 113:3,17 126:5 <b>bone</b> 22:19 24:22 54:10 63:1 78:24 78:25 79:6,12,12 101:8 103:13 <b>bones</b> 81:1 <b>book</b> 48:9 108:10 126:20 <b>born</b> 8:3,4,4 <b>bottom</b> 29:11 <b>bowel</b> 19:13,16 71:14 73:16 98:16 <b>box</b> 2:9,10 <b>bracket</b> 115:15 <b>bracketed</b> 115:18 <b>branches</b> 116:14	116:24 <b>breach</b> 27:12 28:7 123:7 128:5 <b>breached</b> 17:25 105:25 131:4 <b>breadth</b> 79:18 <b>break</b> 18:3 37:5 42:1,5,8 70:15 79:17 81:22 89:3 89:4 97:10,13,16 97:20 106:22 111:15 112:3 126:6 128:15 <b>breakdown</b> 14:17 <b>breaking</b> 111:25 113:6 <b>breast</b> 90:20 124:14 <b>breath</b> 32:2 35:17 40:21,25 41:2 91:17,23 93:21 94:8 100:3 101:9 103:14 120:24 121:1,5,16 124:11,20,22 125:9,13,19,21 128:12,16,23,25 <b>breathing</b> 98:23 99:1 <b>brevity</b> 13:15 <b>brief</b> 128:10 <b>bring</b> 44:3,5 78:14 <b>broke</b> 78:16 90:2 <b>broken</b> 63:1 78:24 78:25 79:6 81:1 107:5 <b>brother</b> 7:12,13 <b>brought</b> 50:5,20 <b>bsc</b> 90:18 <b>build</b> 81:13 <b>bulk</b> 12:5 <b>bunch</b> 85:6 <b>buren</b> 6:10 7:3 17:2,7 <b>bushman</b> 2:13 4:4 5:8 <b>busy</b> 11:22  <hr/> <b>C</b> <hr/>	c 2:1 112:5 132:1,1 <b>calendar</b> 6:25 <b>call</b> 39:23 45:23 49:10 51:13 52:17 53:3 54:16 54:19 69:4,7 121:15 122:22 <b>called</b> 11:16,17 19:19 32:25 52:23 70:7,12 79:15 99:13 106:11 111:20 130:1 <b>calls</b> 69:9 <b>calm</b> 114:12 <b>cancel</b> 7:10 <b>cant</b> 50:25 60:17 61:18 64:6 74:2 84:15 85:22 87:11 118:22 124:15 <b>caption</b> 132:10 <b>cardiology</b> 10:14 <b>cardiorespiratory</b> 34:22 <b>care</b> 3:10 12:16,17 12:18,20,21 16:23 17:1,19,19 17:23,24,25 18:9 18:19 21:19 23:7 24:25 25:11,20 25:22 26:14 27:13 28:1,7 38:8 39:7,18 40:1,18 41:12,14 41:16 45:12,15 45:21 53:14,22 59:7 68:23 71:25 74:23,23 75:22 81:1 85:1,3 88:4 92:12,14,17 93:15 101:17,19 101:19,22 103:10 103:24 106:1 120:19 122:7,9 122:12,15,24 123:2,8 128:6 131:5 <b>cared</b> 19:1	<b>carries</b> 47:17 <b>case</b> 1:7 6:9,22 7:25 13:23 14:8 14:21,23 15:5,8,9 15:12,16 16:19 16:22 19:22 20:17 21:11 39:13 40:2,16,20 40:23,24 41:7,9 43:13,17 68:11 69:10 78:5 82:3 84:22 97:5 101:8 103:12 110:17,20 112:22 126:25 128:4 132:3 <b>cases</b> 13:24 14:20 15:2 <b>cat</b> 77:8 <b>catch</b> 69:25 <b>catching</b> 72:5 <b>catheter</b> 24:5 <b>cause</b> 4:6 6:25 20:20 21:10,12 53:25 100:9 113:24,25 <b>caused</b> 20:18,22 21:22 43:8 45:7 120:10 <b>causes</b> 21:17 100:10 114:8 <b>causing</b> 21:14 94:1 <b>cautioned</b> 132:11 <b>cautious</b> 26:10 <b>caveat</b> 122:9 <b>ccr</b> 4:7 132:22 <b>ccs</b> 22:21,23 79:2 79:22 80:5 <b>cell</b> 85:23 <b>cells</b> 22:8 78:19 <b>center</b> 15:18,22 16:6 18:20 19:4 29:5 <b>centimeter</b> 117:5 <b>centimeters</b> 117:6 <b>central</b> 24:1,4 40:12 100:11 101:7 <b>certain</b> 24:24 36:15 47:14	81:25 <b>certainly</b> 13:18 14:22 20:12 22:14 23:23 24:17 28:7 35:15 35:20 36:9,17 37:19 42:3 44:1 47:15,18 48:16 48:22 49:5,24 61:9 62:3 64:17 66:1 75:8,11 84:23 92:5 97:11 101:13 111:12,14 122:25 <b>certainty</b> 35:20 56:24 57:21 <b>certificate</b> 3:8 132:22 <b>certified</b> 4:3 10:7,9 12:22,25 17:4 41:15 132:8 <b>certify</b> 132:9,15 <b>chair</b> 67:20,21,23 124:15 <b>chairman</b> 46:20 <b>chamber</b> 115:23 120:12 <b>chance</b> 35:3 36:4 58:19 79:7 115:4 <b>chances</b> 36:16 120:8 <b>change</b> 31:19,22 <b>changed</b> 71:19 <b>changes</b> 84:19 99:23 <b>chapter</b> 50:6 <b>chapters</b> 47:4 <b>charge</b> 14:24 15:1 15:2,3 <b>chart</b> 59:24,24 62:19 64:1,24 65:24,25 68:12 72:4,5 75:13 95:14 96:21 104:7 <b>chase</b> 101:14 <b>check</b> 130:2 <b>checking</b> 102:4 <b>chemistry</b> 108:18
---	---	--	--	---



<b>chest</b> 31:25 35:16 37:21 40:21,24 41:2 47:1 48:10 48:11 50:2 91:16 91:23 93:20 94:7 100:2 101:9 103:13 120:22 121:17 125:17,17 126:19 128:13,16 128:24	92:25 94:16 95:5 98:9 99:1,5,11 101:3,15 102:4,7 102:25 103:2 107:4 110:23 111:11 112:11,12 112:13,15,16,19 112:25 113:24,25 114:3,8 116:3,5 116:15,16,16,20 117:5 118:13 119:6,12,16 120:1,5,9,11,18 121:12 122:1,6	130:19 <b>comes</b> 36:5 52:21 69:7 84:18 115:21 <b>coming</b> 43:16,21 86:3,7 91:17 <b>comment</b> 73:6 122:17 124:18 125:9,12 <b>comments</b> 93:19 <b>commode</b> 30:23 74:14 75:6 90:18 124:12 <b>common</b> 10:17 13:7,9 53:25 85:18 <b>commonly</b> 29:19 31:13 <b>communities</b> 17:2 <b>community</b> 17:7 <b>comparable</b> 46:10 <b>compare</b> 46:9,15 114:23 <b>comparing</b> 46:9 57:2 <b>comparison</b> 106:18 <b>compilation</b> 48:15 <b>complained</b> 90:19 124:13 <b>complaining</b> 103:13 <b>complaints</b> 120:23 124:11 125:20 <b>complete</b> 9:9 132:16 <b>completed</b> 9:11 10:2,3,4 41:23 104:2 <b>completing</b> 9:1 <b>complex</b> 40:7,14 41:8 103:16 125:7 <b>compliant</b> 124:21 <b>complicated</b> 26:7 26:8 89:13 <b>complication</b> 88:7 <b>complications</b> 25:14 27:9	<b>compress</b> 53:8,9,9 <b>compression</b> 52:23 52:24 53:4 61:23 62:14 63:15 75:17,21 76:1,7,8 76:14 88:11,14 <b>compressive</b> 50:24 <b>comprise</b> 12:15 <b>conceivable</b> 36:13 <b>concern</b> 22:11 23:7 25:19,20,25 41:2 72:21,23,25 73:1 83:2,12,21 84:3,5,7 92:16 108:1 109:12 <b>concerned</b> 68:21 72:19,21,25 84:14,20,24 86:10,14 88:5 102:21 108:15 109:24 <b>concerning</b> 16:23 27:7 <b>concise</b> 94:13 <b>concluded</b> 131:13 <b>concludes</b> 99:23 <b>conclusion</b> 21:14 87:3,5 98:9 <b>conclusions</b> 86:23 87:1,4 <b>condition</b> 19:4,25 20:10,12 31:19 31:23 98:17 101:2 129:20 <b>confirm</b> 42:22 44:5 91:14 <b>confirmation</b> 3:20 <b>conflict</b> 7:1 <b>conjunction</b> 112:23 <b>connection</b> 18:9 <b>conscious</b> 88:15,23 <b>consider</b> 12:17 41:5 92:11,18 93:13 <b>consideration</b> 92:13 93:8 122:11 <b>considered</b> 51:18	59:14 67:23 88:2 92:19 93:6 94:15 94:20,23 98:9 100:23 120:18 122:6,8 <b>considering</b> 61:1 100:14 <b>consistent</b> 31:1 44:16,18 99:3,5 116:4,25 <b>consisting</b> 99:1 <b>constant</b> 67:18 <b>consult</b> 73:10,17 73:21,24 127:17 127:20 130:14 <b>consultant</b> 47:1 <b>consultation</b> 71:16 127:11 <b>consultative</b> 12:4 <b>consulted</b> 19:17 70:3,7,9,10 73:11 73:13 74:1 127:9 <b>contacting</b> 15:8 <b>contemporaneous</b> 128:23 <b>context</b> 127:1 <b>continue</b> 24:9 <b>continued</b> 7:9 <b>contrary</b> 124:21 <b>contributed</b> 47:3 <b>contributing</b> 3:16 <b>contributory</b> 94:2 94:7 <b>convinced</b> 102:23 <b>cooperative</b> 123:11 <b>copy</b> 98:14 99:17 108:11 115:3 117:12 <b>correct</b> 6:11,23,24 7:17,18,25 8:17 8:23 10:5,6 11:13 18:11 23:22,25 25:12 27:10,11 31:4 32:9,12,21 33:20 37:23 38:22,25 39:12,12 41:24 42:13,14 43:11
---	---	---	---	---



43:14,17,18 45:17,24 46:1 48:1,21 49:1,2,9 49:20 50:4,14,16 51:2,5,11,15,20 52:1,19 53:5,11 54:2,11,13,16,17 55:3,11,15 57:25 61:3,14,20 62:6,9 62:12,15 63:13 63:16,21 64:10 69:11 70:4 71:18 71:21 72:3 74:8 74:10 75:19 76:15,18,21,22 77:4,6,9,12,14,21 77:24 78:2,17,20 79:2,14,20,24 82:15 84:1 89:15 89:17,21 90:4,8 90:21 92:8,9 94:3,21 95:6,25 98:5,22,24 99:12 99:15 100:1 102:5,8 103:8,11 104:10,15,18,21 104:22 105:18 107:3,20,22,25 108:3,12,19 109:14,17,20,23 111:1,7,22 112:9 114:19 115:25 116:8 117:1 118:9 122:16,20 123:6,6 125:16 127:21,22 129:25 131:3,6 132:16 <b>corrected</b> 20:13 22:18 50:18 <b>couldnt</b> 24:1,3 60:18 64:8 95:24 120:13,14 <b>coumadin</b> 26:15 32:25 33:1,4 34:15 37:1 <b>counsel</b> 65:13 132:17 <b>count</b> 77:25 78:1 78:10 79:1 84:11	84:12 86:2 <b>country</b> 54:1 <b>counts</b> 3:15 22:3 22:24,25 23:16 78:14 81:16,20 82:7 84:23,24 85:7,15,19 86:9 <b>county</b> 1:1 4:3 7:20 132:2,7,9 <b>couple</b> 23:21 80:17 <b>course</b> 19:12,21 24:13 60:20 112:7 121:1 <b>court</b> 1:1 2:13 3:8 4:3,4 5:8,11 45:20 132:2,8 <b>cover</b> 10:12 <b>covered</b> 24:14 51:8 <b>cox</b> 2:9,9 3:4,6 5:15,15,24 41:25 43:15,19,25 44:7 44:12 48:8 51:8 54:8 55:24 56:5 65:10 67:17 68:2 77:7 78:9,11,22 80:12,17 83:15 86:16,20 87:19 93:18 95:3 96:10 98:1 107:11,18 110:22 117:13 120:20 121:3 122:17 123:16,21 124:3,6 126:4 128:7 129:3 130:24 131:10 <b>crawford</b> 1:1 7:20 132:2 <b>creatinine</b> 20:4,5 34:3,6 108:18,25 109:1,3,5,9,10,21 <b>credentials</b> 46:2,9 <b>credit</b> 69:5 <b>crystal</b> 40:5 <b>ct</b> 23:11 <b>current</b> 10:22 <b>currently</b> 10:7,19 <b>curriculum</b> 3:11 3:12 <b>cut</b> 50:24 54:5	63:17 101:14 108:6 110:4,23 <b>cutoff</b> 55:1,1 <b>cv</b> 45:25 46:18,18 <b>cv20104251</b> 1:7 132:3 <b>cvs</b> 45:23 <b>cylindrical</b> 116:2 116:15 <hr/> <b>D</b> <hr/> <b>d</b> 1:8,14 2:3,3 3:1 3:11,12 4:2,2,7,7 5:6,20 132:4,5,8 132:22 <b>daily</b> 30:2,6,14 34:18 84:9,23 85:19 86:9 <b>daniels</b> 1:14 3:11 4:2,7 5:8,20,25 6:1,2 39:7 42:11 127:8 132:5 <b>date</b> 5:1 43:22 129:11 132:5 <b>day</b> 4:2 11:24,25 25:7,8 30:6,15,22 31:2,16 32:1 34:4,6,10,11 59:15 61:11 84:19,19 87:23 101:23,23 106:22 106:22 107:24 108:7,8,14,23 109:21 124:24 126:15 129:3 132:18 <b>days</b> 11:23 35:21 40:25 43:20 62:21 63:22 64:6 73:2,6 76:5,6,17 76:20 81:9,20 82:1,8,10,12,19 82:23 83:3 89:18 92:4 100:2 111:10 119:10 <b>daytoday</b> 11:20,21 <b>deal</b> 13:9 28:4 47:5 72:9 <b>dealing</b> 40:7,10	<b>death</b> 1:4 15:5 16:11 21:3 26:20 34:22 36:15 43:8 45:8 53:25 60:2 60:5 74:5 83:24 90:9 116:7 125:23 <b>deaths</b> 25:24 <b>decide</b> 51:12 <b>decided</b> 106:2 <b>decision</b> 71:5 88:23 94:8 105:22 106:4,5 131:1 <b>decisions</b> 39:15 48:3 122:18 <b>decompressed</b> 73:21 <b>decompressing</b> 73:22 <b>decompressive</b> 38:4 73:14 <b>decrease</b> 29:1,17 <b>decreased</b> 71:23 113:7 <b>decreases</b> 29:13 <b>deed</b> 15:23 127:23 <b>deep</b> 13:14 24:23 25:6 27:20 28:6 28:20 29:1,17 31:10 32:7,15,16 35:9 36:3,20 40:9,22 41:7 46:22 56:12 57:4 57:5,9 58:3,4,9 58:19,24 59:2,23 60:16 <b>defendant</b> 1:8 2:8 14:15 132:4 <b>defendants</b> 14:3 14:18 <b>defending</b> 83:24 <b>defense</b> 43:12 <b>defenses</b> 112:10,24 113:1,4,17 <b>definitely</b> 24:20 87:10,10 <b>definition</b> 45:11 45:20	<b>definitive</b> 37:16,17 <b>definitively</b> 35:13 <b>degree</b> 9:2,4,5,12 9:14 35:19,24 41:18 55:6,16 56:1,3 63:2 66:25 75:14 93:2 101:18 <b>degrees</b> 30:21 <b>dehydrated</b> 19:8 19:10 <b>dehydration</b> 20:21 <b>delay</b> 105:24 <b>delivery</b> 105:21 <b>department</b> 9:20 96:22 127:13 <b>depending</b> 30:21 49:22 <b>depicting</b> 117:25 <b>depiction</b> 117:23 <b>deposition</b> 1:13 4:2,7 5:7 7:16 13:16 15:3 16:14 16:16 33:8 35:12 37:25 42:19 45:10 46:16 47:8 50:5 54:3,25 56:11,15,22 57:1 57:13 59:18,22 60:1,4,7,18 65:19 65:20 70:18 71:22 78:21 83:23 88:17,20 88:25 89:24 93:7 94:18 95:19 96:6 96:9,11 97:4,21 98:4 108:5,20 110:21 111:2 123:4 131:13 132:5,12,15,16 <b>depositions</b> 16:12 16:13,18 17:16 <b>derived</b> 107:13 <b>describe</b> 19:3 30:8 101:11 <b>described</b> 128:25 129:1 <b>desk</b> 48:14 62:18 108:11
--	--	--	---	--



<b>despite</b> 128:3 130:24	92:16,20,21 93:9 93:12 95:13,20 98:15 101:15	<b>diseases</b> 13:6 <b>dislodged</b> 116:21	<b>documentation</b> 29:21,24 31:7 44:3 60:12,13 64:16 85:7	<b>doppler</b> 32:10,16 <b>doris</b> 1:4
<b>detail</b> 23:24 49:15	102:20,24 103:6 103:9 105:12,15 106:13 108:20	<b>dislodgement</b> 111:4	<b>documented</b> 64:5	<b>dosage</b> 105:6
<b>determination</b> 23:16,19 51:17 51:25	122:10 128:15 130:12,19	<b>doctor</b> 6:3,4,7,16 6:21 7:10,15 8:2 9:12,13 10:8,20 11:19 12:22 13:4 13:15,22 14:24 15:4 16:21 17:1 17:5,6,12,15 19:2 20:16 21:25 22:20 24:15,25 25:13 26:12 27:6 28:16 29:4,21 31:1,18 32:6 33:8 35:9 36:19 37:20 41:13,15 41:17,22 43:12 43:19 44:14,21 45:5,12 47:16,19 47:24 48:3 49:18 50:16 51:6,13 56:18 57:24 58:7 58:8 59:5 60:6 60:14,17 62:16 65:5 66:25 70:7 70:11 73:13 84:25 88:18 89:2 90:24 92:24 97:8 97:20 98:23 100:7,16 105:3 106:10 108:4 110:15 111:23 112:23 113:2 115:10 117:14 119:3 120:8 122:21,21 123:11 125:22 126:18 127:5,7,7,18,25 128:10,22 130:1 130:11,13 131:7	<b>documents</b> 15:14	<b>dose</b> 33:15,23 34:1 34:8,11,18,19,21 35:5 104:20,23 106:19,23 107:23 108:6,7,22 110:5 114:15,18
<b>determine</b> 23:8 49:14 89:14	<b>die</b> 37:3 110:19	<b>doctors</b> 28:1 37:23 45:22 48:20 56:20 58:2 60:10 68:22	<b>doesn't</b> 23:2 36:6 44:21 59:3,7 71:11 74:16 76:13 90:25 95:7 110:8 111:23 112:19,23 116:19 116:25 120:5 122:24 123:7 129:12 131:4	<b>doses</b> 26:17 37:2
<b>determined</b> 20:19 21:12 23:10 38:8	<b>died</b> 88:20	<b>document</b> 27:6,13 27:24 28:5 59:24 59:25 92:16	<b>doing</b> 10:2 73:14 84:9 85:2 86:1 122:14	<b>doubleblind</b> 49:11 49:12
<b>develop</b> 27:25 36:20 56:25 58:23	<b>dies</b> 37:6		<b>donna</b> 1:5	<b>doubled</b> 34:3,5 108:18
<b>developed</b> 50:2	<b>difference</b> 36:12 110:18 111:17		<b>dont</b> 11:24,25 20:19 21:2,11,16 21:22 23:19 28:1 35:11 36:15 37:12,16 40:5,6 45:5 46:5,14 49:15 50:17 54:17,22 56:5 57:1,8 58:25 59:17 60:24 62:23 63:24,24 64:2 65:5,7,24 68:1 69:25 70:1 71:2 73:18 74:3 74:5 76:4,5,16 79:5,7,9 82:8 84:21 86:25 87:4 87:7 88:22,24 89:1 90:13 91:13 92:17 94:17 95:7 96:2 106:7 108:6 109:8 110:9,17 112:14,18,18 113:19,21 114:13 118:3,17,22,25 119:2,4,11,21 121:22 123:1 124:2 128:16 130:15,16	<b>doubling</b> 34:5 109:10
<b>developing</b> 19:7 24:15,23 29:1 36:4 56:7,12 57:22	<b>different</b> 17:9 36:17 37:19 39:20,22,23,24 40:8,15 78:18 81:19 86:22,23 87:1,3,4 103:15 111:24		<b>dr</b> 5:15,25 6:2 12:21 15:6 16:14 16:16,23 17:5,18 17:23 18:1,8,11 18:13,16,21,24 18:25,25 19:18 19:19,21 21:19 21:20 23:8,11 24:8,8,11,11,13 24:13 25:9,10,15 27:6,12,19 28:4,8 28:17 30:1 32:1 32:6,18 33:8,12 33:14,22 34:9,12 34:17,20 35:2,4 35:12,22 37:25 38:2,7,9,12,13,19 38:20 39:2,7,7,9 39:14,16 40:2,6 40:17,19 41:4,9 41:11,14 42:11 44:24 45:14,25 46:10,13 50:21 54:20 56:10,22 57:17 58:4 59:14 59:22 60:4,6,18 60:25 61:5,22 62:4 64:8 67:24 68:11,13,14 69:10,21 70:2,2,3 70:3,10,12,18 71:2,7,16,22	
<b>develops</b> 31:10	<b>differential</b> 101:4 101:16			
<b>device</b> 61:23	<b>differently</b> 17:6			
<b>devices</b> 38:17 53:4 63:15 75:17,21 76:1,7,9,14 88:12 88:14	<b>difficult</b> 46:15 126:3			
<b>dewey</b> 1:5	<b>dilate</b> 19:13			
<b>diabetes</b> 10:16 13:2,10 46:3	<b>dilated</b> 19:12,14 24:3 26:2 82:22 101:5 127:2			
<b>diabetic</b> 12:14,19	<b>dilating</b> 29:14			
<b>diagnose</b> 13:5 45:16	<b>direct</b> 127:5 128:2			
<b>diagnosis</b> 20:16 45:2 91:18 92:18 94:15 100:20 101:4,16,22	<b>directly</b> 24:6 98:11			
<b>dialyzed</b> 20:14	<b>disagree</b> 33:22,24 34:25 35:7,8 38:7 57:22,23 92:23 114:24,25			
<b>diameter</b> 117:6	<b>discovered</b> 21:3			
<b>diaphoretic</b> 98:19 98:21	<b>discussing</b> 58:13			
<b>diarrhea</b> 24:4	<b>discussion</b> 80:16 130:24			
<b>dictated</b> 74:6	<b>disease</b> 10:15,16 10:17,17,18,18 13:12,17 20:21 41:3 46:11,11,12 46:14,19,21 47:2 47:6,10 52:6 59:14 61:1 93:1 107:21 108:6 112:11,12,13			
<b>didn't</b> 7:4,5,5 21:24 44:1 56:9,14 59:24,25 60:18 61:24 64:8 65:21 67:12 68:2,16 70:5,8 71:7 72:8 73:13 75:23,24 83:10 86:5 87:19 88:5 89:8 92:10				



72:19,25 73:6 74:1,1,6,12 75:20 77:20 80:8 81:19 82:8 83:12,18,19 84:15,22 85:2,6 86:8,13,15,17 87:2,13,25 88:2,5 88:15,19 90:22 91:9,10 92:7,10 92:17 93:25 94:14 95:12,17 97:23 99:7,13 100:4 101:12,21 102:1 103:18 104:5 105:15 106:1,7,18 107:10,23 108:13 109:11 110:10,13 113:12 114:20 117:22 120:18 121:6 122:1,4,5 122:18 127:8,9 127:12,14,14,17 128:4,25 129:6 130:12,13,14,17 130:19 131:1 <b>dramatic</b> 21:1 89:20 <b>draw</b> 110:1 <b>drop</b> 103:22 119:7 119:8 <b>dropped</b> 7:4 23:17 103:19 <b>drug</b> 32:25 48:15 61:12 104:21,21 105:7,16 108:5 <b>dual</b> 9:14 <b>dubai</b> 6:14 <b>due</b> 34:1 86:3 <b>duly</b> 5:21 <b>duplex</b> 96:24 <b>duration</b> 126:2 <b>dynamic</b> 109:1 <b>dysfunctional</b> 19:15 126:10	<b>earlier</b> 14:8 36:3 74:19 75:12 80:12 93:18 125:15 <b>early</b> 8:2 28:8 <b>easier</b> 115:15 <b>eat</b> 24:1,3 <b>edited</b> 47:2 <b>educated</b> 107:12 <b>education</b> 9:1,6,9 <b>educational</b> 6:7 <b>edwards</b> 1:8 5:6 5:15 12:21 15:6 16:14,24 17:5,18 17:23 18:1,8,12 18:14,16 19:18 19:21 21:19,20 23:8 24:13,13 25:15 27:6,12,19 28:4,8,17 30:2 32:1,6,18 33:14 34:12,17 35:22 38:2,9,14,19 39:2 39:7,9,14,16 40:2 40:7,17 41:4,9,11 41:14 44:24 45:15 54:20 56:10 58:4 59:14 59:22 60:6,18,25 61:5,22 64:8 68:11 70:3,18 71:2,22 72:19,25 73:6 74:1,6,12 75:20 77:20 82:8 83:12,19 84:15 84:22 85:2,6 86:8 87:13,25 88:2,5,15,19 90:22 91:9,10 92:7,10,18 93:25 94:14 95:12,17 97:23 99:7,13 100:4 101:12,21 102:1 103:18 104:5 105:15 106:1,7 107:10 107:23 108:13 109:12 110:11,13 120:18 121:6	122:1,4,5,18 128:4,25 129:6 130:12,13,17 131:1 132:4 <b>effect</b> 85:13,13 100:17 <b>effective</b> 76:9 <b>effort</b> 89:16 <b>egg</b> 114:7 <b>eight</b> 11:24 22:5 <b>eighteen</b> 80:2,3,4 <b>either</b> 20:14 22:23 64:8 74:16 95:9 <b>elliott</b> 65:19 <b>email</b> 7:2 <b>emailed</b> 7:7 80:17 <b>emboli</b> 13:14 36:24 <b>embolism</b> 27:21 28:6 <b>embolus</b> 35:18,25 36:5,7,8,21 37:3 37:9,10 41:8 43:9 91:24 100:22 <b>emergency</b> 19:9,18 19:20 70:5,7,8,10 70:11 127:10,13 127:18,19 130:20 <b>emphasis</b> 47:20 <b>encouraged</b> 30:13 <b>ended</b> 30:10 <b>endocrine</b> 10:17 12:13 13:10 <b>endocrinology</b> 9:25 10:10,11 13:3 <b>endurance</b> 124:17 <b>entire</b> 15:21 62:25 75:18 119:11 124:7 <b>entirety</b> 16:2,4 <b>enzymes</b> 21:7 126:12 <b>episodes</b> 32:4 <b>eponym</b> 52:21 <b>equipment</b> 96:23 97:2 <b>equivalent</b> 23:3,5	<b>er</b> 130:11,13 <b>essentially</b> 33:18 34:17 <b>estate</b> 1:3 5:5 <b>estes</b> 2:9 <b>estimate</b> 14:5,17 108:25 <b>estimated</b> 22:21,23 <b>et</b> 5:5 132:3 <b>evaluation</b> 27:8 128:20 <b>evening</b> 106:16 <b>everybody</b> 29:9 <b>evidence</b> 18:16 48:4,6 49:7 50:11,23 60:7 62:2 63:22 64:1 64:2 68:12 71:12 76:8 77:23 82:12 82:17 85:11,25 85:25 86:2 94:9 98:4,8 112:3,21 113:2,3,7,15 115:3 122:23 <b>evidencebased</b> 49:3,6 <b>exact</b> 39:23 118:3 <b>exactly</b> 21:3 28:12 38:12,13,19 42:12 121:15 126:23 <b>examination</b> 3:4,5 3:6,7 4:7 5:23 32:11 42:9 115:13,17 123:15 128:2,8 <b>examined</b> 5:21 <b>example</b> 41:4 50:22 51:18 109:4 <b>exception</b> 116:1 <b>excerpt</b> 3:18 <b>excuse</b> 70:24 72:11 127:14 <b>exercise</b> 39:10 <b>exercised</b> 39:14,16 <b>exercises</b> 30:11,13 30:14 125:5,5,6,6 125:8	<b>exhausted</b> 91:4 129:15 <b>exhibit</b> 42:18 44:10,13 45:19 45:22,25 64:23 64:24 65:1,5 78:8 96:1,8 115:7,8,8,9,12 117:11,12,15,20 129:10 <b>exhibits</b> 44:11 64:25 <b>existence</b> 6:16 <b>expect</b> 48:3 78:25 117:22 <b>expectation</b> 84:8 <b>expected</b> 101:18 <b>experience</b> 6:8 13:23 17:15 25:25 36:19 41:22 48:18 58:20 64:3 68:6 69:6 81:15,18 82:6 126:1 <b>experiences</b> 48:24 50:15 <b>expert</b> 13:23,25 43:16 <b>expertise</b> 46:13 <b>explain</b> 20:1 22:1 27:14 29:7 87:11 100:5 <b>explanation</b> 82:22 <b>explicit</b> 95:22 <b>expressed</b> 41:17 128:2 <b>extent</b> 12:19 30:17 57:12 75:3 <b>externally</b> 80:20 <b>extremely</b> 12:10 <b>extremities</b> 29:15 31:8 75:6 <b>extremity</b> 31:13 <b>eye</b> 72:5
<b>E</b> <b>e</b> 2:1,1,3 3:1,9 132:1,1				<b>F</b> <b>f</b> 132:1 <b>face</b> 40:5 <b>facility</b> 15:25



18:15	102:9 104:5,6	18:19 19:22	<b>forming</b> 16:19	89:10 108:2
<b>fact</b> 39:4 43:15	107:7,8 118:20	21:22 25:1 35:10	<b>fort</b> 7:3 8:4,8,9,12	109:3,11 126:15
50:5 52:16 57:18	<b>fairly</b> 51:7	35:14 37:1,9	8:16	<b>functioning</b>
57:19 59:22 60:8	<b>fall</b> 75:21 122:7,11	44:14 45:10	<b>forth</b> 103:14 120:6	108:22 126:10
75:20 78:7 79:4	123:1	47:24 56:8 62:20	132:15	<b>further</b> 4:9 9:6,16
84:22 85:9,14,19	<b>falling</b> 100:4	62:20,21 72:7,9	<b>fortham</b> 2:12 5:10	25:14 29:23 67:8
92:16 93:12	<b>familiar</b> 10:11	73:2,6 76:20	<b>forthman</b> 64:18	67:8 82:15,17
101:11,14,16	16:22 17:1 37:22	78:7 81:20 82:7	<b>found</b> 19:9,10	132:15
104:16 116:24	49:3	82:10,12,19 83:3	<b>four</b> 9:8 20:4	
123:3 126:14	<b>family</b> 44:24	127:19 128:12	42:12 47:3 54:15	<b>G</b>
<b>factor</b> 51:19,22	<b>far</b> 71:20	129:10 130:2	55:7 66:8,16,20	<b>gait</b> 66:15 124:16
52:6,11 55:1,4,5	<b>fast</b> 98:23 99:1	<b>fit</b> 29:10 91:17,20	73:2,6 81:20	124:17
55:16,18,21,22	<b>fatal</b> 107:4 110:25	91:21	82:8,10,12,19	<b>game</b> 92:2
61:18 75:8 94:2	<b>fayetteville</b> 2:10	<b>five</b> 11:23 23:5	83:3	<b>gas</b> 73:15 91:4
94:7 103:23	<b>febrile</b> 19:10	55:10 56:24	<b>fourth</b> 55:4	129:14
<b>factors</b> 3:13,16	<b>february</b> 6:18 7:11	57:21 58:21 67:1	<b>fraction</b> 107:15	<b>gastroenterologist</b>
24:21 27:8 40:22	<b>fed</b> 24:6	74:24 81:13 97:8	<b>fracture</b> 3:17	73:18,19,24
51:14,17 54:9,24	<b>feeding</b> 23:25	<b>flight</b> 131:8	18:10 23:18	<b>gastrointestinal</b>
55:23 56:2,24	<b>feel</b> 42:20,21	<b>flora</b> 4:3,7 5:12	24:21,22 54:10	20:23 27:17
57:21 58:10,12	<b>feeling</b> 19:7 30:22	132:8,22	68:19 101:8	28:23 40:11 71:1
58:18,22 59:7,10	37:13	<b>flow</b> 120:12	103:13	71:13
62:24 67:2 68:22	<b>feet</b> 66:21,23,24	<b>flu</b> 75:10,10	<b>fractured</b> 15:19	<b>gather</b> 105:2
74:24 75:15 92:6	67:16 90:19	<b>fluid</b> 99:22	18:6	<b>gathered</b> 93:18
92:24 93:2	124:13	<b>focally</b> 117:9	<b>fractures</b> 80:18,19	<b>general</b> 17:12
102:17	<b>fell</b> 18:6 32:3	<b>focus</b> 64:18	<b>frame</b> 44:15	98:16
<b>facts</b> 16:22 132:9	122:9	<b>focusing</b> 121:16	<b>frank</b> 43:15 46:19	<b>generally</b> 36:3
<b>failed</b> 20:3 44:25	<b>fellowship</b> 9:25	<b>follow</b> 38:9	<b>franklin</b> 3:12	<b>generate</b> 126:12
101:17	<b>femoral</b> 3:16	<b>followed</b> 9:24	16:16	<b>genuine</b> 84:7
<b>failing</b> 20:24	<b>femur</b> 15:19 18:6	<b>following</b> 4:5,10	<b>frankly</b> 46:17	<b>getting</b> 34:10
<b>failure</b> 19:10 20:1	22:22 23:18	18:18 94:11	<b>free</b> 42:20,21	38:14 55:19
20:10,18,18,20	79:15 80:19	<b>follows</b> 5:22	<b>freefloating</b> 116:5	58:19 67:9,13,20
20:22,23 21:15	<b>femurs</b> 81:1	<b>followup</b> 94:22	<b>frequency</b> 37:11	67:21,22 75:6
21:17,17 26:23	<b>field</b> 10:12 11:8	<b>foot</b> 29:12	<b>frequently</b> 31:11	84:12 85:16,17
27:17,17 34:6,14	46:3 50:13	<b>force</b> 28:13,14	64:4	87:25 95:18
40:10,11 45:1,3	<b>fifty</b> 54:7	59:19	<b>fresh</b> 116:5 120:11	97:18 109:25
68:9 78:4 82:21	<b>figure</b> 47:13	<b>foregoing</b> 132:10	<b>fresher</b> 120:4,4	111:10 112:19
88:13 91:25	<b>filled</b> 63:10 75:14	132:15	<b>friable</b> 116:15	<b>gi</b> 20:24 28:24
100:12 101:6,6	<b>finally</b> 10:1 31:16	<b>forget</b> 89:9	<b>front</b> 42:15 43:4	77:22 102:23
102:22 108:16	90:3	<b>forgot</b> 103:17	74:20	<b>give</b> 7:16 62:17
127:3,3	<b>find</b> 76:19 91:7	<b>form</b> 35:10,23	<b>full</b> 5:25 25:7,8	64:19,23 81:21
<b>failures</b> 45:7	95:11,14	38:3 39:2 55:24	28:9,12,13,13,14	89:14,15 97:7
<b>fair</b> 43:5 54:21	<b>finding</b> 31:14	83:15 107:13,13	31:2 34:21 59:19	99:17 104:19,24
55:23 56:4 57:2	<b>findings</b> 117:24,25	112:1 114:16,19	106:19,23 108:7	108:7,7,8 117:11
58:16 59:16 60:3	118:21 125:23	114:21 119:9	108:23 114:15,17	117:13
60:8,22 61:4,8	<b>fine</b> 89:5	125:25 130:7	115:7 123:20,21	<b>given</b> 33:2,6,7,16
63:3,8 65:25	<b>finished</b> 97:21	<b>formation</b> 112:2	132:15	34:13,15,21 60:1
67:24 68:24,25	<b>firm</b> 116:14,16,16	113:1	<b>fulltime</b> 10:19	63:12 105:4,5,8
73:7 82:4,9,14	<b>firmly</b> 128:3	<b>formed</b> 17:17 37:5	<b>function</b> 20:7 27:1	105:16,19 106:23
86:24 100:19,21	<b>first</b> 8:18 14:7,9	111:18 116:6,21	27:2,4 34:2	107:19,23



<b>gives</b> 33:3	<b>good</b> 11:8 17:24	<b>handss</b> 79:18	15:6 16:14,24	<b>home</b> 36:25 104:9
<b>giving</b> 15:15 34:17	18:2 21:18 29:16	<b>handy</b> 129:7	17:18 19:18	<b>honestly</b> 46:12
69:5	43:7 53:23 70:18	<b>happen</b> 22:9	39:14 40:2 41:14	80:4 88:24
<b>glad</b> 83:10	86:21 89:6,7	<b>happened</b> 6:25	132:4	<b>hopefully</b> 28:22
<b>go</b> 8:9,13 9:16	90:12 93:21	21:4 44:16 89:20	<b>heparin</b> 32:24	<b>hormonal</b> 10:16
23:24 28:9 30:23	96:22 111:10,10	93:22 102:17	35:23 36:10,11	<b>hose</b> 25:3 29:6,7,8
44:8 49:15,21	112:21 113:2,15	120:9 127:23	36:14 37:14 38:3	29:10,14,16,17
51:7 55:20 59:3	117:25 124:5	<b>happening</b> 128:24	39:2,5,6 88:7	29:21 38:18
59:19 61:15	128:5 129:18	<b>happens</b> 36:24	89:14,15 105:1,2	52:18,24 59:20
65:12,22,24	130:22	<b>happy</b> 14:23 75:7	107:11,13,15	61:23,25 62:2,4
66:13 67:7,9	<b>gotten</b> 25:3 31:25	82:5	111:3,16,21	62:11 64:3,4,6
68:13,14 72:4	<b>grab</b> 109:6	<b>harm</b> 47:21,25	112:23,25 113:3	76:4,6,7,9,12,13
74:2 81:25 84:13	<b>graduate</b> 8:19	<b>harrisons</b> 48:17,18	113:7,16 114:11	76:16,20
89:3,18 90:6	<b>graduated</b> 8:10,11	<b>hartman</b> 1:2 5:3	114:15,21	<b>hospital</b> 6:6 11:5,5
93:24 96:17,19	8:16 29:11 52:23	132:3	<b>heparinlike</b>	11:11,12,16,16
98:13 109:6	52:24	<b>hasnt</b> 99:24 101:2	106:20	11:17,18 12:1,2,4
115:12 116:9	<b>graduating</b> 8:18	<b>havent</b> 88:18	<b>heparins</b> 34:7	12:5,8,10,10
117:4 118:5	<b>grams</b> 78:15	96:15	<b>heparintype</b>	17:10 20:4,6
119:24 120:16,17	<b>great</b> 41:2	<b>hazardous</b> 58:16	104:21	21:6 22:6 23:1
129:5,5,6	<b>greater</b> 27:2	<b>head</b> 96:3	<b>hereof</b> 132:10	23:17 24:10,16
<b>goes</b> 29:13 49:16	<b>grew</b> 116:21	<b>health</b> 57:7	<b>heres</b> 36:2 98:14	25:16 27:23 29:5
79:17,18 122:22	<b>grind</b> 50:7	<b>hear</b> 19:25	<b>hes</b> 46:22,23 47:1	30:3 39:8 46:23
<b>going</b> 7:6 17:12	<b>group</b> 37:23 46:21	<b>heard</b> 19:24 33:12	47:2,4 69:2,4	52:5 53:16 56:7
20:22 21:1 23:3	<b>groups</b> 46:20	37:20 112:5	75:3 80:10 82:20	56:10 57:4 58:21
24:6 40:8 41:1	<b>guaiac</b> 23:13	<b>hears</b> 33:11	82:21,24 83:24	62:4 92:4 106:8
42:18,24 43:20	<b>guess</b> 61:15 62:16	<b>heart</b> 24:6 45:2,4	84:11,12,23	106:8 126:16
43:25 44:1,7,10	110:4	110:24 115:17,20	85:19,20 86:10	<b>hospitalist</b> 12:3
44:14 45:18,19	<b>guessing</b> 110:7	115:23 116:6,21	91:5 92:5,6 96:3	18:22
51:7 56:17,25	<b>guideline</b> 130:6	120:13	100:8 101:2	<b>hospitalists</b> 18:22
57:7 62:16,17,21	<b>guidelines</b> 38:11	<b>hed</b> 18:17 60:2	102:6 129:23	28:1
63:17 64:15,19	38:19,23 39:1	<b>heel</b> 30:12	<b>high</b> 8:11,16,19	<b>hospitalization</b>
65:4 70:14 71:3	48:8,10 50:1	<b>height</b> 51:24	24:6 27:21 37:7	20:9 59:16 62:21
71:4 72:20 76:24	53:12 126:19,20	<b>heights</b> 51:22	37:10 58:8 59:8	69:12 106:21
76:24 82:13,16	126:25 127:1,4	<b>help</b> 8:6 112:15	92:25	<b>hospitalized</b> 29:9
86:22 87:2,13,15	129:19,21	<b>helped</b> 80:25	<b>higher</b> 13:11 59:11	29:20 54:1
89:12 90:1 91:18	<b>guy</b> 54:14 69:1	<b>hematocrit</b> 22:25	93:2	<b>hour</b> 15:2,3 70:15
92:11 96:10 97:6	87:16 107:18	78:18 84:18 87:9	<b>highlighted</b> 81:21	110:8,10
99:17 100:11,19	<b>guys</b> 54:16 69:2	87:23	82:7	<b>hours</b> 11:24 81:9
100:24 101:2,15		<b>hematocrits</b> 84:6	<b>highlighting</b> 98:15	104:25 106:5
103:11,16 104:24	<b>H</b>	84:10	99:18	107:19
108:13,15 110:19	<b>h</b> 3:9	<b>hemoglobin</b> 22:5,7	<b>hindsight</b> 40:3,6	<b>huge</b> 36:7
115:8,12,13,14	<b>half</b> 22:7,8 23:3	22:25 23:4,4	83:10 102:15	<b>human</b> 79:25 80:6
115:16 116:10	82:25 88:20 97:6	78:14 82:22,23	<b>hip</b> 28:21 35:14	<b>hundred</b> 58:18,24
117:14,19,19	107:23 108:6	84:6,10,17	78:16 79:18	<b>hundreds</b> 47:7
120:14 121:18,20	110:5	<b>hemoglobins</b> 87:7	80:18 81:16,16	<b>hydration</b> 21:19
122:1,6 123:4,12	<b>halls</b> 92:6	<b>hemolysis</b> 84:21	<b>hippocratic</b> 47:24	<b>hypotensive</b> 101:7
123:25 127:3	<b>hand</b> 44:8 78:7	<b>hemostasis</b> 46:25	<b>hired</b> 43:12	<b>I</b>
129:9 130:7,11	124:3 132:18	<b>henceforth</b> 13:15	<b>hold</b> 11:14 42:16	<b>ice</b> 95:20,21
131:8	<b>handle</b> 21:23 71:2	<b>henry</b> 1:8 5:6,15	128:1	



<b>idea</b> 88:16	<b>immobility</b> 55:14 55:16,21 63:2 75:2,4	37:5	<b>interpretation</b> 56:22	<b>jewish</b> 6:5 11:5,11 11:16,16,18 17:10
<b>identify</b> 5:13	<b>imoof</b> 3:18	<b>infection</b> 41:4	<b>interpreted</b> 65:18	<b>jim</b> 5:16 42:11
<b>ill</b> 5:10 6:14 19:6 19:11,11 22:20 27:14,16,18,23 42:16 44:7,9 53:15 65:6 66:1 82:6 94:12 96:3 109:4 115:10,14	<b>impeach</b> 96:11	<b>infectious</b> 10:15 40:12	<b>intervention</b> 92:22	<b>job</b> 117:25
<b>illness</b> 55:9 63:2	<b>implicit</b> 73:11 85:14	<b>inflammation</b> 21:8 31:7,15 81:7 113:24,25 114:5 114:8,12	<b>intestine</b> 19:13,14 127:2	<b>john</b> 1:14 3:11 4:2 4:7 5:7,20 6:1 132:5
<b>illustration</b> 3:21	<b>important</b> 113:16	<b>inflammatory</b> 114:1,2,10	<b>intestines</b> 24:2	<b>joint</b> 79:18
<b>im</b> 6:12 8:7 10:9 11:2,3,15 13:19 14:23 17:12 18:22 38:1 42:18 42:24 44:10,14 45:18 46:17 50:11 51:7 52:21 52:24 53:17,19 54:7,18 57:25 58:13 59:5 62:16 62:21 63:17 64:15,19 65:4 66:10,13 67:11 67:24 68:10 69:15 73:7 75:7 76:24 80:4 81:23 81:25 82:1,5 84:18 85:1 89:5 89:7 94:4 96:10 96:18 97:18 98:2 100:13,24 105:10 105:25 106:8 110:15 112:2,21 113:10,11 114:6 114:8,9 115:14 115:16 117:14,19 119:5,18,22 123:4,12,25 124:2,15,16 129:7,9 130:5,11	<b>impossibility</b> 7:10	<b>information</b> 54:19 65:6 92:7 105:22	<b>intravenous</b> 85:17 89:15 104:20,23	<b>journal</b> 46:24,25 46:25 48:18
<b>imhoof</b> 96:1	<b>impressed</b> 46:17	<b>initial</b> 19:1	<b>intravenously</b> 105:4,8	<b>journals</b> 46:24
<b>imhoofs</b> 96:5,8 97:21	<b>impressive</b> 46:3,5 46:6	<b>initially</b> 34:10 87:22	<b>invented</b> 53:1,2	<b>judged</b> 93:9
<b>immediate</b> 33:3	<b>improved</b> 124:10 124:15,16	<b>inject</b> 95:7	<b>investigate</b> 93:14 121:13	<b>judgment</b> 39:10,14 39:17,20 93:11 101:5 121:15 122:22,23 123:5 123:7 127:6
<b>immediately</b> 91:5 105:9 129:15	<b>improvement</b> 21:18,21 47:2	<b>injected</b> 33:2	<b>invited</b> 47:6	<b>judgments</b> 17:24 39:22 40:18 41:9 122:19,25 123:6 127:7 131:1,3,4
<b>immobile</b> 75:3,11 101:9	<b>inability</b> 86:14	<b>injuries</b> 18:4	<b>involved</b> 18:8 19:22 39:9	<b>jumping</b> 20:16
	<b>inappropriate</b> 33:15,23 122:25	<b>insert</b> 108:5,9	<b>involving</b> 15:5	<b>jury</b> 7:17,20,21 10:11 11:19 19:23 20:1 22:2 29:7,9 33:11 37:20 38:1 41:18 64:19 89:2 96:18 107:12
	<b>incidence</b> 13:11 29:17	<b>inserts</b> 48:15	<b>iota</b> 110:18	
	<b>include</b> 48:6,7	<b>inside</b> 77:22	<b>isnt</b> 40:23 57:24 58:7 70:2 79:13 82:9 85:25 86:1 98:25 100:9 105:19 106:10 108:8 113:2,15 114:4 118:21 130:8	<b>K</b>
	<b>including</b> 24:21 39:9 46:24 102:16 121:20	<b>intake</b> 85:22	<b>issue</b> 21:25 22:1	<b>keep</b> 29:14 112:19 117:19 120:14
	<b>increase</b> 26:22,24 58:11,12	<b>intensive</b> 71:25	<b>issues</b> 21:5 27:4 57:7 59:21 107:21	<b>keeping</b> 43:23
	<b>increased</b> 34:3 36:16	<b>intention</b> 60:14	<b>iv</b> 23:25	<b>keever</b> 2:3 3:5,7 5:16,16 42:1,10 42:11 55:25 65:7 65:12,14 78:9,12 83:16 86:19 96:12,14 97:17 98:3 117:18,21 120:25 121:4 123:20,22,23,25 124:5 125:25 128:1,9 129:4 131:7
	<b>increases</b> 113:8	<b>interaction</b> 113:5	<b>ive</b> 13:9 14:11 78:13 80:23 81:24,24 94:18 98:14 99:16 121:11 126:23	<b>ken</b> 2:5 5:16 44:20 90:23 104:1
	<b>independent</b> 113:1	<b>interest</b> 132:17	<b>J</b>	
	<b>index</b> 54:16,20 58:8 59:8,11 92:25	<b>intern</b> 101:20	<b>j</b> 2:3	
	<b>indexed</b> 42:21	<b>internal</b> 9:19,21 10:1,3,9,13,14 11:8 12:18 13:2 13:8 17:4,6,15 22:13 23:9 41:15 41:22 47:3 53:14 59:8 60:10 72:8 77:15 88:3 115:13	<b>james</b> 2:3	
	<b>indicate</b> 67:8	<b>internally</b> 80:19	<b>january</b> 12:7 15:18 16:6 19:5 24:19 29:6,6 31:3 32:18 33:16 38:5 39:3 42:20 77:5 97:1 126:22	
	<b>indicated</b> 8:15	<b>internist</b> 25:20,22 26:9 28:19 68:16 69:1,4,9 72:24 73:17,20 86:9 87:15 100:19	<b>jaundiced</b> 21:8	
	<b>indication</b> 31:14 71:17 72:15	<b>internists</b> 28:1 68:17 69:5 75:4 84:16 85:1 86:22 87:3 100:17	<b>jaw</b> 7:4	
	<b>individual</b> 20:14 22:18 34:13 37:6 37:8 40:7,10,20 40:24 48:7,21 50:16 51:12,14 58:15 59:1 127:5 129:23 130:8	<b>internship</b> 9:19,23		
	<b>individually</b> 1:2,6 5:4	<b>interpret</b> 103:1 126:3		
	<b>individuals</b> 13:10			



<b>kenneth</b> 1:2,3,4,5 1:6 5:4,5 15:5 17:20 43:8 44:16 45:8,16 51:9 54:14 55:2,17 56:2 58:9 61:1,7 66:8 68:3 69:12 70:19 71:24 74:13,22 77:2 78:15,23 85:10 88:3,20 90:3,17 96:24 99:13,22 101:12 106:19,23 111:18 114:14,20 114:22 118:13 120:13 129:20,22 130:19	94:5 101:12 104:5 115:1 <b>know</b> 20:19 22:4 22:10,14 27:20 27:25 34:6 35:11 36:6 40:14,19,19 40:21 43:24 46:5 46:5,14 51:21 52:21 53:6 54:17 56:5,11 58:24 59:21 60:10,11 60:13,21 63:24 63:24 67:8,13,24 68:6,19 69:8,25 71:7 72:18 73:18 76:5,7,7,16 79:7 80:7,17 81:25 82:6 83:8,18 84:7,21,21 86:9 86:25 87:4,7 91:21,22 94:4 96:1,4 98:7 100:17,17,18 105:24,25 106:7 110:9 114:13 118:17,18,22,25 119:2,7 120:4,21 128:16,24 129:8 130:15,16 <b>knowing</b> 71:3 <b>knowledge</b> 18:13 <b>known</b> 11:8 15:25 19:25 34:7 <b>knows</b> 49:18	120:11 <b>law</b> 2:3,6 <b>lawsuit</b> 83:25 <b>learn</b> 21:9 <b>learning</b> 49:1 99:7 101:18 <b>leave</b> 8:8 62:22 <b>leaving</b> 6:14 121:18 <b>lecturer</b> 47:7 <b>lectures</b> 57:18 <b>left</b> 8:9 29:5 49:17 52:17,17 90:20 117:9 124:14 <b>leg</b> 29:13 35:10 81:3 112:16 117:3 <b>legs</b> 29:10 31:11 <b>length</b> 55:13 <b>lethal</b> 41:5 <b>level</b> 17:1 67:18 92:5 93:9,13 100:23 102:24 103:7,9,19,22 104:24 108:22 109:21 121:13 122:10 <b>levels</b> 105:8 <b>life</b> 20:10,13 40:25 61:12 89:19 101:24 103:3 <b>light</b> 21:24 127:25 <b>lightly</b> 26:21 <b>likewise</b> 16:4 <b>limited</b> 12:12 <b>line</b> 24:1,4 40:12 63:10 94:19 96:20 100:11 101:7 <b>lines</b> 129:11 <b>list</b> 15:14 27:21 55:13 101:16 129:19 130:2 <b>listed</b> 55:14 101:1 121:21 125:5 <b>literature</b> 38:20 49:22 51:4 81:19 <b>little</b> 1:15 2:14 4:4 5:9 7:15 8:13 9:7	9:7 16:10 43:1 52:16 54:8 56:19 61:5 62:17 70:15 82:16 89:13 106:18 111:9 116:10,24 122:13 <b>live</b> 14:6 <b>liver</b> 20:24 21:5,5 21:7,8,15,17 26:6 26:25 27:2,4,17 34:14 68:9 82:21 91:25 100:12 101:6 102:22 126:9,10,14 127:3 <b>livers</b> 126:11 <b>lloyd</b> 127:9 <b>load</b> 89:15 <b>logan</b> 69:20 <b>long</b> 6:16 7:8 24:22 54:10 60:4 90:24,24 98:15 103:12 126:2,20 <b>longer</b> 36:6 99:19 <b>longterm</b> 33:5 <b>look</b> 14:21,22 42:21 43:2 44:21 51:22 62:20 64:19 65:8,10,16 70:16 74:2 77:7 77:15 86:22 87:16,23 93:24 94:5 96:16 106:15 115:2 117:24 123:18,25 124:23 127:12 129:8 <b>looked</b> 53:13,20 77:20,22 113:10 116:6 <b>looking</b> 43:2 51:13 83:9 84:12 <b>loose</b> 90:2 110:23 <b>lose</b> 7:12 107:5 <b>losing</b> 23:23 71:3 87:8,10,16 <b>loss</b> 3:16 22:11,15 22:16,18,21,23 23:20 25:19 26:1	78:3,5 79:2,21 80:19 81:5,6 84:5,7,8,20 85:9 85:20 86:6,7,12 87:6,11 88:6 102:22 <b>lost</b> 22:7 23:5 82:20,24 87:24 <b>lot</b> 7:12 13:10 24:4 25:22 26:15 51:8 98:12 103:16 126:5,18 <b>louis</b> 6:6 8:10,22 9:18 10:22,24,25 <b>lovenox</b> 32:23 33:2 33:15,23 34:1,8 34:18,21 35:5,22 36:11 104:20 105:3,7 107:9 110:5 114:15,18 <b>low</b> 32:4,23 34:7 36:10 39:5 40:12 56:14,16 78:1 84:11,11 86:2 99:21 107:15 118:13,14 <b>lower</b> 29:15 31:8 31:13 33:25 <b>lung</b> 94:25 116:14 117:9 <b>lungs</b> 43:10 45:2,4 59:3 90:1,6 91:19 92:11 99:2 101:3,15 110:24 115:24 116:11,22 116:25 122:2,6 <b>lurking</b> 107:5 <b>lying</b> 30:17
<b>kill</b> 59:3 <b>killed</b> 51:9 90:3 110:23 119:12,13 119:13 <b>kind</b> 44:15 47:23 49:7,10,16 50:1 53:9 67:18 69:1 71:23 72:4 90:2 101:14 112:12 115:14 117:19 130:1 <b>kinds</b> 87:6 111:24 <b>knew</b> 54:19 92:7	<hr/> <b>L</b> <hr/> 11:3 4:1 5:5 <b>lab</b> 109:22,25 <b>lack</b> 86:3 <b>laminar</b> 116:17,19 <b>laminations</b> 120:6 <b>large</b> 13:13 19:14 24:5 36:7 42:15 43:9 89:25 112:2 112:16,16 <b>larger</b> 17:7 <b>late</b> 29:6 31:20 32:18 33:16 59:14 119:9,16	<b>life</b> 20:10,13 40:25 61:12 89:19 101:24 103:3 <b>light</b> 21:24 127:25 <b>lightly</b> 26:21 <b>likewise</b> 16:4 <b>limited</b> 12:12 <b>line</b> 24:1,4 40:12 63:10 94:19 96:20 100:11 101:7 <b>lines</b> 129:11 <b>list</b> 15:14 27:21 55:13 101:16 129:19 130:2 <b>listed</b> 55:14 101:1 121:21 125:5 <b>literature</b> 38:20 49:22 51:4 81:19 <b>little</b> 1:15 2:14 4:4 5:9 7:15 8:13 9:7	9:7 16:10 43:1 52:16 54:8 56:19 61:5 62:17 70:15 82:16 89:13 106:18 111:9 116:10,24 122:13 <b>live</b> 14:6 <b>liver</b> 20:24 21:5,5 21:7,8,15,17 26:6 26:25 27:2,4,17 34:14 68:9 82:21 91:25 100:12 101:6 102:22 126:9,10,14 127:3 <b>livers</b> 126:11 <b>lloyd</b> 127:9 <b>load</b> 89:15 <b>logan</b> 69:20 <b>long</b> 6:16 7:8 24:22 54:10 60:4 90:24,24 98:15 103:12 126:2,20 <b>longer</b> 36:6 99:19 <b>longterm</b> 33:5 <b>look</b> 14:21,22 42:21 43:2 44:21 51:22 62:20 64:19 65:8,10,16 70:16 74:2 77:7 77:15 86:22 87:16,23 93:24 94:5 96:16 106:15 115:2 117:24 123:18,25 124:23 127:12 129:8 <b>looked</b> 53:13,20 77:20,22 113:10 116:6 <b>looking</b> 43:2 51:13 83:9 84:12 <b>loose</b> 90:2 110:23 <b>lose</b> 7:12 107:5 <b>losing</b> 23:23 71:3 87:8,10,16 <b>loss</b> 3:16 22:11,15 22:16,18,21,23 23:20 25:19 26:1	78:3,5 79:2,21 80:19 81:5,6 84:5,7,8,20 85:9 85:20 86:6,7,12 87:6,11 88:6 102:22 <b>lost</b> 22:7 23:5 82:20,24 87:24 <b>lot</b> 7:12 13:10 24:4 25:22 26:15 51:8 98:12 103:16 126:5,18 <b>louis</b> 6:6 8:10,22 9:18 10:22,24,25 <b>lovenox</b> 32:23 33:2 33:15,23 34:1,8 34:18,21 35:5,22 36:11 104:20 105:3,7 107:9 110:5 114:15,18 <b>low</b> 32:4,23 34:7 36:10 39:5 40:12 56:14,16 78:1 84:11,11 86:2 99:21 107:15 118:13,14 <b>lower</b> 29:15 31:8 31:13 33:25 <b>lung</b> 94:25 116:14 117:9 <b>lungs</b> 43:10 45:2,4 59:3 90:1,6 91:19 92:11 99:2 101:3,15 110:24 115:24 116:11,22 116:25 122:2,6 <b>lurking</b> 107:5 <b>lying</b> 30:17
				<hr/> <b>M</b> <hr/> <b>m</b> 1:8,14 2:3 3:11 3:12 4:2,3,7 5:2 5:6,6,20 127:17 129:13 131:13 132:4,5 <b>machine</b> 132:13 <b>major</b> 8:24 25:5 25:19,24,25 26:19 55:6 63:7



113:19,21 126:23 <b>majority</b> 47:9 <b>making</b> 44:24 71:5 81:11 85:10 101:22 122:21 123:6 <b>man</b> 73:7,9 78:23 101:5 127:1 <b>mandate</b> 38:12 39:2 <b>mandated</b> 38:2 39:5 <b>mark</b> 44:10 45:19 64:12,13,14 117:20 <b>marked</b> 45:18 115:9 117:14 <b>markedly</b> 82:21 <b>marker</b> 44:13 <b>marketed</b> 19:13 <b>marrow</b> 22:19 <b>mary</b> 1:2 5:3 132:3 <b>mass</b> 51:24 54:16 54:18,20 <b>massive</b> 110:23 <b>master</b> 9:13 <b>masters</b> 9:14 <b>material</b> 116:16 <b>materials</b> 15:11 24:7 <b>math</b> 8:6 <b>matter</b> 5:3 36:6 107:6 <b>mature</b> 116:20 <b>maximum</b> 52:13 <b>mean</b> 20:12 22:9 23:2 27:14,16 36:23 37:12 39:22 50:22 52:20 63:25 67:3 67:12,16 69:6 70:25 71:11 82:20 83:18 85:12 89:13 101:5,17 102:6 105:5 109:10 113:10 116:5,19 118:3 120:15 123:7 126:1,2	128:18,19 131:4 <b>meaning</b> 21:7 113:8 <b>meaningful</b> 119:22 <b>means</b> 20:3 24:5 34:6 38:14 78:1 84:19,23 98:21 <b>meant</b> 28:17 74:9 118:19 <b>measure</b> 26:18 79:21 <b>measured</b> 26:18 78:15 <b>measurement</b> 79:22 <b>measures</b> 52:14 61:12,17 <b>mechanical</b> 38:14 38:17 52:13 61:17 <b>mechanisms</b> 112:3 <b>medical</b> 8:13 9:8,9 9:17 10:7,25 11:12 12:6,16 15:17,18,22 16:4 16:5,8 17:16 18:20 19:2,4,17 29:5 31:6 35:19 35:24 39:10,15 39:17 40:18 41:18 42:19 43:13 48:3 49:22 52:4,7,12 53:15 55:9 57:20 60:2 63:2 64:22 77:1 94:8 105:22 129:24 131:1 <b>medication</b> 25:15 26:13 32:19 33:2 33:4 36:21 <b>medications</b> 33:6 <b>medicine</b> 6:3,4 9:12,13,19,20,21 10:1,3,9,12,13,15 10:19 11:4,7,9,20 12:18 13:2,8 17:5,6,15 18:2 21:10 39:23 40:5 41:15,22 46:23	47:3 48:17 49:4 49:7 53:14 59:8 60:10 106:6 128:5 <b>meet</b> 101:17 122:24 <b>member</b> 46:19,22 <b>memory</b> 15:10 <b>men</b> 81:1 <b>mention</b> 99:10 103:17 <b>mentioned</b> 11:11 13:9 19:23 21:5 23:24 24:8 26:14 95:19 113:4 121:6 <b>merged</b> 11:17 <b>met</b> 17:18,23 41:14,16 42:11 45:15 85:3 101:21 103:10,24 122:15 <b>metabolism</b> 9:25 10:10,12 12:13 <b>metric</b> 79:22 <b>michota</b> 3:12 16:16 33:12,22 34:9 35:2,4,12 37:25 38:7,12,20 40:20 43:15 46:19 56:23 57:17 67:24 80:8 81:19 86:13,17 87:2 106:18 113:12 114:20 117:23 <b>michotas</b> 33:8 34:20 45:25 46:10,13 60:4 86:15 <b>middle</b> 79:19 <b>midnight</b> 16:6 19:5 110:24 <b>mildly</b> 98:19 <b>milligrams</b> 33:20 33:20 34:10,11 107:19 108:23 <b>mind</b> 60:18 84:15 87:13 90:23	93:20 100:20 <b>mine</b> 129:7 <b>minor</b> 55:5,6,18,21 63:7 113:23,23 <b>minus</b> 64:11 <b>minute</b> 8:15 78:22 <b>minutes</b> 97:9 111:13 <b>missouri</b> 6:6 <b>mobile</b> 28:25 75:9 75:9 <b>moderate</b> 56:12,14 56:16 <b>molecular</b> 32:23 34:7 36:10 39:6 <b>molecularweight</b> 107:15 <b>molecule</b> 107:16 <b>moment</b> 17:14 21:25 <b>monday</b> 6:10 <b>money</b> 7:12 <b>month</b> 18:7 37:1,9 57:14 <b>morning</b> 34:5 66:23 90:20 91:8 98:16 99:10 102:1 108:21 109:19 121:24 124:8,10 130:14 <b>mother</b> 1:5 <b>move</b> 76:23 <b>movements</b> 125:7 <b>moving</b> 28:25 30:11 32:2 67:5 67:6,14 75:5 104:1 <b>multiple</b> 84:6 <b>multitude</b> 100:13 <b>muscle</b> 51:24 54:18 <hr/> <b>N</b> <hr/> <b>n</b> 1:8 2:1 3:1 4:1 132:4 <b>name</b> 5:10,25 18:23 42:11 <b>nationally</b> 47:1 <b>natural</b> 111:5,24	112:3,8,10,24 113:1,4,17 126:6 <b>nature</b> 18:4 <b>nausea</b> 19:7 <b>nauseated</b> 24:3 <b>near</b> 29:11 <b>nearly</b> 22:7,8 <b>necessarily</b> 123:7 <b>need</b> 20:14 42:22 56:18 62:16,18 68:3 70:19 72:11 73:7,9,12 76:13 <b>needed</b> 28:21,22 73:21 93:14 127:20 <b>needle</b> 33:2 <b>needs</b> 12:18 129:24 <b>negligence</b> 60:3 <b>neither</b> 61:22 <b>never</b> 18:17 47:19 58:4,23 62:13 64:4 69:12 71:19 74:25 88:2 120:18 122:5,8 <b>new</b> 114:15,18 <b>niba</b> 18:24,25,25 25:10 <b>nice</b> 123:14 <b>night</b> 105:17 127:13 <b>nine</b> 22:5 23:4 <b>normal</b> 20:5,6 22:6,18 26:12 27:3 79:1 81:17 109:5,22 <b>normally</b> 22:17 81:11 126:11 <b>notary</b> 4:3 132:9 <b>notation</b> 28:8 125:18 <b>notations</b> 65:23 <b>note</b> 60:25 69:22 71:17 74:12,17 76:19 85:21 90:16,17,22,23 90:24 91:2,8,10 93:25 95:11 97:22,23 98:11
---	---	---	---	---



98:16 99:10,16 99:18,19 100:8 109:15 120:24 121:2,5 123:20 123:21 124:7,24 125:1,3 128:11 129:1,6 <b>noted</b> 31:17,24 32:1,4 <b>notes</b> 30:6,14 31:5 62:7 65:17,22 66:4,7,17,19 67:6 69:20 76:19 84:3 85:13,13 90:14 90:24 123:18 <b>november</b> 1:16 4:2 5:1 6:10,13,22 132:5,19 <b>number</b> 25:17 27:18 28:18 44:10 45:1,19,22 45:25 46:24 50:2 64:23,24 65:1,5 78:8 80:12 88:18 96:1,8 100:20 115:8,9 117:17 117:18,20 <b>numbers</b> 13:13 87:16 <b>nurse</b> 104:11 <b>nurses</b> 30:14 62:7 67:8 76:19 <b>nursing</b> 31:5 65:22 97:22 104:9 <b>nutrition</b> 85:17,18 86:5 87:12 92:1 <b>nutritional</b> 21:20 24:7 40:11 85:16 <b>nutritionally</b> 85:22	125:25 <b>obligated</b> 38:9 <b>observe</b> 31:22 <b>obstruction</b> 26:3 <b>obstructive</b> 19:15 <b>obvious</b> 19:12 <b>obviously</b> 22:10 27:20 28:20 84:5 87:2 100:6,23 101:21 102:21 103:4 121:12 123:5 131:2 <b>occasion</b> 13:5 67:14 <b>occasionally</b> 26:20 66:15 81:4 <b>occasions</b> 24:10 47:7 <b>occluded</b> 120:10 <b>occupation</b> 6:2 <b>occur</b> 37:10 41:3 78:3 <b>occurred</b> 36:8 78:5 <b>occurs</b> 37:4 <b>offered</b> 48:23 <b>office</b> 11:24 42:12 <b>offices</b> 4:4 <b>oh</b> 66:3 69:14,15 69:23 103:17 105:3 121:10 124:5,16 <b>okay</b> 43:7 44:19 45:18 47:12,14 47:16 50:19 51:6 52:2,10 53:12,23 54:8,24 55:9,23 56:4,17 57:24 60:24 61:4 63:4 63:9 64:13,18,21 65:4 66:1,12,19 66:22 67:15,24 69:23 71:16,22 72:14 73:4,5 74:11 75:1,12 76:23 78:7,10,11 78:13,21 79:4,10 80:25 81:8,18 82:4 83:1 87:18 87:25 90:12,16	90:22 91:11,16 92:15 93:17 94:14 95:11 96:12 97:19 98:6 98:13 101:23 103:6 104:1 105:12,12,15 106:15 107:9,17 109:15 110:21 111:2 113:21 114:11,14 115:2 115:15 119:1,3 119:15 121:10,24 122:17 129:18 130:10,22 <b>old</b> 8:6,7 54:14 55:2 <b>once</b> 34:10 108:8 <b>ones</b> 53:6 <b>ongoing</b> 99:23 <b>open</b> 14:20 <b>opined</b> 37:25 <b>opinion</b> 17:13,17 17:22 25:13 27:12 33:14,25 34:25 35:9,24 38:5 39:13 40:16 41:13 50:20 63:6 64:13 66:25 82:18 86:15 90:2 <b>opinions</b> 13:22 15:16 16:19,23 41:17 48:23,24 88:19 114:23 128:2 130:23 <b>opposed</b> 33:20 85:9 86:4 <b>opposite</b> 30:12 38:13 39:5 <b>oral</b> 1:13 4:2,7 33:1,4 <b>orally</b> 33:6 <b>order</b> 16:22 20:15 23:8 28:11,15 32:13,19,22,25 61:24 63:14 84:17 88:13,24 95:12,14 97:23 106:12 127:14	<b>ordered</b> 23:11,14 30:2 32:7,10,23 33:1,6,15 34:12 61:13 62:5 63:12 84:6 85:6 102:1 104:17 105:16 107:23 127:11 <b>ordering</b> 84:23 85:8,19 86:9 <b>orders</b> 28:8 61:22 61:25 69:21 85:14 106:3 127:12 130:12 <b>organs</b> 77:15 <b>orthopedic</b> 18:21 24:18,25 25:10 54:12 68:18,20 69:6 <b>orthopedist</b> 24:12 69:3,10 <b>otherthanhuman</b> 107:14 <b>outcome</b> 18:1 36:12,17 37:15 37:19 41:10 47:18 49:14 128:4 <b>outflow</b> 116:1 120:10 <b>outpatient</b> 12:6 <b>outrageous</b> 35:1 <b>outside</b> 6:17 <b>overall</b> 17:12 19:3 <b>oversight</b> 88:14 <b>overweight</b> 51:18 54:15 63:1 <b>oxygen</b> 103:19,22 118:14 119:7	94:7 100:2 120:23 124:13 125:17 128:13,16 128:24 <b>pains</b> 40:21 101:10 103:13 121:17 <b>palpation</b> 74:7 <b>panting</b> 98:19 121:7,8 <b>paper</b> 28:2 44:20 <b>paradigm</b> 130:1 <b>paragraph</b> 116:10 116:11 <b>pardon</b> 80:11 88:17 <b>parenteral</b> 85:17 92:1 <b>part</b> 29:23 40:8 52:10 61:16 62:8 63:19 74:20 86:4 99:18 100:6 106:4 126:8 <b>particular</b> 28:3 50:17 110:17 <b>particularly</b> 34:13 35:1 68:8 <b>parties</b> 4:6 132:17 <b>partner</b> 24:14 <b>partners</b> 11:23 <b>pass</b> 41:25 65:12 123:12 <b>passed</b> 125:24 <b>pathologist</b> 119:19 119:21 125:22 <b>patient</b> 13:4 19:20 20:11 23:12 24:9 24:11 26:13 27:3 27:18 28:19 31:10 34:9 38:15 39:24 40:14,15 47:17,20 48:2,7 48:21 51:10,10 51:12,14,21 52:5 52:11,13 53:15 57:20 58:9,15 59:6 60:15 61:17 61:18 67:1 68:17 68:18,19 69:16 70:12 81:11,12
---	---	---	--	--

## O

o 2:10 4:1  
oath 7:24 47:24  
obese 54:19,21  
object 55:24 83:15  
86:16 96:10  
121:3  
objection 86:21

## P

p 2:1,1,10 4:1  
131:13  
page 3:1 94:19  
96:8,9,17 115:11  
115:12 123:3  
129:9,9,12  
pain 31:25 35:16  
40:25 41:2 90:19  
91:16,23 93:20



83:20 84:4 91:23 91:25 92:3,24 100:25 103:12,16 106:2 109:2 110:16 124:10,12 124:13,14,19 125:4,7,13 129:22 130:8 <b>patients</b> 11:20,23 12:1,5,7,9,12,15 12:20 13:13 25:21,22,23 26:15,16,22,24 27:23 29:9,10,18 29:19 36:19,24 38:16 49:16 50:25 53:7 54:1 57:3,6 58:2,21 68:7,23 98:18 125:17 <b>pay</b> 7:13 <b>peer</b> 47:5 <b>pelvis</b> 112:17 <b>percent</b> 12:15 14:18,19 22:5 29:18 35:3 51:1 54:6,7 58:18,24 114:22 <b>percentage</b> 78:19 <b>perfect</b> 91:20,20 91:21 <b>perfectly</b> 34:12 39:25 <b>perform</b> 96:24 <b>performed</b> 38:4 <b>period</b> 9:24 22:10 44:2 63:11 75:18 75:21 78:6 88:3 128:20 <b>permitted</b> 4:8 <b>persimmon</b> 2:6 <b>person</b> 125:24 126:21 <b>personal</b> 48:24 103:6,9 <b>perspective</b> 49:12 49:12 <b>pertain</b> 16:9 <b>pharmacological</b>	26:10 88:7 <b>phrase</b> 118:5 <b>physical</b> 25:4 28:9 28:12,25 30:1,2,5 30:6,9,20 31:24 55:19 59:19 60:14,15 65:17 65:18 66:17 90:14 98:17 120:21 123:18 124:7,18,19,23 129:1 <b>physician</b> 6:9 11:15 12:21 19:18,20 25:11 127:10,19 <b>physicians</b> 12:17 12:20 19:1 37:22 39:8,9,19,21,24 48:11,14 69:19 108:11 126:19 <b>picture</b> 79:4,5,6 118:3 <b>pin</b> 80:7 <b>pint</b> 79:23 80:5,5 <b>pints</b> 79:25 80:2,3 80:9,20,21 81:13 81:13 <b>place</b> 15:25 18:14 19:6 21:22 29:7 29:22 35:15 45:19 62:5 <b>placed</b> 24:4,5 25:3 25:7,8,15 52:6 114:17 <b>plaintiff</b> 1:6 2:2 5:17 14:15,19,22 132:3 <b>plaintiffs</b> 14:2 <b>plan</b> 6:18 <b>plane</b> 69:25 <b>planned</b> 6:19 7:8 7:11 <b>plans</b> 6:16 <b>play</b> 58:1 <b>please</b> 5:13,25 20:2 27:15 64:23 117:11,13 125:3 <b>pllc</b> 2:9	<b>plural</b> 90:10 <b>plus</b> 64:11 <b>point</b> 57:24 58:7 58:14 87:9 93:12 102:12,14 126:23 128:22 <b>points</b> 81:19 <b>pooling</b> 29:15 <b>pools</b> 77:13 <b>poor</b> 85:22 124:17 <b>population</b> 13:4 13:13 <b>portion</b> 97:21 116:2 <b>position</b> 71:19 <b>positioned</b> 30:15 30:19 <b>positioning</b> 30:25 <b>positive</b> 32:15,16 104:2 <b>possessed</b> 99:8 101:19 <b>possibility</b> 59:4 68:2 70:19 72:16 77:2 82:18 93:10 98:12 100:22 105:13 <b>possible</b> 25:4 26:3 26:11 27:25 39:21 40:11 43:24 53:2 72:10 72:16 84:3 92:1 101:3 118:15 120:15 <b>postmortem</b> 126:2 <b>postoperatively</b> 82:1 <b>potential</b> 27:24 28:6 41:5 59:23 88:6 <b>potentially</b> 41:5 <b>powerpoint</b> 42:25 <b>practice</b> 6:4,5 10:19 11:20,22 12:2,5,6,10,12,16 13:8,9 17:9,10 22:22 40:5 60:11 60:12 101:20 <b>practiced</b> 18:2	128:5 <b>practices</b> 17:5 <b>precautions</b> 24:24 25:9 <b>premarked</b> 44:11 <b>preparation</b> 15:15 <b>prepared</b> 54:18 105:25 <b>present</b> 7:14 56:2 58:18 62:24 91:22,24 92:3 112:15 <b>presentation</b> 22:2 <b>presented</b> 7:20 22:4 126:22 <b>presents</b> 127:2 <b>pressure</b> 32:3,4 99:21 100:4 118:14 119:8 <b>pressures</b> 40:13 <b>presume</b> 72:20 109:11,13 <b>presumptive</b> 91:18 <b>pretty</b> 22:9 46:3 84:17 89:19 93:5 95:22 <b>prevalence</b> 13:12 <b>prevent</b> 25:6 45:16 46:22 60:15 61:13 68:23 111:3 <b>preventable</b> 53:25 <b>prevented</b> 34:23 36:1,14 61:6 <b>preventing</b> 50:6 76:2 <b>prevention</b> 46:21 <b>preventive</b> 44:25 54:4 <b>prevents</b> 28:20 <b>previous</b> 13:24 <b>previously</b> 15:9 22:6 <b>primary</b> 12:16,17 12:20,21 24:25 25:11 28:1 <b>print</b> 72:8 <b>printout</b> 43:3 <b>prior</b> 15:8 20:6	21:3 34:4,21 35:23 <b>priority</b> 27:21 <b>privileges</b> 11:14 <b>probability</b> 35:24 41:19 114:22 <b>probably</b> 12:15 13:8 14:11 19:24 29:8 35:21 36:16 54:2 55:12 63:19 70:14 86:21 94:23,23 107:12 110:9 117:3 130:12 <b>problem</b> 13:7 19:12,15 21:15 27:24,25 58:13 59:23 69:2 <b>problematic</b> 82:16 <b>problems</b> 12:13,13 13:11 21:5,22 26:5,6,23,23,24 26:25 27:17,19 28:4 40:11,12 41:5 54:22 68:9 85:16 92:1,1 100:12 102:23,23 126:22 <b>procedure</b> 4:8 132:12 <b>proceeding</b> 132:16 <b>proceedings</b> 4:10 <b>process</b> 40:9 99:24 100:11 118:6 <b>processes</b> 27:7,13 28:5 41:3 <b>production</b> 85:23 86:3 <b>profession</b> 6:2 <b>professionally</b> 46:14 <b>professor</b> 11:3 <b>profound</b> 20:21 22:9 <b>progress</b> 74:12 84:3 85:21 90:22 90:23 91:2,10 93:24 95:11 97:22
---	--	---	---	---



<b>progresses</b> 36:20	<b>question</b> 19:24	21:2,12,16 43:2	73:25 77:7 84:2	128:23
<b>promise</b> 88:11	58:11 59:6 64:12	51:7,16 53:13	86:14 89:4 96:12	<b>reliable</b> 49:22
128:10	64:13,13 69:3	89:22 90:9 95:7	96:13 97:5,12,15	<b>relies</b> 38:20
<b>proposition</b> 92:23	70:25 83:17 86:6	119:21 129:23	97:22 98:8	<b>reluctant</b> 68:11
<b>protect</b> 44:25 67:1	88:10 89:8 93:19	<b>reason</b> 7:5 26:4,5	106:15 117:19	<b>rely</b> 48:16,20
<b>protected</b> 52:13	94:12,22 96:22	37:4 52:7,12	118:19 120:16	87:14,18
<b>protein</b> 112:5,5	97:1 105:7	68:4 70:20 72:17	121:25 125:3	<b>remain</b> 29:12
<b>proteins</b> 113:4,17	110:15 113:13,14	76:10 77:1,3	131:11	<b>remained</b> 29:22
113:20,22 126:7	113:15 114:6	82:18 83:13,21	<b>recorded</b> 5:7	<b>remember</b> 48:25
126:12	119:4,15 127:8	95:17	132:13	50:17 51:3 64:9
<b>provided</b> 15:12	128:22	<b>reasonable</b> 17:24	<b>records</b> 15:11,17	65:2 67:17 71:24
16:23 17:2,17	<b>questions</b> 44:9,9	35:19,24 41:18	15:21,24 16:2,5,8	71:25 74:3,4,5,12
18:9 33:19 75:20	47:13 65:11	45:11 52:9 53:21	17:16 19:3 21:13	82:8 85:21 87:21
96:5	123:17 126:5,18	70:24 72:11,13	23:15 27:7 29:4	88:22,24 89:1
<b>providing</b> 26:10	127:25 131:10	72:23 73:1 87:15	30:8 31:6,19,23	90:14 91:7,12,13
<b>provisions</b> 4:8	132:10,13	94:8 101:19,19	42:17,19 65:15	94:14,17,22 95:1
<b>pt</b> 3:14 66:19	<b>quicker</b> 115:11	105:22 106:3,6	65:16 91:8	95:22,24 102:2
128:11	<b>quite</b> 22:4 89:22	110:3,10,13,14	119:23,23 130:12	103:18 104:7
<b>public</b> 4:3 132:9	<b>quote</b> 59:19 91:4	122:19 131:2	<b>recovery</b> 85:23	119:4 123:3,9
<b>published</b> 48:8	123:4	<b>reasonably</b> 117:25	<b>recurrent</b> 37:9	<b>remembered</b>
<b>puffing</b> 91:4 121:7	<hr/> <b>R</b> <hr/>	<b>reasoning</b> 61:7	<b>red</b> 22:8 78:19	127:16
129:15	<b>r</b> 2:1 132:1	87:25	85:23 108:10	<b>renal</b> 19:9,25
<b>pull</b> 44:20	<b>raise</b> 22:12	<b>reasons</b> 25:17 26:9	114:4	20:10,18 34:14
<b>pulmonary</b> 13:14	<b>raised</b> 8:3,4	28:18 58:23	<b>reddish</b> 116:15	68:8 82:20
27:20 28:6 35:18	<b>rambling</b> 94:12	64:22 72:6 74:1	<b>redo</b> 76:25	102:22 108:16
35:25 36:5,7,8,21	<b>ran</b> 91:4 129:14	83:13 86:1	<b>reduced</b> 132:13	109:16 114:18
36:24 37:3,9,10	<b>random</b> 49:12	<b>recall</b> 33:14,18	<b>refer</b> 38:23	127:2
41:8 43:9 91:24	<b>randomized</b> 49:11	34:23 35:2 38:5	<b>reference</b> 48:14	<b>render</b> 16:22
100:22 116:13,14	<b>range</b> 22:5	68:1,1 99:14,19	108:11	<b>rendition</b> 117:22
117:10 118:6	<b>rapidly</b> 51:7	<b>receive</b> 9:2,16	<b>referred</b> 38:12	118:4
<b>pump</b> 53:9	<b>rate</b> 50:24 54:5	20:14 30:2	<b>refine</b> 57:14	<b>repair</b> 18:10 22:22
<b>pumping</b> 115:23	<b>rational</b> 71:6	<b>received</b> 9:3,12,13	<b>reflect</b> 29:4	<b>repeat</b> 12:23
120:12	<b>read</b> 15:17 16:4,10	9:14	<b>regard</b> 22:3	113:14
<b>pumps</b> 115:24	16:13,16,18 33:8	<b>receives</b> 26:13	<b>regarding</b> 28:5	<b>rephrase</b> 85:3
<b>puppy</b> 98:20 121:8	34:20 46:18	<b>receiving</b> 9:5	39:17	86:20 89:23
<b>pursuant</b> 4:7	48:25 51:4 57:11	<b>recess</b> 42:6 97:14	<b>regardless</b> 61:7	<b>replace</b> 85:10 86:6
<b>put</b> 44:12,14 47:20	57:12,17 65:20	<b>recommendation</b>	89:10	<b>replacement</b> 22:19
63:17 64:11,15	81:22 88:17	50:8 52:3,4,9	<b>register</b> 7:4,5 44:1	81:16
64:15,19,25 65:4	96:19 97:5 124:7	<b>recommendations</b>	<b>regular</b> 13:5	<b>report</b> 3:19 16:10
71:5 72:20 73:15	125:3 129:10,11	37:21,23 38:2,8	<b>rehab</b> 62:5	115:3,4,7,9
83:3,6 84:15	<b>reading</b> 54:7 78:18	38:10,21 39:1	<b>rehabilitate</b> 28:21	119:18
101:2,15 115:3	97:21	65:1	<b>rehabilitation</b>	<b>reporter</b> 3:8 4:3
121:22 125:23	<b>readmission</b> 16:5	<b>recommended</b>	15:24 18:15	5:11 45:20 132:8
129:10 130:13	19:4	108:22	<b>related</b> 40:12	<b>reporting</b> 2:13 4:4
<b>puts</b> 100:7 115:24	<b>readmitted</b> 21:2	<b>record</b> 4:6 5:3,14	132:17	5:8
<b>putting</b> 71:4	<b>real</b> 128:16	42:4,7 43:23	<b>relative</b> 75:2,8	<b>reports</b> 79:11
<hr/> <b>Q</b> <hr/>	<b>realize</b> 125:22	56:6 59:13 60:25	<b>relatively</b> 37:7,10	<b>repositioning</b> 67:4
<b>quality</b> 47:1	<b>really</b> 12:14,17	62:3 69:23 70:1	75:11 82:10	<b>represent</b> 22:20
		71:20 73:5,8,25	101:9 116:3	53:14,24 65:6,24



97:4	<b>richmond</b> 2:4	5:9 7:15 8:13 9:7	77:8	61:23 62:14
<b>representation</b>	<b>right</b> 48:2 49:8,17	9:7	<b>scans</b> 94:25	63:15 75:17,20
118:20	49:25 50:10	<b>rogers</b> 2:7	<b>scar</b> 111:5	76:1,6,8,13 88:11
<b>representing</b> 1:3	51:17,23 53:3	<b>ronnie</b> 2:12 5:10	<b>scarring</b> 111:8	88:13
<b>represents</b> 42:17	58:25 60:4,8	<b>room</b> 19:9,18,20	118:7	<b>serious</b> 55:9 57:20
53:21	61:10 62:18	62:18 70:5,7,8,10	<b>school</b> 8:12,14,17	63:2 99:24
<b>reps</b> 125:6	63:20 64:9 66:9	70:11 124:14	8:19 9:8,9,17	<b>seriously</b> 53:15
<b>reputation</b> 11:8	66:17,18 67:18	127:10,18,19	10:25 11:7,12	<b>set</b> 6:9,22 43:21
<b>request</b> 15:4	76:23 77:19	130:20	<b>science</b> 39:23	98:18 132:15
<b>require</b> 59:7	79:13,21 88:10	<b>roughly</b> 79:22	<b>scientific</b> 51:17,25	<b>setting</b> 57:4,5
<b>required</b> 17:19	88:22 89:8,16	<b>routinely</b> 105:16	113:2,15 122:22	<b>seven</b> 66:23
18:6 23:25 26:2	90:5 92:7 100:10	<b>rpr</b> 4:7 132:22	<b>scope</b> 73:15	<b>severe</b> 108:6
34:1 41:14 92:22	100:21 104:11,12	<b>ruff</b> 19:19 23:11	<b>screen</b> 42:25	<b>shaped</b> 116:2,3
<b>requires</b> 51:13	106:10 108:8,13	24:8,8,11 68:13	<b>se</b> 114:10	<b>sharp</b> 90:19
<b>requiring</b> 25:21	111:13 112:8	70:2,2,3,10,12	<b>seal</b> 132:18	124:13 128:13
<b>residency</b> 9:21,23	113:24 114:6,20	71:7,16 74:1	<b>search</b> 70:1	<b>shawn</b> 3:18 96:1
10:3	115:5,11,21	127:9,14,17	<b>second</b> 26:3 52:10	<b>shed</b> 21:24
<b>respected</b> 50:12	116:1 118:8	130:14,19	56:8 61:16 72:7	<b>sheet</b> 78:14
<b>respirator</b> 30:18	119:18,25 120:5	<b>ruffs</b> 127:12	72:8 124:23	<b>shin</b> 30:12,12
<b>respond</b> 87:20	120:7 121:2	<b>rule</b> 32:7,7	<b>secondary</b> 125:7	<b>shins</b> 30:11
<b>responded</b> 87:22	127:16 128:17	<b>rules</b> 4:8,8 132:12	<b>seconds</b> 111:13	<b>ship</b> 6:15
<b>response</b> 114:1,2	129:2,20	<b>run</b> 70:14	<b>see</b> 11:21,23 12:4	<b>shoe</b> 96:1
114:10 132:10	<b>ring</b> 94:20		13:4 18:11,12	<b>short</b> 42:1 63:17
<b>responsibility</b>	<b>rise</b> 92:21 93:9,13	<b>S</b>	19:19 24:9 28:8	78:6 97:10 101:9
128:4	100:22 102:24	<b>s</b> 2:1 3:9 4:1,1 6:1	31:11,13 52:17	116:10 121:1,5
<b>result</b> 25:24 26:20	103:6,7,9 121:12	112:5	65:23 70:5,8	124:20 125:13
35:18 37:6	122:10	<b>safer</b> 110:7,12,16	71:17 72:7 75:13	<b>shorthand</b> 132:13
<b>resulting</b> 114:10	<b>risk</b> 3:13 24:15,18	<b>sake</b> 13:15	78:7 79:7 80:14	<b>shortly</b> 35:14
<b>results</b> 113:7	24:20,20,22	<b>saline</b> 4:3 132:7	81:23 96:16,19	105:19
<b>resume</b> 45:22	25:14,17 26:12	<b>sat</b> 124:14	99:13 106:2	<b>shortness</b> 32:2
<b>retain</b> 130:23	27:2,8 37:7	<b>satisfactory</b> 44:12	110:1 115:4,10	35:17 40:21,25
<b>retrospect</b> 83:9	38:16 40:22	<b>saturday</b> 72:2	115:17 116:13	41:2 91:16,23
<b>returned</b> 8:13 9:7	47:17,20 51:9,13	<b>saw</b> 18:14 23:12	117:7 125:5	93:21 94:8 100:3
9:18 29:6 124:14	51:14,16,19,21	24:11,12 69:12	129:8 130:19	103:14 120:23
<b>review</b> 15:4,11,24	52:6,11 54:9,24	69:16 79:11	<b>seeing</b> 12:7	121:16 124:11,22
16:2 17:16 19:2	54:25 55:4,5,16	89:25 103:18	<b>seen</b> 18:17 29:9	125:9,19,21
21:13 23:15 30:8	55:18,21,21,23	<b>saying</b> 58:14 68:10	30:5 53:7 80:23	128:12,15,23,25
31:5,18 56:6	56:2,6,12,24 57:9	83:8,9,12 93:5	80:24 81:24	<b>shots</b> 69:7,9
82:5 96:6	57:21 58:10,12	103:23 105:3	<b>self</b> 30:15,18,25	<b>shoulder</b> 43:2
<b>reviewed</b> 15:9,15	58:12,18,22 59:7	<b>says</b> 50:21 62:8	<b>sense</b> 85:18 109:25	44:22
16:12 47:5 96:15	59:10 61:18	65:24 74:17 80:8	123:1	<b>shouldnt</b> 58:7
<b>reviewer</b> 46:24	62:24 67:1 68:19	86:13 90:17 91:2	<b>sent</b> 36:25 78:21	<b>show</b> 29:16 30:14
<b>reviewing</b> 14:20	68:22 71:23	93:25 94:1 98:17	80:16	44:4,4 50:24
15:2,8 50:2	74:24 75:8,15	98:18 108:9,11	<b>sentences</b> 117:4	62:10 76:25 84:2
<b>rheumatology</b>	92:6,24 93:2	115:20,21 116:13	<b>separate</b> 66:21	95:5 101:17
10:15	102:17,25	116:24 117:4	90:7	112:3,21 117:14
<b>rhombert</b> 18:21	<b>risks</b> 26:22,24 29:1	119:19 120:23	<b>sepsis</b> 40:12 41:4	<b>showed</b> 57:12
24:11 25:10 62:5	<b>road</b> 2:4	124:9,21 125:4	92:2	108:21 123:22
68:14 69:10,21	<b>rock</b> 1:15 2:14 4:4	<b>scan</b> 23:11 32:13	<b>sequential</b> 53:3	<b>shown</b> 7:17 99:24



101:2 <b>shows</b> 62:13 76:8 84:5,6,13 86:14 113:7 <b>shut</b> 20:7 <b>side</b> 8:11,16,18 <b>sign</b> 31:11 77:10 87:20 <b>signed</b> 69:21 <b>significance</b> 28:15 <b>significant</b> 82:13 93:10 <b>silver</b> 127:15 <b>similar</b> 80:5 <b>simple</b> 29:17 40:20 40:24 41:7 101:8 101:10 103:12 <b>simply</b> 30:17 93:9 113:11 <b>singapore</b> 6:15 <b>single</b> 53:25 <b>singular</b> 90:10 <b>sir</b> 45:8,9 46:7 53:19 97:3 115:19 117:8 125:11 127:24 129:7 130:18 <b>sister</b> 1:2,5 5:3 <b>sit</b> 89:3 91:4 129:15 <b>situation</b> 59:1 72:20 86:23 103:3,15 109:2 <b>six</b> 23:5 55:23 56:2 58:9,18,22 59:7 62:24 63:8,10,22 67:1 75:15 76:5 76:6,17,20 92:6 92:24 <b>sixfoot</b> 54:14 <b>sixth</b> 55:14 <b>size</b> 54:17 107:18 112:18 113:7 <b>skeptical</b> 119:25 <b>skin</b> 33:3 <b>skip</b> 117:17 <b>slide</b> 43:1 44:14,21 56:17,20 57:2,8 57:18 58:25	61:16,16 64:25 65:5 97:18 <b>slides</b> 42:25 <b>slightly</b> 116:3 <b>small</b> 19:13 40:8 71:13 111:25 127:2 <b>smaller</b> 17:7 <b>smith</b> 7:3 8:4,8,9 8:12,16 <b>smooth</b> 116:3 <b>soandso</b> 50:21 <b>sobering</b> 25:25 <b>society</b> 46:23 <b>somebody</b> 30:18 84:18 101:8 <b>somewhat</b> 36:16 <b>soon</b> 25:4 38:3 <b>sorry</b> 11:2 53:17 66:10,13 67:11 68:10 69:15 124:2,15,16 130:5 <b>sort</b> 19:15 49:13 50:17 <b>sorts</b> 40:13 48:19 50:23 <b>sound</b> 66:9 <b>sounds</b> 72:13 <b>sources</b> 107:14 <b>south</b> 8:11,16,18 <b>speak</b> 46:12 69:23 86:8 106:16 126:25 129:21 <b>speaks</b> 38:20 126:21 <b>special</b> 107:13 <b>specialist</b> 53:15 59:8 <b>specialties</b> 19:17 <b>specialty</b> 10:8 12:22 13:1 <b>specific</b> 47:12 74:2 88:22 90:16 94:17 127:6 <b>specifically</b> 28:11 59:5 73:14 120:17 122:4 129:21	<b>specifics</b> 17:13 <b>speculation</b> 60:22 84:13 <b>speed</b> 28:9,13 <b>spencer</b> 56:21 <b>spent</b> 128:20 <b>splitting</b> 34:18 <b>st</b> 6:6 8:9,22 9:18 10:22,24,25 <b>stabilization</b> 111:11,12 113:8 <b>stabilize</b> 112:15,18 <b>stabilized</b> 37:5 111:4 <b>stable</b> 82:10 <b>staff</b> 11:4,15 <b>staffing</b> 96:23 97:2 <b>stand</b> 50:18 <b>standard</b> 3:10 17:18,23,25 27:12 28:7 38:8 40:1 41:14,16 45:11,15,21 53:14,21 59:7 75:22 80:8 85:1 85:3 88:4 92:12 92:14,17 93:15 101:17,22 103:10 103:24 105:11,13 106:1 120:19 122:7,9,11,15,24 123:2,7 128:5 131:5 <b>standing</b> 130:23 <b>start</b> 8:2 38:3 64:21 68:11 102:20 103:1,4 104:11,23 106:6 106:10,16 111:10 115:13,16 <b>started</b> 19:7 35:4 35:22 36:14 37:18,18 100:25 106:19 111:16 114:21 117:16 118:13 <b>starting</b> 103:23 <b>starts</b> 79:17 <b>stat</b> 106:11,12,12	<b>state</b> 5:25 132:6,9 <b>stated</b> 93:7 111:2 132:9 <b>statement</b> 73:9 74:3 81:12 123:9 <b>statements</b> 50:12 88:18 100:16 132:13 <b>states</b> 6:17 38:15 <b>stating</b> 7:2 85:21 <b>status</b> 27:1,2 34:2 <b>steps</b> 24:24 66:8 66:16 91:3 129:14 <b>stipulated</b> 4:6 <b>stipulations</b> 3:2 4:9 <b>stock</b> 125:23 <b>stockings</b> 29:8 50:24 62:14 63:18,19 <b>stomach</b> 71:13 <b>stool</b> 23:13 <b>stopped</b> 30:4 <b>storm</b> 95:20,21 <b>streamline</b> 47:13 <b>street</b> 2:6,13 4:4 <b>strong</b> 49:7 50:11 <b>structure</b> 116:18 116:19 <b>studies</b> 29:16 49:21 81:25 126:15 <b>study</b> 10:16 49:11 49:13,13 <b>subcutaneously</b> 105:5 <b>subsequent</b> 23:17 <b>subsequently</b> 37:6 <b>subspecialties</b> 11:9 <b>subspecialty</b> 10:1 10:13,14 <b>substandard</b> 41:11 <b>suddenly</b> 103:19 <b>sued</b> 60:2 <b>sufficient</b> 22:24 <b>sufficiently</b> 16:21 <b>suggest</b> 59:13 68:13,14 122:1	<b>suggested</b> 19:14 68:21 <b>suit</b> 132:17 <b>suite</b> 2:13 4:4 <b>sum</b> 41:13 <b>summary</b> 3:14 65:15 74:5 78:9 78:13 <b>summit</b> 15:18,22 16:5 18:18,20 19:4,8 25:2 29:5 73:19 96:4 <b>sunday</b> 66:20 <b>superficial</b> 114:3 <b>supplement</b> 48:10 <b>support</b> 38:19 85:23 97:23 98:8 113:11 <b>supportive</b> 21:19 <b>supports</b> 57:19 <b>suppose</b> 105:10,14 106:12 114:2 118:2 <b>supposed</b> 68:22 69:1 <b>sure</b> 13:18 38:1 44:19 52:21,24 60:10 64:25 65:12 66:3,5 67:11,24 69:19 69:24 70:17,25 80:4,15 82:2,2 83:8 85:5 93:5 100:13,24 106:8 110:15 119:18 129:7,23 <b>surface</b> 116:3 <b>surgeon</b> 18:21 19:19 22:20 24:8 24:25 25:10 68:10,20 72:15 73:10,11,13,18 73:22 127:9 <b>surgeons</b> 68:7,16 69:7 79:21 <b>surgery</b> 3:17 18:7 22:15,21 24:19 26:2 35:14 54:12 63:1 68:3,7
--	--	---	--	---



70:19 71:4,17,23 72:7,11,17 73:7 73:10,12,21,23 75:13 78:24,25 79:3 81:15,16 <b>surgical</b> 18:10 74:6 127:11,20 <b>survival</b> 35:3 <b>survive</b> 20:15 <b>survived</b> 106:21 106:24 114:23 <b>suspect</b> 35:16 96:4 100:20 <b>suspected</b> 38:16 57:3 58:2,4 102:12,12,14 122:13 <b>suspecting</b> 58:8 102:6 <b>suspicion</b> 22:12 57:5 58:8 59:9 59:11 92:21,25 93:3,13 103:7,9 121:12 <b>sustained</b> 18:4 24:21 <b>sweating</b> 98:25 <b>sweaty</b> 98:21 <b>swelling</b> 31:7,13 31:15 <b>swindle</b> 2:5 5:16 43:3 44:8,13 99:16 117:16 <b>swollen</b> 81:3 <b>sworn</b> 3:3 5:18,19 5:21 132:11 <b>symptom</b> 31:11 <b>symptoms</b> 41:3 120:10 121:21 <b>syndrome</b> 21:11 <b>system</b> 20:24,24 28:23,24 <b>systemic</b> 20:21	42:1 46:7 65:10 66:2 68:7,23 70:15,23 74:23 74:23 81:1,21 89:3,4 95:8 102:25 109:6 111:9,12 <b>taken</b> 1:15 4:2,7 5:8 19:8 24:24 25:9 42:6 61:17 65:15 83:23 97:14 132:12 <b>takes</b> 25:20 26:21 33:5 89:16 110:7 111:10 118:10 119:3 <b>talk</b> 8:15 16:13 30:1 32:6 49:6 55:12 61:5 67:12 67:25 76:24 95:23 104:20 130:16 <b>talked</b> 43:15,19 51:6,6 52:16 54:3,8,9,12,25 56:21 59:17 62:3 74:11,19 77:25 92:4 93:18 95:3 102:16 107:11 108:1,17 110:22 117:25 <b>talking</b> 53:17,19 55:6 57:9 62:25 64:22 66:10 81:10 84:25 90:9 103:15 105:1,2 111:20 128:13 <b>talks</b> 98:11 99:21 99:21 115:20 <b>tap</b> 73:15 <b>tape</b> 97:9 <b>task</b> 26:8 <b>taught</b> 30:11,13 <b>teaching</b> 11:5,12 <b>technically</b> 54:15 <b>technician</b> 95:8 96:4 <b>ted</b> 25:3 29:6,7,8 29:13,16,17,21	38:18 52:17,20 52:25 53:1,1,2 59:20 61:23,25 62:2,4,11 63:18 63:19 64:3,4,5 76:4,5,7,9,12,13 76:16,20 <b>tell</b> 11:19 21:16 46:2,16 50:10 56:14 58:20 63:25 64:3,6,20 68:16 69:2,6 70:14 71:20 84:16 85:18 87:15 96:3 121:11 125:1 <b>tells</b> 86:10 <b>ten</b> 79:25 80:9,9 111:10 125:7 <b>tend</b> 28:23 <b>term</b> 19:23 46:21 49:3 52:25 <b>terminal</b> 90:3 <b>terms</b> 4:8 21:21 36:12 38:21 46:10 57:2 76:6 100:8 112:1 113:5 <b>test</b> 32:10,15 48:7 89:14 95:8 102:13,15 108:18 108:20 109:18 110:1 <b>testified</b> 5:21 13:24 14:2,6,9,11 14:14,14 18:17 35:2 42:17 59:22 70:6 74:25 75:2 78:23 106:17,18 121:11 <b>testifies</b> 57:19 <b>testify</b> 7:9,25 33:12 56:23 117:23 118:22 132:11 <b>testifying</b> 43:17 <b>testimony</b> 3:18 7:19 15:3 19:25 33:9,11,18 34:20	35:1,12 44:17 45:14 46:16 56:12 57:1 68:5 70:23 74:19,20 83:19,19,23 87:14,18,21 88:22,25 93:8 95:22 96:20 97:7 103:10 110:22 126:24 <b>testing</b> 110:7 <b>tests</b> 23:8,13 26:18 32:7 108:17 <b>texarkana</b> 2:4 <b>texas</b> 2:4 <b>textbook</b> 48:17,18 <b>textbooks</b> 47:3,4 <b>thank</b> 42:23 56:9 104:1 123:12,14 124:5 128:7 129:18 131:7,9 <b>thats</b> 6:15,24 9:25 10:6,25 31:4 32:9 33:2,6 38:22 39:12,12 39:22 40:4,23 41:24 43:10 46:17 47:23 48:9 48:9,10,20 49:9 49:15 51:3,3,16 52:9 53:2,11 54:2 55:4 56:4 60:8 61:3,4 62:12,15 63:13 63:16,21 64:10 66:17,20 76:22 78:17,18,20 79:11,14,24 81:18 82:4 86:16 86:17 87:20 89:17 90:4 92:7 92:9 93:4,12 94:21 95:4,25 99:12,15 100:6,7 102:4,8 103:1 104:6,15 106:3 107:10,13,20,25 108:9,10,19 110:20 111:7,20	112:10,15 114:19 117:12 118:20,20 119:13,22,23 122:20,23 125:16 127:22,23 128:7 130:1,21 <b>therapist</b> 30:3,5,7 30:10,20 31:24 55:19 59:19 65:18 66:7 90:16 91:3 98:17 120:22 124:8,18 129:1,13 <b>therapy</b> 25:4 28:10,12 30:1,3 60:14,15 65:17 66:17 88:7,9 90:14 123:18 124:10,19,24 <b>theres</b> 22:11,11 28:2 29:23 49:7 52:12 56:24 58:11 59:13 60:24 62:2,10,13 64:2 66:19 69:2 71:11 73:5,9 77:10 79:25 80:5 82:12,13,17 84:20 98:11 115:21 116:10 120:4 122:25 124:21 <b>thesis</b> 57:20 113:11 <b>theyre</b> 36:24 37:1 46:5,10 48:20 52:24 53:8 77:15 82:9 126:9 <b>theyve</b> 25:23 <b>thigh</b> 79:12,19 81:1 <b>thin</b> 32:19 36:22 126:6 <b>thing</b> 22:9 30:18 42:24 43:5 50:17 53:19 75:7,14 77:19 90:3 100:24 103:17 106:8 110:3,14
--	---	---	--	--

## T

t 3:9 4:1,1 132:1,1  
tachypneic 98:19  
98:23  
take 9:22 26:14



110:25 117:13 118:19 <b>things</b> 10:18 20:8 21:9,20,21 25:5 27:22 35:11 36:23 40:8,13 41:1,4 47:13 48:13,13,16,19 51:24 60:16 67:10 86:1 89:12 91:21 99:4 100:13,18 101:1 102:16,17 103:11 103:16,21 121:17 121:18,20 127:3 <b>think</b> 6:14 17:9 18:1,16 20:19 21:2,11,16,23 22:10 23:19 26:9 27:22 28:13 34:11 35:1,11,18 36:2,15 37:16 38:18 39:4,21 46:10 50:10 53:6 53:21 54:4 55:20 56:11,23 57:1,8 58:16,25 60:7 64:2 65:24 68:20 69:5,21 70:11,23 71:2,3 72:21 73:10 75:4 83:2 83:4,18,18 84:16 85:1,14,18 86:7 86:18,20 88:13 89:24 91:16,20 92:14 94:1 100:21 103:4 104:9 105:24 106:3,7 107:4,11 108:13 110:13,17 110:21 112:14 113:19,21,22 114:17 116:9 117:2,24 118:16 118:24 119:11,13 120:8 121:9 123:6 128:18,18 128:19 129:5 130:13 131:7	<b>thinking</b> 60:22 98:10 100:4,6,8 122:1 <b>thinned</b> 37:2 <b>thinner</b> 44:25 69:8 106:23 107:10 111:16,20 <b>thinners</b> 27:9 52:7 52:8,12 54:5 61:19,23 63:12 68:4,12,14,15,17 68:21 69:3 70:20 70:24 71:5,6 72:6,12,17 77:1,3 82:19 83:11,14 83:22 88:8 89:9 102:20 103:4,24 104:12,17 105:21 106:19,20 107:6 111:24 112:8 <b>thinning</b> 26:19 33:3 <b>third</b> 2:13 4:4 26:5 <b>thought</b> 27:7,13 28:5 40:9 71:23 80:11 86:2 92:21 93:25 94:19 102:24 103:2 115:1 127:16,20 130:10 <b>threatening</b> 20:11 20:13 103:3 <b>three</b> 11:23 14:12 45:3 54:24 66:8 66:16 80:20,20 81:9,13 89:18 106:5 111:23 113:17,19 <b>threeyear</b> 9:24 <b>thrombi</b> 37:4 112:2 <b>thromboembolic</b> 13:16 <b>thrombolic</b> 13:6 13:12 <b>thrombosis</b> 13:14 24:23 25:6 27:20 28:6,20 29:2,18 31:10 32:8,15,17	35:10 36:4,20 40:9,22 41:8 46:23,25 56:13 57:4,6,10 58:3,5 58:9,19,24 59:2 59:23 60:16 <b>thrombus</b> 112:1 116:4 <b>thyroid</b> 10:18 <b>ticked</b> 54:24 <b>tier</b> 49:10 50:11 <b>tiers</b> 49:7 <b>tight</b> 29:10,12 <b>tighter</b> 29:11 <b>tightness</b> 29:13 <b>time</b> 5:2 6:21 7:6,8 7:9 12:3,9 14:9 14:12,24 19:22 19:24 22:10 24:18 28:2 30:4 30:10 31:2 33:11 34:16,21 36:5 37:20 38:1 44:2 44:15 50:21 56:8 56:8 58:21 61:10 62:8,25 63:11,19 73:20 75:18,21 78:6 79:3 83:5,6 83:7,12 85:2 87:14 88:3 89:4 89:16 91:17 92:7 92:10,22 93:10 93:22 94:4,5,9 96:4 97:10 102:20 105:23 110:9,10 111:9 118:10 119:4,8 119:10,16 121:21 121:21 123:12 125:1 128:20,21 128:24 129:11,12 129:13 132:16 <b>timed</b> 91:8 129:2 <b>timely</b> 45:1 <b>times</b> 14:5,12,13 66:21 69:16 90:17 113:10 122:18 <b>timespan</b> 76:17	<b>timing</b> 93:20,20 105:21 <b>tip</b> 122:14 <b>tissues</b> 81:5 <b>today</b> 5:11 7:16,19 12:8 41:18 48:23 79:8 91:3 124:11 129:13 <b>today's</b> 5:1 99:23 <b>told</b> 38:1 43:20,25 60:17 67:17 68:2 80:25 87:19 104:11 107:17 108:4 123:4 <b>tolerated</b> 125:8 <b>tomorrow</b> 109:6,7 109:9 <b>top</b> 49:10 101:16 101:22 115:14 <b>total</b> 90:19 92:6 124:13 <b>totally</b> 35:8 114:25 <b>touched</b> 21:25 <b>towit</b> 4:10 <b>track</b> 71:1 <b>tract</b> 71:13 77:22 116:1 <b>tragic</b> 18:1 36:23 41:10 128:3 <b>trained</b> 60:11 84:16 <b>training</b> 6:8 9:17 10:2,4 17:14 41:21,23 49:1 <b>transcription</b> 132:16 <b>transection</b> 116:17 <b>transfer</b> 30:22 128:13 <b>transferred</b> 71:24 90:18 124:12 <b>transferring</b> 124:11 <b>transfused</b> 23:21 84:4 <b>transfusion</b> 87:20 87:22 <b>transplant</b> 20:15 <b>traveled</b> 110:24	<b>traveling</b> 43:10 45:2,3 99:1 <b>treat</b> 13:6 39:2 45:3,16 61:13 127:5 <b>treated</b> 36:25,25 37:8,13 38:13,14 38:17 58:22 <b>treating</b> 40:3 48:21 <b>treatment</b> 15:19 17:19 18:9 37:17 40:18 47:17 49:17,18,18,19 61:12 124:16,16 <b>treats</b> 36:3 <b>trenches</b> 72:22,23 <b>trial</b> 6:9,17,22 7:6 7:8 14:6,8,9,10 14:11 15:3 42:18 43:21,21,22,25 86:8 <b>tried</b> 95:12,23 97:24 126:23 <b>trip</b> 6:19 7:7,11,13 44:4 <b>trouble</b> 96:18 <b>true</b> 29:25 37:12 40:23 61:24 70:2 70:21 83:19 89:11 102:18,19 104:12,13 105:19 105:20 130:8,9 130:21 132:10,15 <b>truly</b> 120:1 <b>trunk</b> 116:13 <b>truth</b> 132:11,11,12 <b>truthfully</b> 7:25 <b>try</b> 25:5 26:11 49:14 58:14 83:17 94:12 <b>trying</b> 81:23 118:7 <b>turn</b> 45:5 110:9,10 <b>turned</b> 123:5 131:3 <b>turning</b> 62:23 <b>twice</b> 14:11 34:11 34:18 107:24 108:7,23
--	--	---	--	--



<b>twicedaily</b> 105:6	41:10 110:20	60:16 114:1,8	119:17	<b>weekend</b> 24:13
<b>two</b> 11:22 14:13,13	<b>unique</b> 129:23	118:7	<b>walls</b> 120:3	<b>weeks</b> 22:10 42:12
18:25 24:9 25:5	<b>unit</b> 23:3 71:25	<b>veins</b> 24:5 29:14	<b>walter</b> 2:9 5:15	<b>weight</b> 32:23 34:7
25:5 45:1 46:19	79:22 87:24	29:15 112:16	65:7 96:9 124:5	36:11 39:6 51:22
59:21 66:21	<b>united</b> 6:17	114:4	<b>want</b> 27:14 42:20	51:24
67:16 68:16	<b>units</b> 23:5,21 80:4	<b>venous</b> 13:6,12,16	43:2,4 44:19	<b>went</b> 8:21 9:8
69:22 72:6 82:1	80:6,9 82:25	32:10,16 95:4,12	49:15 51:21	22:14 23:6 47:7
82:23,25 100:2	<b>university</b> 6:5 8:10	95:15 96:24	55:12 62:20	51:16 56:7 87:9
109:3 114:23	8:11,12,22 9:4,19	97:24 102:2	64:11,25 67:7	87:23 91:3 97:20
120:13 129:10	9:20 10:23,24	113:9	69:25 70:1,15	116:21 118:13
<b>twothirds</b> 54:6	11:3,4,6,7 17:11	<b>ventricle</b> 115:22	81:22 89:8 96:15	129:14
<b>twoyear</b> 9:24	<b>unnecessarily</b>	115:23 116:1	104:19,23 115:2	<b>west</b> 2:13 4:4
<b>type</b> 10:18 11:20	47:19,20	120:5	115:7,12 118:18	<b>weve</b> 12:3 45:18
30:18 75:7	<b>unstable</b> 66:15	<b>versus</b> 5:5 55:6	120:16,17 121:13	53:7 75:13 77:22
<b>types</b> 51:24 67:10	<b>unsteady</b> 91:5	76:7	121:22 129:8,8,9	82:7 92:4 102:16
<b>typewriting</b>	<b>unusual</b> 22:16	<b>vessel</b> 112:2	<b>wanted</b> 7:3 28:17	107:9 117:14
132:14,15	<b>urgent</b> 26:2	<b>video</b> 5:7 58:1	42:21 63:5	121:21
<b>typical</b> 11:25	<b>usage</b> 3:14	<b>videographer</b> 2:11	102:13,15,25	<b>whats</b> 52:20 73:25
<hr/>				
<b>U</b>	<b>use</b> 4:8 13:20 27:9	5:1,11,18 42:4,7	106:2	93:25 110:16
<b>u</b> 4:1 116:2,3	39:2,5 41:9	42:16 97:8,12,15	<b>wants</b> 28:19	<b>white</b> 29:8
<b>uams</b> 9:10	42:24 44:5,25	131:11	<b>warm</b> 114:4	<b>whos</b> 69:1
<b>uhhuh</b> 81:2 99:20	63:15 76:11	<b>videotape</b> 7:19	<b>washington</b> 6:5	<b>wiggling</b> 74:21
116:12	85:25 89:10	<b>videotaped</b> 1:13	8:10,11,12,21 9:4	<b>willing</b> 125:4
<b>ultimately</b> 119:13	96:10 127:6	132:5	9:18,20 11:2,3,4	<b>withhold</b> 52:8 68:4
<b>ultrasound</b> 94:25	129:7 130:7,7	<b>view</b> 103:11	11:6,7 17:11	70:20,24 72:12
95:3,4,12,15,18	<b>usual</b> 107:17	<b>virtually</b> 126:15	<b>wasnt</b> 67:19,21	77:3 82:19 83:22
96:24 97:24	<b>usually</b> 21:10	<b>visit</b> 56:18 124:19	69:19 71:8,15	<b>withholding</b> 83:14
102:2 104:2	22:17 73:17	<b>vitae</b> 3:11,12	73:19 85:10 86:2	<b>witness</b> 3:3 5:18
<b>unassisted</b> 125:6	105:5	<b>volume</b> 22:8 78:19	89:22 96:7	5:19 13:24,25
<b>unaware</b> 113:6	<hr/>			
<b>undergraduate</b>	<b>V</b>	<b>vq</b> 32:13	101:24 102:23	41:25 42:3 43:13
9:1	<b>valarie</b> 4:2,7 5:11	<b>vs</b> 1:7 132:3	122:14	86:17 96:11 98:2
<b>underlying</b> 58:13	132:8,22	<b>vte</b> 13:17 24:15	<b>way</b> 6:15 29:24	120:21 123:11,12
<b>underneath</b> 33:3	<b>van</b> 6:10 7:3 17:2	46:20	38:13 62:17 63:8	123:24 124:2
<b>understand</b> 7:19	17:7	<hr/>		
7:22,23,24 13:19	<b>varies</b> 51:9 117:5	<b>W</b>	65:20 75:15 77:5	126:1 131:9
18:8 45:14 81:12	<b>variety</b> 58:23	<b>wad</b> 44:20	83:20 84:17 88:1	132:11,11,18
83:17 86:1	<b>various</b> 11:9 16:12	<b>waist</b> 54:17	89:2 94:6 114:11	<b>wont</b> 23:24 89:2
113:14	<b>vary</b> 127:7	<b>wait</b> 78:22 106:5	127:6	109:9
<b>understanding</b>	<b>varying</b> 30:21	<b>waited</b> 104:16	<b>ways</b> 39:25,25	<b>word</b> 46:7 60:8
18:4 44:20,23	<b>vein</b> 13:14 24:7,23	<b>walk</b> 15:14 49:16	40:15 111:25	98:23 107:9
45:8 63:6 106:1	25:6 27:20 28:6	<b>walked</b> 30:21 66:8	113:16	<b>wording</b> 28:13
<b>understood</b> 90:5	28:20 29:1,18	66:20,23 67:16	<b>weak</b> 74:13,17	<b>words</b> 47:19 109:4
<b>underwent</b> 22:16	31:10 32:7,15,16	91:2 129:13	91:5 125:4	131:2
<b>unfair</b> 118:24	35:10 36:4,20	<b>walker</b> 66:8,16	<b>weakness</b> 66:15	<b>work</b> 12:4 28:24
<b>unfortunate</b> 18:1	40:9,22 41:7	<b>walking</b> 67:9,22	100:3	<b>working</b> 20:8 24:2
40:4	46:22 56:13 57:4	74:21 92:5	<b>wearing</b> 62:8	28:23 46:20
<b>unfortunately</b>	57:5,9 58:3,5,9	<b>walks</b> 66:15	<b>wed</b> 31:13	109:18
	58:19,24 59:2,23	<b>wall</b> 111:6,9 113:9	<b>week</b> 6:17 11:24	<b>works</b> 113:16
		117:10 118:6,7	20:6 22:17 78:25	114:12
			81:10,14,15 97:6	<b>worried</b> 73:7,11



73:20,22,23 84:7 84:19 85:15,16 85:20 87:5 109:16 <b>worrisome</b> 99:23 <b>worry</b> 85:8 <b>worrying</b> 85:8,9 <b>worse</b> 109:25 <b>wouldnt</b> 58:3 72:24 84:9,12 90:23 100:19 109:25 119:16,25 <b>write</b> 61:25 100:18 100:20 <b>writes</b> 60:14 90:24 <b>written</b> 60:25 100:14 106:12 120:16,22 127:17 128:11 <b>wrong</b> 50:11 57:25 70:12 80:10 114:9 129:7 <b>wrongful</b> 1:4 <b>wrote</b> 61:22 69:22 122:4 127:15	62:16 66:10 69:5 83:8,10 84:25 85:12 93:5 103:23 105:1,1 125:22 130:7,23 131:7 <b>youve</b> 34:20 43:12 46:18 48:23,25 51:4 57:14 80:25 107:12 122:3 123:14 127:25 128:2 131:4	<b>12day</b> 76:17 <b>13</b> 16:6 19:5 29:6 <b>132</b> 3:8 <b>13th</b> 62:4 <b>14</b> 22:7 23:4 78:15 <b>14th</b> 18:17 63:18 74:22 126:22 <b>15</b> 47:4 125:6,7 <b>150</b> 22:21 79:2 <b>15th</b> 38:4 39:3 70:3 71:7,16 72:14 <b>16</b> 96:20 <b>16th</b> 28:12 59:19 72:16 <b>17</b> 1:16 132:5 <b>17th</b> 4:2 5:2 66:7 66:11,12,13,13 72:2,10,16 <b>18</b> 80:2,4,6 <b>18th</b> 29:22 37:14 66:19 <b>19</b> 131:12,13 <b>1948</b> 8:5 <b>1966</b> 8:20 <b>1970</b> 8:11 <b>1974</b> 9:11 <b>1979</b> 10:3,4 41:23 <b>19th</b> 29:23 37:14 42:20 62:7,10 63:18 66:20 82:23 87:8	<b>21st</b> 67:15,19 <b>22</b> 96:20 <b>22nd</b> 67:15,19 106:20 <b>24</b> 97:13 <b>24th</b> 36:13 74:12 <b>25</b> 12:9 87:9 <b>250</b> 15:2 79:2 <b>25th</b> 36:13 62:25 66:6 74:16,22 <b>26</b> 6:10,13 124:9 129:12 <b>26th</b> 7:4 31:20,24 35:16,17,21,21 35:23 36:8,10,18 37:18 61:2 74:16 84:5 85:22 89:20 90:6,12 93:24 94:16,25 95:11 95:14,18 96:23 97:24 98:10 100:2 102:17 106:24 111:17,18 114:21 120:17,19 121:14 123:19 124:19 125:10,15 125:18 129:6,16 <b>27th</b> 31:20 32:3 59:15 77:5 94:25 95:12,14,18 97:1 97:25 98:10,13 98:13 100:2 102:18 103:18 106:20 107:1 118:12 119:6,12 120:9 121:9,24 121:24 122:5 125:12 129:3,16 <b>28</b> 33:16 <b>2801</b> 2:4 <b>28th</b> 30:4 31:2,15 32:5,6,18 34:5 90:2 101:23 102:1 106:21 107:2 114:18 119:9,16 120:11	<b>30</b> 12:11 87:9 104:3,16 110:1 <b>300</b> 22:23 <b>302</b> 2:13 4:4 <b>31</b> 54:21 <b>33</b> 87:9 97:16 <b>38</b> 129:9
<b>X</b>	<b>Z</b>		<b>4</b>	
x 3:1,9 <b>xray</b> 79:5 95:23 96:3 <b>xrays</b> 95:8	<b>zero</b> 109:10,11		4 3:2,13 65:1 115:12 <b>40</b> 29:18 50:25 55:1 63:1 104:5 <b>400</b> 15:3 <b>42</b> 3:5 47:5	
<b>Y</b>	<b>0</b>		<b>5</b>	
<b>yeah</b> 54:3 60:1 66:3,13 67:3 74:11,23 90:12 <b>year</b> 6:18 8:19 10:2 14:8 16:11 26:16 43:22 88:20 119:20,20 125:23 <b>yearly</b> 14:11 <b>years</b> 8:7 9:8,21 12:2,11 14:11,12 14:12 55:2 <b>youll</b> 13:19 65:23 109:7,9 <b>youre</b> 7:24 37:22 50:19,19 56:17 56:24 58:13	<b>0</b> 109:5,22 <b>00</b> 4:3 90:20 91:8 102:1 105:17 109:18 128:15 129:2 <b>05</b> 128:16 <b>07</b> 90:22 124:9,9 <b>08</b> 42:8 <b>09</b> 124:9 129:12	<b>1</b> 1 3:10 34:4,4 42:18 45:19 65:1 104:3 109:5,10,21,21 117:5 124:9 129:9,12 <b>10</b> 3:19 42:8 90:20 90:22 91:8 115:9 115:12 124:9,9 128:15,16 129:2 129:13 <b>1007</b> 90:17 <b>11</b> 3:20 44:10,13 97:13,16 102:1 117:15,16,17 <b>12</b> 3:21 43:20 47:5 62:21 90:19 92:4 107:19 117:18,20 124:13 131:12,13 <b>120</b> 33:20 34:10 107:18 108:23 <b>123</b> 3:6 <b>128</b> 3:7	5 3:3,4,14 64:23,24 65:5 96:9 104:16 109:18 110:1 <b>50</b> 12:15 55:1 <b>500</b> 80:5 <b>516</b> 132:22 <b>57</b> 2:4 5:2 <b>58</b> 55:2 <b>59</b> 42:4	
		<b>2</b> 2 3:11 45:22 65:1 104:5 109:9,10 109:22 117:5 125:2 129:12 <b>20</b> 12:9 14:10,19 31:20 66:23 125:2,6 <b>2008</b> 37:22 68:6 <b>2009</b> 12:7 15:18 16:6 19:5 96:23 <b>2012</b> 1:16 4:2 6:10 132:5,19 <b>20th</b> 37:14 63:23 66:23 132:18 <b>21</b> 94:19	<b>6</b> 6 3:15 15:18 78:8 <b>60</b> 33:19 34:11 54:7 <b>60th</b> 6:19 <b>619</b> 2:6 <b>620</b> 2:13 4:4 <b>64</b> 8:7 <b>65</b> 54:6 <b>66</b> 94:19 <b>6th</b> 18:7	
			<b>7</b> 7 3:16 24:19 <b>72</b> 81:9 <b>72201</b> 2:14 <b>72702</b> 2:10 <b>72756</b> 2:7 <b>75503</b> 2:4 <b>780</b> 50:9	
			<b>8</b> 8 3:18 5:2 54:21	

96:1,8 105:17,19  
80 14:18  
878 2:10

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9

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9 4:3 29:6 42:4  
115:8 117:17  
95 35:3  
99 114:22 123:3



IN THE CIRCUIT COURT OF CRAWFORD COUNTY, ARKANSAS  
CIVIL DIVISION

MARY HARTMAN, THE SISTER OF KENNETH BIELER,  
INDIVIDUALLY, AND AS THE ADMINISTRATRIX OF  
THE ESTATE OF KENNETH L. BIELER, AND  
REPRESENTING THE WRONGFUL DEATH BENEFICIARIES  
OF KENNETH BIELER, AND DORIS BIELER, THE  
MOTHER OF KENNETH BIELER, AND DONNA DEWEY,  
THE SISTER OF KENNETH BIELER, INDIVIDUALLY PLAINTIFFS

VS. CASE NO. CV-2010-425-I

HENRY N. EDWARDS, M.D. DEFENDANT

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Deposition of

SHAWN IMHOOF

August 3, 2012, at 1:00 p.m.  
-----

APPEARANCES:

ON BEHALF OF:

James E. Keever, M.D., J.D.  
2801 Richmond Road PMB #57  
Texarkana, TX 75503

Plaintiffs

Walter B. Cox  
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Defendant

ALSO PRESENT: J. Michael Cogbill, Counsel for  
Summit Medical Center

KIMBERLY E. LAYMAN, INC.  
CERTIFIED COURT REPORTER  
4313 SOUTH 89<sup>TH</sup> STREET  
FORT SMITH, ARKANSAS 72903  
PHONE 479-420-1244

1334

The discovery deposition of SHAWN IMHOOF, was taken on August 3, 2012, beginning at the hour of 1:00 p.m. at the law offices of Ledbetter, Cogbill, Arnold & Harrison, Fort Smith, Arkansas, before me, Kimberly E. Layman, a Notary Public within and for Sebastian County, Arkansas, and for the cause now pending in the Crawford County Circuit Court, page one hereof; said deposition was taken pursuant to agreement of counsel.

STIPULATION

It is hereby stipulated and agreed by and between counsel for the parties hereto that the deposition of SHAWN IMHOOF, be taken before Kimberly E. Layman, a Certified Court Reporter, and Notary Public, at the above captioned time and place.

Said deposition is taken pursuant to Rule 32 (a) (3), Arkansas Rules of Civil Procedure, with the specific understanding that any objections as to relevance, immateriality, or incompetence are reserved and may be made at the time the deposition is first offered into evidence. Objections as to form of questions are to be noted at the time of taking of the deposition.

All formalities with reference to taking, transcribing, forwarding and filing of said deposition are waived.



1 SHAWN IMHOOF, being first duly sworn, testified on  
2 oath as follows:

3 DIRECT EXAMINATION

4 BY MR. KEEVER:

5 Q. Would you give your full name for the record, please?

6 A. Shawn Carl Imhoof.

7 Q. Mr. Imhoof, I'm Jim Keever, and we were just  
8 introduced a moment before. We have, I believe, had one  
9 brief telephone conversation in the past, is that correct?

10 A. That is correct.

11 Q. Would you just summarize that for us on the record?  
12 What you remember.

13 A. What I remember is I was off work one day and got a  
14 phone call saying that there was a physician looking for  
15 some information about a patient, and essentially they  
16 said that it sounded like he was getting pretty upset so  
17 they wanted to transfer him to me. And I gave them my  
18 phone number and, or I got his phone number and made the  
19 call, and reached you, and once I talked to you I said,  
20 you know, "Anything pertaining to that, I, I think I  
21 remember something about that. However, anything like  
22 that needs to go through Mary Jo Brinkman."

23 Q. Okay, and I'm sorry if I let anyone think that I was  
24 upset. That's -- but I appreciate that summary. Mr.  
25 Imhoof, have you ever given a deposition before?

1 A. Yes.

2 Q: Okay. And I won't go through all of the rules, but  
3 please make your answers audible, instead of uh-huh, huh-  
4 uh, or shaking your head.

5 A. Yes, sir.

6 Q. And if my question is not clear to you, would you let  
7 me know so I could rephrase it?

8 A. Yes, sir, I will.

9 Q. Good. I'll do my best not to have that happen. Would  
10 you give, tell us about your job description?

11 A. I am the director of radiology at Summit Medical  
12 Center. I oversee the functioning of the department.

13 Q. How long have you done that, Mr. Imhoof?

14 A. About fourteen and a half years.

15 Q. Wow. Now, are you aware that originally the hospital  
16 was a named defendant in a lawsuit filed by the Estate of  
17 Kenneth Bieler?

18 A. Yes, sir.

19 Q. And are you aware that the hospital has since been  
20 dismissed from that lawsuit?

21 A. Yes, sir.

22 Q. Now, the -- I'm going to show you a document which  
23 we'll mark as Exhibit Number One. And these are the  
24 Answers of the hospital to what we call Requests for  
25 Admission. Have you seen this document before, Mr.



1 Imhoof?

2 A. Yes, sir.

3 Q. Okay. And were you the one who provided the  
4 information for the answers in this document?

5 A. Yes, sir.

6 Q. Okay. Now, I'm just going to ask you some questions  
7 that are really going to track this. What documentation  
8 did you find that Dr. Edwards had contacted the radiology  
9 department on January 26<sup>th</sup>, 2009 regarding the possibility  
10 of performing a duplex venous ultrasound on Mr. Bieler?

11 A. I cannot find any documentation.

12 Q. Would there be any employee of the hospital or member  
13 of your department better qualified than you regarding the  
14 possibility of finding that documentation?

15 A. No, sir.

16 Q. Very good. Did your department have the equipment and  
17 staffing available on January 26<sup>th</sup>, 2009 to perform a  
18 duplex venous ultrasound on Kenneth Bieler?

19 A. Yes, sir.

20 Q. How about on January 27<sup>th</sup>? Was the equipment and  
21 staffing available?

22 A. Yes, sir.

23 Q. And I meant the 27<sup>th</sup>, 2009, of course. Were you  
24 personally on duty on January 6<sup>th</sup>? Were you in the  
25 hospital on January 6<sup>th</sup>, 2009?

1 MR. COGBILL: I think you've got the date  
2 wrong.

3 A. January -

4 Q. January 26<sup>th</sup>?

5 A. You said the 6<sup>th</sup>.

6 MR. COGBILL: The 6<sup>th</sup>.

7 Q. I'm sorry, January 26<sup>th</sup>. Thank you.

8 A. I believe I was. I'm not positive, but I believe I  
9 was there.

10 Q. If you were not there on January 26<sup>th</sup>, 2009, who would  
11 have been the senior technician or the senior supervisor  
12 of the department that would have been present?

13 A. Generally, I have an office manager who is not a  
14 technologist, but she's the one who grounds all phone  
15 calls and questions and they generally pass those off to  
16 me. Obviously, just like when I was off and took your  
17 phone call.

18 Q. Okay. Do you know whether you were personally on duty  
19 on January 27<sup>th</sup>, 2009?

20 A. I believe, yes, sir, I was.

21 Q. Are you qualified to do a duplex venous ultrasound?

22 A. Yes, sir.

23 Q. And who else in the department would have been  
24 qualified to do a duplex venous ultrasound on January  
25 26<sup>th</sup>, 2009?



1 A. Can you rephrase the question? Or repeat the  
2 question?

3 Q. Other, other than yourself, who else in the department  
4 would have been qualified to do a venous duplex ultrasound  
5 on January 6<sup>th</sup>, 2009?

6 MR. COGBILL: 26<sup>th</sup>.

7 A. I'm, I'm not for sure -

8 Q. Did I, am I still saying 6<sup>th</sup>?

9 MR. COGBILL: Yeah.

10 Q. 26<sup>th</sup>, thank you.

11 A. I'm not for sure who else was in the building on the  
12 26<sup>th</sup>.

13 Q. How many members of your department were qualified to  
14 do a duplex venous ultrasound on January 26<sup>th</sup>, 2009?

15 A. January 26<sup>th</sup>, including myself, I believe there were  
16 three of us.

17 Q. Okay. And the same number on January 27<sup>th</sup>, 2009?

18 A. Yes, sir.

19 Q. Mr. Imhoof, do you recall being served a Subpoena to  
20 testify at the trial in this case when it was scheduled  
21 for trial in January of 2012?

22 A. Yes, sir.

23 Q. And did you receive notice that the trial had been  
24 continued?

25 A. Yes, sir.

1 Q. And do you understand that that Subpoena is still  
2 operative for the new trial date, which is the week of  
3 November 26<sup>th</sup>, 2012?

4 A. Yes, sir.

5 Q. I have no further questions. Thank you. You've been  
6 a great witness.

7 A. Alright, thank you.

8 CROSS EXAMINATION

9 BY MR. COX:

10 Q. I have a few questions.

11 A. Yes, sir.

12 Q. I'll be brief. Kim, can you hear me down here?

13 COURT REPORTER: I can.

14 Q. With regard to the Responses to Requests for  
15 Admissions back when you were asked to admit or deny that  
16 Dr. Edwards contacted a member of the radiology department  
17 on January 26, 2009 regarding the possibility of  
18 performing a duplex venous ultrasound on Mr. Bieler, in  
19 order to respond to that, what investigation did you  
20 conduct?

21 A. In order to respond to that, with like anything,  
22 there's not any documentation ever of a verbal  
23 conversation held with another staff member. So, unless  
24 there is a written note saying so-and-so needs you or a  
25 call is transferred to me, there would have been no, you



1 know, way for me to get those, get a record of that.

2 Q. So, in other words, if Dr. Henry Edwards, whom I  
3 represent, had asked someone in the department, "Is there  
4 anyone here who can do a venous duplex today," and was  
5 told no, there would be no record of that, would there?

6 A. There would be no record of that.

7 Q. And what if he had picked up the phone and just called  
8 the department of radiology and asked that same question?  
9 Would there be a record made of that?

10 A. There would not be.

11 Q. Under what circumstances would there be a record made  
12 of that?

13 A. Under the circumstances, the staff would make a note  
14 if there were an issue or someone was asking for something  
15 that they didn't have the capability of doing. They would  
16 have made a note or, or transferred the call to me to try  
17 and make that, you know, communication available so I  
18 would know what was going on and try to fix the situation.

19 Q. But if Dr. Edwards had simply asked someone verbally  
20 or picked up the phone and said, "Hey, is it possible to  
21 get a duplex venous ultrasound today," and if somebody had  
22 told him no, then there would be no record of that, would  
23 there?

24 A. There would not be.

25 Q. And the same would be true if that same type of

1 contact had been made either on January the 26<sup>th</sup> or  
2 January the 27<sup>th</sup>, correct?

3 A. Yes, sir.

4 Q. Now, do you recall there being a pretty severe ice  
5 storm in January of 2009?

6 A. Yes, sir.

7 Q. Did the hospital have some difficulty getting some  
8 personnel to work in the hospital?

9 A. Some personnel, just in general?

10 Q. In general, yes.

11 A. Always. Any time there's an ice storm, yes.

12 Q. Have you been able to go back and check the records at  
13 Summit to know whether or not the radiology techs and  
14 other personnel in the department were all there, present  
15 during that ice storm, each day?

16 A. Yes, sir.

17 Q. They were there all day, each day?

18 A. I don't know that they were there all day, each day.  
19 You're talking about "they," meaning everybody?

20 Q. Yes.

21 A. I don't know that everybody was there all day, every  
22 day.

23 Q. Dr. Edwards has testified under oath that he was  
24 informed or knew that the tech who ordinarily did  
25 ultrasounds was not at work that day and could not do the



1 test. Would there be a record kept of that sort of  
2 conversation if that had taken place?

3 A. No.

4 Q. Now, there's also some testimony from Dr. Edwards that  
5 he wanted to do a nuclear study on Mr. Bieler during that  
6 ice storm but that the radioactive media was not available  
7 because of the ice storm and it had to come from St. Louis  
8 and could not get here. Do you remember anything of that  
9 nature happening?

10 A. I do not remember that specific incidence, no.

11 Q. Is that radioactive material ordinarily brought to the  
12 hospital on an as-needed basis?

13 A. Yes.

14 Q. It's not kept at the hospital, is it?

15 A. No, sir, it is not.

16 Q. And if there is difficulty, or difficulties in  
17 transporting the radioactive material to the hospital  
18 because of weather, there would be no record kept of that,  
19 either, would there?

20 A. Not at my facility.

21 Q. That's all I have, sir. Thank you.

22 REDIRECT EXAMINATION

23 BY MR. KEEVER:

24 Q. Just one or two brief follow-ups, Mr. Imhoof. Was  
25 there any record of a lung scan using, requiring

1 radioactive materials ordered on Henry Bieler on the 26<sup>th</sup>  
2 or 27<sup>th</sup> of January?

3 A. I do not know the answer to that.

4 Q. Fair answer, thank you.

5 A. Uh-huh (yes).

6 Q. I have nothing further.

7 MR. COX: I have no further questions.

8 MR. COGBILL: I have no questions.

9 Q. That's it. Shawn, thank you for your courtesy. I  
10 appreciate it.

11 MR. COGBILL: We'll waive signature.

12 \* \* \* \* \*

13 Concluded at 1:15 p.m.

14 \* \* \* \* \*



C E R T I F I C A T E

STATE OF ARKANSAS                    )  
  ) ss  
COUNTY OF SEBASTIAN                )

I, Kimberly E. Layman, a Notary Public and Certified Court Reporter before whom the foregoing deposition was taken, do hereby certify that the deponent, SHAWN IMHOOF, was sworn by me, and that this deposition is a true and correct transcription of the testimony given by said deponent;

That the testimony of said deponent was taken down by me by Stenomask, reduced to typewriting via speech recognition, and the foregoing consecutively numbered pages are a complete and accurate record of the testimony given at said time by said deponent;

That I am not related to, nor employed by any of the parties to the action in which this proceeding was taken; and further, that I am not a relative or employee of any counsel employed by the parties hereto, nor financially interested, or otherwise, in the outcome of this action; and,

That I have no contract with the parties, attorneys, or persons with an interest in the action that affects or has a substantial tendency to affect impartiality, that requires me to relinquish control of an original deposition transcript or copies of the transcript before it is certified and delivered to the custodial attorney, or that requires me to provide any service not made available to all parties to the action.

---

Kimberly E. Layman  
Certified Court Reporter  
and Notary Public  
Certificate No. 484

My Commission Expires:  
12/01/13 (seal)

EXHIBIT LIST

Deposition Exhibit One

Answer of Defendant Van Buren  
H.M.A. LLC, to Decedent's  
First Set of Requests for  
Admission



1348

The discovery deposition of KEVIN ELLIOTT, was taken on August 3, 2012, beginning at the hour of 1:16 p.m. at the law offices of Ledbetter, Cogbill, Arnold & Harrison, Fort Smith, Arkansas, before me, Kimberly E. Layman, a Notary Public within and for Sebastian County, Arkansas, and for the cause now pending in the Crawford County Circuit Court, page one hereof; said deposition was taken pursuant to agreement of counsel.

STIPULATION

It is hereby stipulated and agreed by and between counsel for the parties hereto that the deposition of KEVIN ELLIOTT, be taken before Kimberly E. Layman, a Certified Court Reporter, and Notary Public, at the above captioned time and place.

Said deposition is taken pursuant to Rule 32 (a) (3), Arkansas Rules of Civil Procedure, with the specific understanding that any objections as to relevance, immateriality, or incompetence are reserved and may be made at the time the deposition is first offered into evidence. Objections as to form of questions are to be noted at the time of taking of the deposition.

All formalities with reference to taking, transcribing, forwarding and filing of said deposition are waived.



1 KEVIN ELLIOTT, being first duly sworn, testified on  
2 oath as follows:

3 DIRECT EXAMINATION

4 BY MR. KEEVER:

5 Q. Would you just give your full name for the record,  
6 please?

7 A. Kevin Christopher Elliott.

8 Q. Mr. Elliott, I'm Jim Keever and we were just  
9 introduced. I'm trying to think whether we had a brief  
10 conversation almost a year ago or not. Do you remember if  
11 we ever talked over the telephone?

12 A. No, I don't, I don't recall.

13 Q. Okay. Have you ever been deposed before?

14 A. No, sir.

15 Q. Well, I'll go over some of the rules and -

16 A. Okay.

17 Q. - and I'm going to ask you questions and we'll ask  
18 that you answer with audible answers instead of a shaking  
19 head or a nodding head.

20 A. Correct.

21 Q. Because the court reporter needs to take down every  
22 word.

23 A. Yes.

24 Q. If one of my questions is not clear, would you please  
25 let me know so I can rephrase it?

1 A. Yes, sir.

2 Q. And, and that's really about it. You're under oath,

3 just like if you were in a courtroom.

4 A. Correct.

5 Q. Would you tell us your job description at Summit?

6 A. I am a physical therapist assistant.

7 Q. And what was your job description in January of 2009?

8 A. As a physical therapist assistant.

9 Q. I'm going to hand you what we've marked as Exhibit

10 Number One to your deposition. And you will notice that

11 on the bottom there are some numbers. It says 1.14.09

12 Batch 3, and then 54, 53, going back to 49. As we talk

13 about these records, if you would, would you try to refer

14 to the page number so that we can be sure we're on the

15 same page, so as to speak?

16 A. Yes, sir.

17 Q. Okay, great. Now, would you identify what these pages

18 represent in Exhibit One?

19 A. Page 54 and 53 are the evaluation, physical therapy

20 evaluation. Pages 52, 51, 50 and 49 are daily therapy

21 progress notes.

22 Q. And who did the, made the entries on page 53 and 54,

23 the evaluation?

24 A. LeAnn Karnes.

25 Q. And can you tell us who LeAnn Karnes is?



1 A. She is a physical therapist and the current director  
2 of the physical therapy department at Summit Medical  
3 Center.

4 Q. Okay. Let's go on to 52. Who made the entries on  
5 page 52?

6 A. LeAnn Karnes made the entry on 1/17/09, and I made, I,  
7 Kevin Elliott, made the entries on the 19<sup>th</sup> and the 20<sup>th</sup>.

8 Q. Okay. And then that would be the same, both above,  
9 and then the comments section would be the same? Is that  
10 correct? LeAnn on the 17<sup>th</sup> and you on the 19<sup>th</sup> and 20<sup>th</sup>?

11 A. Yes, sir.

12 Q. Would you describe Kenneth's activities in terms of  
13 being up and ambulatory for the dates noted on page 52?

14 A. Referring to my notes, on the 17<sup>th</sup> it says that he was  
15 supine in bed, agreeable to treatment. He took three to  
16 four steps with a rolling walker, using moderate  
17 assistance with the therapist. On the 19<sup>th</sup>, he, with his  
18 transfers from -- to a chair from his bed, was at moderate  
19 assistance with me. He ambulated four feet times two  
20 using a standard walker at a moderate assist level. On  
21 the 19<sup>th</sup>, in the second treatment we did exercises only,  
22 no transferring. On the 20<sup>th</sup>, his transfer from bed to  
23 chair was at minimal assistance. He ambulated a distance  
24 of seven feet. The assistive device used was a rolling  
25 walker with maximum assistance of me.

1 Q. How would Kenneth's activities on those notated times  
2 and days, how would that compare to a normal ambulatory  
3 patient?

4 A. No way to determine.

5 Q. No -

6 A. Each, each patient is an individual. There's no -- I  
7 take each patient as an individual. There's no way to  
8 group them all together. In my, in my view.

9 Q. And so what you can say is what he was able to do and  
10 that's reported and that stands for itself.

11 A. Yes, sir, it stands alone for itself.

12 Q. Okay. Now, when you are seeing patients, do you rely  
13 upon the nursing notes to get an idea of what their  
14 activities have been during the periods you're not with  
15 them?

16 A. No, I do not refer to the, to the nursing notes.

17 Q. Okay. Well, let's go to page 51. And why don't you  
18 go through the same discussion of his, his activity levels  
19 and confirm who made the notes on each one of these for  
20 notations?

21 A. On the 20<sup>th</sup>, in the, looks like number two would be in  
22 the afternoon, at 4:05 in the afternoon. That notation  
23 was made by myself. The morning treatment on the 21<sup>st</sup> was  
24 made by myself. The afternoon treatment of the 21<sup>st</sup> was  
25 made by Andy Messenger. And the morning treatment on the



1 22<sup>nd</sup> was made by myself.

2 Q. And can you tell us who Andy Messenger is?

3 A. Andy Messenger is the former director of the physical  
4 therapy department at Summit, and he's currently just a  
5 PRN staff therapist.

6 Q. For the court reporter, would you mind spelling his  
7 last name?

8 A. M-E-S-S-E-N-G-E-R.

9 Q. Thank you. Now, I think we just got who, who was  
10 making the notations. Can you tell us about the  
11 activities of Kenneth on those four notations?

12 A. The treatment on the 20<sup>th</sup>, in the afternoon, his bed  
13 mobility, his ability to sit up was at minimal assistance  
14 from myself. His sitting tolerance was forty-five  
15 minutes. His distance in ambulation was twenty feet. The  
16 assistive device used was a standard walker with minimal  
17 assistance of me. On the 21<sup>st</sup>, in the morning, his  
18 sitting tolerance was two hours. There was no ambulation  
19 on that morning. The afternoon of the 21<sup>st</sup>, Andy has  
20 written -- go ahead and -

21 MR. COGBILL: Yeah, you can go ahead and  
22 read what Andy wrote.

23 A. Two feet that he ambulated with a standard walker,  
24 with, looks like a minimal assistance of the therapist.  
25 And then on the 22<sup>nd</sup>, the morning treatment, he ambulated

1 two feet with a standard walker.

2 Q. Do you, can you tell us why he ambulated twenty feet  
3 on the 20<sup>th</sup> but didn't ambulate at all on the 21<sup>st</sup>?

4 A. No, sir. Not from my notes. It just says that --  
5 let's see, the 21<sup>st</sup> -- in my notes, on the 21<sup>st</sup> it says  
6 that he had complained of dizziness, and so if he  
7 complained of dizziness I would not have gotten him up on  
8 his feet, for safety reasons.

9 Q. Okay. And how about the only ambulating two feet on  
10 the 21<sup>st</sup> and the 22<sup>nd</sup>? Can you tell us why he was only  
11 able to ambulate two feet on those two days or those two  
12 sessions?

13 A. Mr. Messenger has written on the 21<sup>st</sup> that the patient  
14 was tired and ready for bed. So that would, that was his  
15 explanation for his treatment. I wrote on the 22<sup>nd</sup> that  
16 he complained of nausea and being tired. He was  
17 transferred to the chair and was able to perform easy  
18 exercises from the chair.

19 Q. Okay. Let's go on to page 50 now. And first, the  
20 same way, go ahead and tell us who made these notes.

21 A. The treatment on the 22<sup>nd</sup> was made by myself. The  
22 treatments on the 23<sup>rd</sup>, both treatments, and the 24<sup>th</sup>, were  
23 made by Mr. Messenger.

24 Q. Okay. And, and for the record, tell us what his  
25 exercise tolerance was on those days. Or those



1 treatments, actually, thank you.

2 A. On the 22<sup>nd</sup>, he did not ambulate that day. His, he  
3 was maximum assist for his transfers from chair to bed,  
4 and we did simple bed exercises. And the 23<sup>rd</sup> and the  
5 24<sup>th</sup>, I did not see the patient. I have no way to  
6 determine what that, what his tolerance would have been.

7 Q. But from the record, can you tell us what his exercise  
8 tolerance was?

9 A. I can read what Mr. Messenger has written.

10 Q. Please do.

11 A. He ambulated ten feet times two with a standard walker  
12 using touch-down weight-bearing. On the morning treatment  
13 of the 23<sup>rd</sup>, on the 23<sup>rd</sup> afternoon treatment, it was a  
14 single distance of ten feet again with a standard walker,  
15 minimal assistance. And then on the 24<sup>th</sup>, he ambulated  
16 fifty feet with a standard walker at contact guard  
17 assistance.

18 Q. Okay. Let's go on to page 49. And if you would, Mr.  
19 Elliott, go ahead and we'll do the same drill in terms of  
20 tell us who made the notes, first of all.

21 A. The 26<sup>th</sup>, both treatments, on the 27<sup>th</sup>, both  
22 treatments, those notes were made by me.

23 Q. Okay. Now, how much did he ambulate on the morning  
24 treatment on the 26<sup>th</sup>?

25 A. Twelve feet, total.

1 Q. And will you go to your narrative comment and just  
2 read that for us?

3 A. "Patient agreeable to therapy. Improved transferring  
4 today. No complaint of shortness of breath. Patient  
5 transferred to bedside commode, then ambulated a total of  
6 twelve feet. Patient complained of sharp pain under left  
7 breast. Patient returned to room and sat up in chair. He  
8 has improved gait." Because of my loopy E, I'm unable to  
9 determine what I've written there. But, "has very poor  
10 endurance."

11 Q. Okay. Did you discuss the, that treatment session  
12 with Dr. Edwards?

13 A. No way to determine. I mean, I didn't, I didn't note  
14 that I, that I spoke with anybody during that, or after  
15 that treatment session.

16 Q. What would your usual practice have been when you have  
17 a patient who responded to the treatment like you just  
18 described in your narrative note?

19 A. Rephrase the -- referring to what part of my note?

20 Q. Referring to -- what would your -- and you're right,  
21 that wasn't a very good question. Let me try that again.  
22 What would your usual practice have been in terms of  
23 notifying the attending physician when a patient had a  
24 response to a treatment like you just described?

25 A. Again, what part of the treatment are we talking



1       about? The twelve feet?

2       Q. Okay, how about when a patient has walked for twelve  
3       feet and complains of a sharp pain under the left breast?

4       A. When a patient -- because he's, because patients have  
5       varying complaints of, of discomfort, if I had seen where  
6       the patient was in distress, then I would refer to the  
7       nurses. I, I don't get on the phone and speak with the  
8       doctors after every treatment. And if the, if the doctor  
9       happens to be at the nurses station and I've noted  
10      something that would be what I felt was out of the norm or  
11      something that required immediate attention from the  
12      physician to know or the nurses to know, then I would  
13      speak to them. But as far as when he, when I had written  
14      "he complained of sharp pain under his left breast," that  
15      was just a verbal complaint that he made to me and I noted  
16      it in my note, but I did not, from reading my note, I  
17      didn't see, I didn't write anything as he didn't have any  
18      shortness of breath, there was nothing associated with  
19      that. And it could have just been he was, he was tired  
20      that day. And he made the complaint, and I try to put --  
21      if the patient says something specific I try to enter it  
22      into my notes.

23      Q. I'm going to -- do you remember Kenneth Bieler, by the  
24      way?

25      A. Not in the -- not at all.

1 Q. Kenneth was an American Indian who was about 6'4" and  
2 weighed close to 280 pounds. Does that refresh it any?

3 A. No, sir.

4 Q. Okay. I'm going to show you what I have marked  
5 Exhibit Number Two. And this is out of the progress  
6 notes. You'll notice on the bottom it says Summit  
7 1.14.009 Batch 1, page 39, and then page 38 on the second  
8 page.

9 A. Okay.

10 Q. Did I get it, did I make it?

11 A. Yes.

12 Q. Okay. And on the second page -- this is Dr. Edwards'  
13 progress note, and on the second page it says, "When he  
14 walked with therapist today, he went only a few steps  
15 before he," quote, "'ran out of gas,'" unquote.  
16 "Exhausted and puffing, had to sit down immediately. He's  
17 still too weak and unsteady to get out of bed by himself."  
18 Does that refresh your memory in terms of what you  
19 observed in Kenneth that morning?

20 A. No, sir. Because I don't, I don't remember the  
21 patient at all.

22 Q. Okay. Let's go on and read your, your afternoon note,  
23 which was at 14:20 or 2:20 p.m., on 1/26/09.

24 A. My note says that, "Patient still very weak but  
25 willing to do exercises. See above for listed exercises.



1 All unassisted exercises fifteen to twenty reps. Assisted  
2 exercises were ten to fifteen reps, secondary to complex  
3 movements. Patient tolerated exercises well."

4 Q. And what was his ambulation during that session?

5 A. We did not ambulate.

6 Q. What was Kenneth's overall condition on the morning of  
7 the 27<sup>th</sup>?

8 A. My note states, "Treatment deferred secondary to  
9 nausea and dizziness and short of breath. Patient  
10 condition reported to M.D. No treatment."

11 Q. And on the afternoon?

12 A. On the afternoon of the 27<sup>th</sup>, "Patient very agreeable  
13 and just wanted to do exercises. See above listing for  
14 exercises. All exercises times fifteen reps each."

15 Q. And what was Kenneth's ambulation on that afternoon  
16 session?

17 A. On the 27<sup>th</sup> was nothing.

18 Q. And then you have an additional notation below that.

19 A. That notation was made by Andy Messenger.

20 Q. Okay.

21 A. It says, "Dr. Edwards asked P.T. to hold until further  
22 notice."

23 Q. Can you tell when that note was made?

24 A. No. On the 28<sup>th</sup>. But -

25 Q. Okay.

1 A. Oh, I thought you meant time. Yeah.  
2 Q. Yeah.  
3 A. It was 1/28/09.  
4 Q. When was the last time you saw Kenneth?  
5 A. From the notes that you've provided me, the last time  
6 I saw Kenneth was on the 27<sup>th</sup> at 14:00.  
7 Q. And what was his status in terms of shortness of  
8 breath?  
9 A. Other than what I have written on the 27<sup>th</sup>, that he  
10 complained of dizziness and shortness of breath, that's,  
11 that's all I, that's all I have here.  
12 Q. And again, any, any independent recollection as we sit  
13 here today about his condition on the 27<sup>th</sup>?  
14 A. No, sir.  
15 Q. Mr. Elliott, do you recall getting a Subpoena to  
16 testify in January, when this case was first set for  
17 trial?  
18 A. Yes, sir.  
19 Q. Are you aware that initially the hospital was a  
20 defendant in this case?  
21 A. The defendant is -  
22 Q. Oh, the Bieler Estate was suing the hospital  
23 initially. Were you aware of that?  
24 A. Yes. Yes, I was. Yes.  
25 Q. Are you aware that since that time the estate has



1 dropped the suit against the hospital and they're no  
2 longer a party in the lawsuit?

3 A. No, I did not know that.

4 Q. Okay. Do you understand that the Subpoena that you  
5 got -- or when did you learn that the case had been  
6 continued and wouldn't be going to trial in January of  
7 2012?

8 A. I don't recall the date.

9 Q. But you do recall being notified?

10 A. Yes.

11 Q. And are you aware that the Subpoena for the original  
12 trial date actually still carries over to the new trial  
13 date the week of November 26<sup>th</sup>, 2012?

14 A. I did not realize that.

15 Q. Okay. I think I'll pass the witness. Thank you very  
16 much, Mr. Elliott.

17 A. Thank you very much.

18 MR. COGBILL: Wait a second.

19 MR. COX: I don't have any questions.

20 MR. COGBILL: Okay, you're finished.

21 Q. Done deal.

22 MR. COGBILL: We're through. Thank you.

23 Since he, since he read this stuff I'd like for  
24 him to look at it, so if you could, you can  
25 send it to me and I'll send it to him.

1  
2  
3  
4

COURT REPORTER:     Okay.

\* \* \* \* \*

Concluded at 1:15 p.m.

\* \* \* \* \*



C E R T I F I C A T E

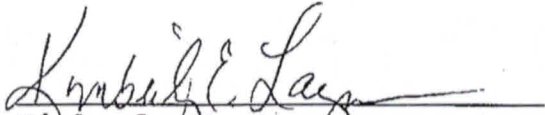
STATE OF ARKANSAS                    )  
  ) ss  
COUNTY OF SEBASTIAN                )

I, Kimberly E. Layman, a Notary Public and Certified Court Reporter before whom the foregoing deposition was taken, do hereby certify that the deponent, KEVIN ELLIOTT, was sworn by me, and that this deposition is a true and correct transcription of the testimony given by said deponent;

That the testimony of said deponent was taken down by me by Stenomask, reduced to typewriting via speech recognition, and the foregoing consecutively numbered pages are a complete and accurate record of the testimony given at said time by said deponent;

That I am not related to, nor employed by any of the parties to the action in which this proceeding was taken; and further, that I am not a relative or employee of any counsel employed by the parties hereto, nor financially interested, or otherwise, in the outcome of this action; and,

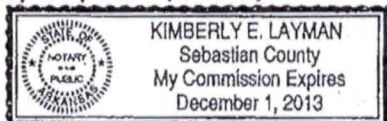
That I have no contract with the parties, attorneys, or persons with an interest in the action that affects or has a substantial tendency to affect impartiality, that requires me to relinquish control of an original deposition transcript or copies of the transcript before it is certified and delivered to the custodial attorney, or that requires me to provide any service not made available to all parties to the action.

  
Kimberly E. Layman  
Certified Court Reporter  
and Notary Public  
Certificate No. 484

**KIMBERLY E. LAYMAN**

**ARKANSAS SUPREME COURT  
CERTIFIED COURT REPORTER  
LS CERTIFICATE NO 484**

My Commission Expires:  
12/01/13 (seal)







KEVIN ELLIOTT

ERRATA SHEET

Upon reading and examining my testimony as herein transcribed, I make the following additions, changes and/or corrections, with the accompanying and corresponding reason(s) for same:

Page	Line	Is Amended to Read
_____	_____	_____
_____	_____	_____
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EXHIBIT LIST

Deposition Exhibit One

Physical Therapy Evaluation  
Notes, 6 pages

Deposition Exhibit Two

Summit Progress Notes, 2  
pages



<b>Code:</b> NT = Not Tested NA = Not Applicable I = Independent S = Supervised SBA = Stand By Assist	<b>CGA = Contact Guard Assist</b> Min. A = Minimal Assist Mod. A = Moderate Assist Max. A = Maximum Assist U = Unable	<b>WBAT = Weight Bear as tolerated</b> PWB = Partial Weight Bearing TTWB = Toe Touch Wt. Bearing NWB = Non-Weight Bearing	<b>Equipment</b> CR = Crutches SPC = Single Point Cane NBQC = Narrow Base Quad Cane WBQC = Wide Base Quad Cane	SW = Standard Walker FWW = Front Wheel Walker 4WW = Four Wheel Walker WC = Wheelchair
--	---	--	--	--

## Functional Status

Bed Mobility	Assist	Transfers	Assist	Transfers	Assist	Transfers	Assist
Rolling Right	SBA	Supine - Sit	min A	Stand - Sit	mod A	Toilet	NT
Rolling Left	↓	Sit - Supine	min A	Bed - WCSit -	NT		
Scotting	CGA	Sit - Stand	mod A	WC - Bed	NT		
<b>Balance</b>	<b>Sitting</b>	<b>Standing</b>	<b>Gait</b>				
Static	good	fair	Equipment	RW	Distance (Feet)	3-4 steps	
Dynamic	↓	fair-	Assist	mod	Weight Bearing	TDWB (R/L)	

## Gait Analysis

Only a few steps. Good understanding of TDWB.  
 Cane needed for proper sit→stand→sit.

## Assessment

Problems	Plan of Treatment
<input checked="" type="checkbox"/> Decline in Bed Mobility <input checked="" type="checkbox"/> Decline in Transfers <input checked="" type="checkbox"/> Decline in Gait <input type="checkbox"/> Safety Awareness Deficits <input type="checkbox"/> Balance Deficits <input type="checkbox"/> ROM/Strength Deficits <input type="checkbox"/> Other (specify)	<input type="checkbox"/> Bed Mobility Training <input checked="" type="checkbox"/> Transfer Training <input checked="" type="checkbox"/> Progressive Gait/Stairs Training <input type="checkbox"/> Instructions on Safety <input type="checkbox"/> Balance Training <input type="checkbox"/> Therapeutic Exercises (specify) <input type="checkbox"/> Patient/Caregiver/Staff Teaching Program <input type="checkbox"/> Other (specify)
<b>Short Term Goals</b> <input checked="" type="checkbox"/> Improve Bed Mobility to: mod <input checked="" type="checkbox"/> Improve Transfers to: min A <input checked="" type="checkbox"/> Improve Gait/Stairs Mgt. to: 25' RW mod-min A <input type="checkbox"/> Improve Safety Awareness to: <input type="checkbox"/> Improve ROM/Strength to: <input type="checkbox"/> Others (specify) <input type="checkbox"/> Initiate Patient/Caregiver/Staff Teaching Program	<b>Long Term Goals</b> <input checked="" type="checkbox"/> Improve Bed Mobility to: mod <input checked="" type="checkbox"/> Improve Transfers to: min - CGA <input checked="" type="checkbox"/> Improve Gait/Stairs Mgt. to: 50' RW min A <input type="checkbox"/> Improve Safety Awareness to: <input type="checkbox"/> Improve ROM/Strength to: <input type="checkbox"/> Other (specify) <input type="checkbox"/> Independent in Home Exercise Program; Good Return Demonstration of All Instructions by Staff/Caregiver

## Patient's Goals

Start moving better

## Rehab Potential

Tentative Discharge Plans: ☐ Home ☒ Rehab ☐ Other

## Frequency/Duration of Treatment

BID

## Comments

## PATIENT IDENTIFICATION



BIELER, KENNETH

ACCT 1172114 MR#0000134207 01/13/2009  
 EDWARDS, HENRY N. DOB:01/03/1951 058 M  
 SUMMIT MEDICAL CENTER 0010-7

## Registered Physical Therapist

John Karmes PT, DPT

## Date

1/17/09

## Physician Approval

## Date

Rehabilitation Therapy  
 Physical Therapy Evaluation



Date of Referral	1/14/09	Date of Onset	1/13/09	Treatment Diagnosis	
Physical Therapy Orders					
Eval; ROM @ LE, mobilize & walker TDWB @ LE					
History of Present Illness					
Pt is a 58 y/o male, fell @ work 1/6/09 & had subtrochanteric @ femur fx. started on 1/7. Admitted to Ashton Place 1/9, but had abd. distention/obstruction & was re-admitted to SMC 1/13/09					
Past Medical History					
HTN					
Precautions					
TDWBing @ LE					
Prior Functional Level					
before fx @					
Present Functional Level					
did mod A					
Psychosocial History					
Allergies			Medications		
Range of Motion/Strength		Orientation		Responsiveness	
ROM/Strength	ROM	Strength	<input checked="" type="checkbox"/> Name	<input checked="" type="checkbox"/> Alert	
	Left	Right	<input checked="" type="checkbox"/> Place	<input type="checkbox"/> Lethargic	
			<input checked="" type="checkbox"/> Time	<input type="checkbox"/> Responds to Verbal Cue	
Upper Extremities			<input type="checkbox"/> Agitation	<input type="checkbox"/> Painful Stimuli	
			<input type="checkbox"/> Language Barrier	<input type="checkbox"/> Non-Responsive	
			<input type="checkbox"/> Specify:	Prior Ambulation	
			<input checked="" type="checkbox"/> Follows Commands	<input checked="" type="checkbox"/> Community	
			<input type="checkbox"/> Confused at Times	<input type="checkbox"/> Household	
			Home Environment		
			<input checked="" type="checkbox"/> Alone	<input type="checkbox"/> Assist	
			<input type="checkbox"/> With Help	<input type="checkbox"/> Device	
			<input type="checkbox"/> Board and Care	<input type="checkbox"/> Non-Ambulatory	
			<input type="checkbox"/> Convalescent/SNF	Safety Awareness	
			<input type="checkbox"/> Stairs	<input type="checkbox"/> Poor	
Lower Extremities			Sensation		
hip	WFL 10-15	WFL	NVI		
knee	WFL 0-45	↓	Pain Status		
ankle	WFL	↓	min @ LE		
			Psychosocial		
			Trunk Strength/ROM		
			good		
			Barriers in Learning		
			none		
			Endurance		
			poor		
Tone					
Coordination					

Comments

ROM b'd 2° strength b'd.

Unable to perform hip movements/knee against gravity

## PATIENT IDENTIFICATION



BIELER, KENNETH

ACCT 1172114 MR#0000134207 01/13/2009

EDWARDS, HENRY N. DOB:01/03/1951 058 M

SUMMIT MEDICAL CENTER 0010-7





BIELER, KENNETH

 ACCT 1172114 MR#0000134207 01/13/2009  
 EDWARDS, HENRY N. DOB:01/03/1951 058 M  
 SUMMIT MEDICAL CENTER 0010-7

## Physical Therapy Progress Notes



PROCEDURE		DATE / a.m or p.m			
		1/17/09	1-19-09	1-19-09	1-20-09
Bed Mobility		GA min A	min A		min A
Sup to Sit		min A	min A		
Sit to Stand		mod A	mod A		
Standing Tolerance		fair	fair		
Ther Ex	QS / GS	✓		✓	✓
	AP / Heel Slides	✓ ✓		✓ ✓	✓ ✓
	SLR / LAQ			✓	
	Seated Hip Flex				
	hip abd add			✓	
	Sat 2.0.5	~10min	15min		5min
	sit→stand	2x			
Transfer to chair			Mod A		min A
GT	Distance	3-4 steps	4' x 2		11'
	A.D./ Assist	RW/mod	SW/mod A		RW/Max A
INITIALS		JK	(KE)	(KE)	(KE)

DATE	COMMENTS (subjective, assessment, plan)	DO NOT USE
1/17/09	PT improve in bed. Able to RX. Performed per above. Tol well. Returned to supine in bed & call light in reach. — J. K. Kames PT	U or u IU Q.D. Q.O.D. Use as leading "0" when writing decimal or fractions as a whole number, i.e. 0.5 DO NOT use a trailing "0" when writing a whole number, i.e. 5.0. MS or MSO4 MgSO4 µg < and >
1-19-09 1100	PT assigned to therapy. No vol A in transferring. Slowed. PT sitting time — PT 1d at distance & was able to sit in chair x 1.5". — (KE)	
1-19-09 1930	PT very sleepy but willing to do exercises. PT needs min A exercises such as SLR, hip abd add & heel slides. All exercises are 15 reps. No transfer from this visit. SR 1 x 2 — (KE)	
1-20-09 930	PT ready for therapy. See above for exercises. Improved sit→stand. Slight ↑ in dist. PT returned to a seated position. Call light in hand — (KE)	

Initials	Signature	Initials	Signature
JK		JK	J. K. Kames PT DPT
(KE)		(KE)	K. Edwards RN





BIELER, KENNETH

 ACCT 1172114 MR#0000134207 01/13/2009  
 EDWARDS, HENRY N. DOB:01/03/1961 058 M  
 SUMMIT MEDICAL CENTER 0261-1

## Physical Therapy Progress Notes



		DATE / a.m or p.m			
PROCEDURE		1-20-09 <sup>②</sup>	1-21-09 <sup>①</sup>	1-21-09 <sup>②</sup>	1-22-09 <sup>①</sup>
Bed Mobility		min <sup>①</sup>	min <sup>①</sup>	min <sup>①</sup>	min <sup>①</sup>
Sup to Sit		↓	↓	↓	↓
Sit to Stand					
Standing Tolerance					
Ther Ex	QS / GS	✓			
	AP / Heel Slides	✓			X10 X10
	SLR / LAQ				
	Seated Hip Flex				
Transfer Chair				min <sup>①</sup>	min <sup>①</sup>
GT	Sit Tol-	45 min.	2'		
	Distance	20'	0'	2'	2'
	A.D./ Assist	SW @ min <sup>①</sup>		SW/min <sup>①</sup>	SW
INITIALS		(KE)	(KE)	ms	(KE)

DATE	COMMENTS (subjective, assessment, plan)	DO NOT USE
1-20-09 1105	PT ready for therapy. PT reports & nausea & only mild Dizziness. See above for exercises. Improved gt ability, ↑ distance. PT no mild nausea during gt. PT returned to bed side. Sat on EOB x 45 min. PT then returned to bed — (KE)	U or u IU Q.D. Q.O.D. Use as leading "0" when writing decimal or fractions as a whole number, i.e. 0.5 DO NOT use a trailing "0" when writing a whole number, i.e. 5.0. MS or MSO4 MgSO4 μg < and >
1-21-09 1100	No A.T. transferring ability. PT no dizziness upon sitting up. When PT stood he became very SOB. Pulse O <sub>2</sub> at 97% E O <sub>2</sub> on. PT just sat up in chair No gt. — (KE)	
1-21-09 1430	pt tired & ready for bed cant p.c. — (ms)	
1-22-09 1100	PT no nausea & very tightness. PT transferred to chair & was able to perform easy exercises from the chair — (KE)	

Signature	Initials	Signature
	(KE)	Summit LPTA





BIELER, KENNETH

 ACCT 1172114 MR#0000134207 01/13/2009  
 EDWARDS, HENRY N. DOB:01/03/1951 058 M  
 SUMMIT MEDICAL CENTER 0261-1

## Physical Therapy Progress Notes



PROCEDURE		DATE / a.m or p.m			
Bed Mobility		1-22-09 (2)	1/23/09 (1)	1/23/09 (2)	1/24/09 (1)
Sup to Sit		max/ass (A)	mod (A)	mod (A)	min (A)
Sit to Stand		mod (A)	mod (A)	mod (A)	min (A)
Standing Tolerance		mod/min (A)	min (A)	min (A)	SBA
Ther Ex	QS / GS	✓ ✓			
	AP / Heel Slides	✓		min	✓ ✓
	SLR / LAQ				✓
	Seated Hip Flex				
Transfer	BSC		mod (A)	mod (A)	
	Shower		mod (A)		
Sitting Tolerance			2hr →		
GT	Distance	10' x 2	10'	50'	
	A.D./ Asslst	SW/min (A)	SW/min (A)	SW/CBA	
		TDRS	TDRS	TDRS	
INITIALS		(KE)	Am	Am	Am

DATE	COMMENTS (subjective, assessment, plan)	DO NOT USE
1-22-09	Max (A) transfer from chair → bed. See above for exercises. Pt cont to clo (P) in (A) hip (KE)	U or u IU Q.D. Q.O.D. Use as leading "0" when writing decimal or fractions as a whole number, i.e. 0.5 DO NOT use a trailing "0" when writing a whole number, i.e. 5.0. MS or MSO4 MgSO4 μg < and >
1/23/09 1015	pt participated well to get to chair. Good maintenance of WB, some SOB during amb.	
1/23/09 1310	Verbally reviewed the ex. Pt tried from sitting tolerance and a.m. activities. Doing better in mobility.	
1/24/09 1130	pt refused to stay up in chair but gave great effort = amb. Pting dist to 50'. maintain TDRS well. Understood plan for (A)	

Initials	Signature	Initials	Signature
Am	Anthony Mser	(KE)	Edward WRA





BIELER, KENNETH

 ACCT 1172114 MR#0000134207 01/13/2009  
 EDWARDS, HENRY N. DOB:01/03/1951 058 M  
 SUMMIT MEDICAL CENTER 0261-2

## Physical Therapy Progress Notes



		DATE / a.m or p.m			
PROCEDURE		1-26-09 ①	1-26-09 ②	1/27/09 ①	1/27/09 ②
Bed Mobility		SBA	SBA		
Sup to Sit		Min (A)			
Sit to Stand		CGA/min (A)			
Standing Tolerance		Fair			
Ther Ex	QS / GS		✓		✓
	AP / Heel Slides		✓		✓
	SLR / LAQ		✓		✓
	Seated Hip Flex			Deferred	
	hip and/abd				✓
GT	Distance	12' total			
	A.D./ Assist	SW/CGA			
INITIALS		(KE)	(KE)		

DATE	COMMENTS (subjective, assessment, plan)	DO NOT USE
1-26-09	PT agreeable to therapy. Improved transferring today	U or u
1007	NO CLO SBA - PT transferred to BSC then ambulated a total of 12'. PT clo sharp pain under @ breast. PT returned to room & sat in chair. PT has improved gt ability but has very poor endurance. (KE)	IU
1-26-09	PT still very weak but willing to do exercises	Q.D.
1420	See above for listed exercises. All unassisted exercises 15-20 reps. Assisted exercises were 10-15 2° complex movements. PT tolerated ex. well. (KE)	Q.O.D.
1-27-09	Rx deferred 2° nausea, dizziness & SBA. PT's condition reported to MD. No Rx. (KE)	Use as leading "0" when writing decimal or fractions as a whole number, i.e. 0.5
1-27-09	PT very giddy & just wanted to do exercises. See above listing for exercises. An ex x15 reps each. (KE)	DO NOT use a trailing "0" when writing a whole number, i.e. 5.0
1/27/09	Dr. Edwards asked PT to hold until further notice. (KE)	MS or MSO4
		MgSO4
		µg
		<and>
Initials	Signature	

1373



Date/Time	
1/26/09 10 AM	<p><u>Dysmotility?</u> Ogilvie syndrome slow resolving</p> <p>Repeat Xray today shows generalized gaseous distention of both small and large intestine. I reviewed films in person with radiologist, and compared both the most recent film from couple days ago, as well as 1 and 2 weeks ago. The degree of intestinal distention is less prominent today than two days ago and much less than ~ 10-12 d ago. Still, the first and lasting impression is of way too much gas everywhere.</p> <p>He continues to pass watery green diarrhea, so he's obviously not obstructed. I'd still consider this as a dysmotility condition, which started with pattern of or similar to Ogilvie's. Kenneth showed greater small intestinal gas than the textbook colon-only dilation of Ogilvie's. However, I don't know enough about the pathophysiology of Ogilvie's to say that small intestinal distention makes the condition different. I don't know if anybody knows. I don't know if there's a single pathological process that causes Ogilvie's, or if there are multiple contributory factors that result in a general pattern of distended bowel.</p> <p>Anyway, I suspect that the quickest way to recover normal intestinal motility is to become more active physically and move around a lot, i.e., work with physical therapy.</p>

continued p. 2

**PROGRESS NOTES**

PATIENT ID

Kulas



BIELER, KENNETH  
 ACCT 1172114 MR#0000134207 01/13/2009  
 EDWARDS, HENRY N. DOB:01/03/1951 058 M  
 SUMMIT MEDICAL CENTER 0261-1

1374

## PROGRESS NOTI

Date/Time

1/26/09

p. 2

When he walked with therapist today, he went only a few steps before he "ran out of gas." Exhausted and gasping, had to sit down immediately. He's still too weak and unsteady to get out of bed by himself. I think that the most contributory factor is his anemia. His Hb today is 8.7 - 3<sup>rd</sup> day in a row that he's "stuck" at this level. His <sup>oral</sup> intake is so poor that he can't nutritionally

support recovery of RBC production. His appetite is nil and intake limited due to nausea of dysmetria. Dysmetria is slow to resolve because he's physically inactive. He's physically inactive due to low RBC count. And there's the vicious circle.

Transfusion of 2 U RBC's looks to be quickest way to interrupt this circle and get him going. In all respects will transfuse and see how he responds.

*W. H. H. H.*

## PROGRESS NOTES

PATIENT ID



BIELER, KENNETH

ACCT 1172114 MR#0000134207 01/13/2009  
EDWARDS, HENRY N. DOB:01/03/1951 053 M  
SUMMIT MEDICAL CENTER 0261-2

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IN THE CIRCUIT COURT OF CRAWFORD COUNTY, ARKANSAS  
CIVIL DIVISION

MARY HARTMAN

PLAINTIFF

vs.

CASE NO. CV-2010-425II

HENRY EDWARDS, M.D.

DEFENDANT

\* \* \* \* \*

DEPOSITION OF

**GENEVA HAYNES**

OCTOBER 17, 2012

FORT SMITH, ARKANSAS

\* \* \* \* \*

**CYNTHIA'S COURT REPORTING**

P.O. Box 180487

Fort Smith, AR 72918-0487

(918)436-2036 \* (479)651-7529

REPORTED BY: Cynthia Minks Myers

E-mail: cindysdepo@gmail.com

ORIGINAL

A P P E A R A N C E S

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P.O. BOX 878

FAYETTEVILLE, ARKANSAS 72701

ALSO PRESENT:

CHRIS MIDDLETON, VIDEOGRAPHER



S-T-I-P-U-L-A-T-I-O-N-S

It is hereby stipulated and agreed by and between the parties hereto, through their respective attorneys, that the deposition of **GENEVA HAYNES**, may be taken on the 17th day of October, 2012, by Cynthia Minks Myers, Certified Court Reporter, within and for the State of Arkansas, taken by Agreement.

It is further stipulated and agreed by and between the parties hereto, through their respective attorneys, that said deposition is taken pursuant to Rule 32(a)(3), Arkansas Rules of Civil Procedure, (Rule 30, Federal Rules of civil Procedure).

\* \* \* \* \*

I N D E X

WITNESS

EXAMINATION

**GENEVA HAYNES**

By Mr. Keever

6

By Mr. Cox

21

By Mr. Keever

41

CERTIFICATE OF REPORTER

42

E X H I B I T S

DEPOSITION EXHIBIT

PAGE NO.

No. 1

9



1 PROCEEDINGS

2  
3  
4 THE VIDEOGRAPHER: We are now on the  
5 record in the matter of Mary Hartman versus Henry  
6 Edwards. Today's date is Wednesday, October 17th,  
7 2012. The time is 1:00 p.m.

8 This is the video recorded deposition of  
9 Mary Hartman being taken at the Law Office of Nolan,  
10 Coddell & Reynolds, 122 11th Street, in Fort Smith,  
11 Arkansas.

12 I'm the camera operator. My name is Chris  
13 Middleton. I work for Branch Out Studios located at  
14 8 North Fifth Street here in Fort Smith, Arkansas.  
15 The court reporter is Cynthia Minks Myers from  
16 Cynthia's Court Reporting.

17 Will all attorneys please identify  
18 themselves and anyone with them and the parties they  
19 represent, beginning with the party noticing this  
20 proceeding?

21 MR. KEEVER: I'm Jim Kever and, along  
22 with Ken Swindle, we represent the plaintiff in this  
23 action.

24 MR. COX: I'm Walter Cox and I represent  
25 Dr. Henry Edwards.

1 MR. KEEVER: Could I make a correction? I  
2 believe that you said this was a video deposition of  
3 Mary Hartman, and it's Geneva Haynes.

4 THE VIDEOGRAPHER: Excuse me. Make that  
5 correction. I do apologize. Geneva Haynes is the  
6 recorded deposition today.

7 Will you please administer the oath?

8 THE COURT REPORTER: Will you raise your  
9 hand, please, and let me swear you in?

10 Do you swear to tell the truth, the whole  
11 truth, and nothing but the truth so help you God.

12 THE WITNESS: I do.

13 THE COURT REPORTER: Thank you, ma'am.

14  
15 **GENEVA HAYNES,**  
16 having been first duly sworn appeared as a witness  
17 and testified as follows:

18 **EXAMINATION**

19 BY MR. KEEVER:

20 Q. Ms. Haynes, would you give your full name  
21 for the record, please?

22 A. Geneva Haynes.

23 Q. Okay. I'm kind of sitting to the side of  
24 you, but we're -- we're videotaping this. So as  
25 much as you can, if you could address your comments



1 down to that direction, I won't -- I won't feel  
2 slighted if you're not looking at me. Okay?

3 A. Okay.

4 Q. Have you ever been -- been deposed or been  
5 in a deposition, Ms. Haynes?

6 A. No, I haven't.

7 Q. Well, it's a legal proceeding. You're  
8 under oath just like in the courtroom. And we're  
9 going to ask, as much as you can, to give verbal  
10 answers instead of head nods. I -- I understand  
11 that with your breathing problems that -- that we  
12 may have to work around that. But that's so that  
13 the court reporter can get an accurate record, but  
14 we're on videotape so I don't think that will be a  
15 problem. But could you do that as much as possible?

16 A. Yes, I will.

17 Q. And I may occasionally have a question  
18 that is confusing. And if you don't understand my  
19 question, I'll not be offended at all, and I'll be  
20 happy to rephrase it to make sure it's as clear as  
21 possible. Will you -- will you work with me on  
22 that?

23 A. Yes, I will.

24 Q. Good.

25 Now, as -- as we just said, my co-counsel

1 is Ken Swindle and he and I represent the estate of  
2 Kenneth Bieler and the wrongful death beneficiaries  
3 of Kenneth Bieler. And with us is Walter Cox who  
4 represents Dr. Edwards in this lawsuit. Is -- are  
5 you clear on who the players are?

6 A. Yes.

7 Q. Ms. Haynes, would you tell us when you and  
8 I actually first met in person?

9 A. Approximately about an hour ago.

10 Q. And have -- how many times have we had an  
11 opportunity to talk on the telephone?

12 A. I believe we've talked twice.

13 Q. When was -- when was the first time and  
14 when was the second time, approximately? Can you  
15 tell me?

16 A. I'm going to guess approximately two or  
17 three weeks ago was the first time. And then I  
18 spoke with you again yesterday.

19 Q. Okay. Now, I'm going to be asking you  
20 some questions about what you know concerning  
21 Kenneth Bieler and his biologic daughter, Crystal.  
22 Would that be okay?

23 A. That's fine.

24 Q. First of all, would you explain to us your  
25 relationship to Crystal, who's legal name is Crystal



1 Bieler Haynes, and who's also been known as Crystal  
2 Bieler?

3 A. She is my adopted daughter.

4 (Deposition Exhibit No. 1  
5 was marked for identification.)

6 BY MR. KEEVER:

7 Q. And we have a copy of a final Decree of  
8 Adoption from the probate court of Logan County that  
9 is dated May 10th, 2010. And we'll make this  
10 Exhibit No. 1 to the deposition. Do you recognize  
11 that document?

12 A. Yes. It's the -- I've got a copy of  
13 the --

14 Q. Okay.

15 A. -- final decree.

16 Q. Okay. Now, when did you first meet  
17 Kenneth Bieler?

18 A. Oh, I wish I could come up with exact  
19 dates. I met Kenneth approximately two or  
20 three weeks before Crystal turned 12.

21 Q. You --

22 A. You'd have to come up with the years on  
23 that on -- on when I actually met Kenneth.

24 Q. Well, we can do the math. And we've got  
25 her birth certificate, actually.

1           A.     Yeah.

2           Q.     So what can you tell us about that very,  
3 very first meeting between you and Kenneth?

4           A.     I was working at the DHS office as a  
5 caseworker. And I just happened to be walking up  
6 front and a gentleman came up to the front desk just  
7 asking questions. He had a situation. He was  
8 trying to find out what his options were in what --  
9 in how to deal with his 12-year old daughter.

10          Q.     Can you expand on that, Ms. Haynes, and  
11 tell us as much as you can kind of remember about --  
12 it doesn't have to be word for word, but what you  
13 remember about that conversation?

14          A.     Basically, he was living in a little  
15 kitchenette apartment and that he was going to --  
16 this was no place that he felt he could raise a  
17 12-year-old daughter. And he was just checking his  
18 options because he really did not want to go with  
19 foster care. And at that time, I don't know why, I  
20 agreed to discuss and meet with him and that I would  
21 take her home. And the only way I could explain  
22 that is God put me where I needed to be that day. I  
23 felt -- I never second guessed it. I never -- it  
24 was just nothing. It was here was a little girl  
25 that needed a place to go.



1 I commended Kenneth because he could have  
2 just done anything, but he was telling he had her  
3 best at heart. He was not in a position where he  
4 could physically take care of her at that point in  
5 time and provide for her. And so I took her home.

6 Q. Now --

7 A. Now, it -- it -- it took a little while.  
8 I mean, it's not like I met him that day and -- he  
9 contacted his ex-wife, which, at that time, that's  
10 where Crystal was residing. And she came in and  
11 brought Crystal and we met to even see if Crystal  
12 would even warm up to me. Me and Crystal hit it  
13 off.

14 I met with Kenneth a couple of separate  
15 times after that. He had -- he had arranged for a  
16 lawyer, at his cost, to draw up guardianship papers.  
17 And I met him at the attorney's office and we signed  
18 the guardianship papers.

19 And I -- I'm sorry. It's been too many  
20 years back. I don't remember if it was just a  
21 couple days. I went to Carol's and I picked up  
22 Crystal. While Crystal was with me, I went to Ken's  
23 and I picked up the few belongings that Kenneth had  
24 and I took her home.

25 Q. Now, you had, I believe, two other

1 children at the time?

2 A. Yes.

3 Q. What were their ages in relationship to  
4 Crystal's?

5 A. My son was born February of 1984. Crystal  
6 fell right in between, in October of '84. And then  
7 my child -- my youngest child was born in March of  
8 '85. So I had three of them right there in the  
9 same -- there's a couple of months that I have two  
10 that are the same age.

11 Q. Ms. Haynes, what did you -- I think I know  
12 the answer to this, but what did you think was in  
13 Crystal's best interest at that time?

14 A. At that time she needed a stable home  
15 life. Here she had a stepmom. And I don't remember  
16 the exact -- like I said, this is many years ago --  
17 I don't remember the exact reason that she could no  
18 longer keep Crystal. But that was the only stable  
19 Crystal had. For so long she'd been with Kenneth  
20 and Carol. And then apparently their marriage had  
21 whatever. And now Carol no longer could take her.  
22 And I just wanted to provide a stable home. I  
23 wanted to provide her -- I can't explain it. It was  
24 like the good Lord put me there that day because I  
25 don't normally work the front desk. That's not my



1 job. I normally would have worked down the hallway  
2 in an office. And I just happened to be there, the  
3 one that answering questions and advising on what he  
4 could do.

5 Q. What involvement, if any, did DHS, as a  
6 state agency, have in this arrangement that you and  
7 Kenneth had?

8 A. None, period.

9 Q. Just --

10 A. I was an employee. We met outside of the  
11 office. We didn't take care of anything inside the  
12 office. We used his personal lawyer. And then when  
13 it actually came to the adoption, I used my own  
14 personal lawyer. We had nothing to do with the DHS.  
15 It just happened to be where I was employed at the  
16 time.

17 Q. Okay. And we're going to move forward to  
18 the adoption in a moment, but Crystal came to live  
19 with you just before her 12th birthday; is that  
20 correct?

21 A. Yes. I had her approximately a week and a  
22 half, two weeks, before she turned 12.

23 Q. Now, during the period -- and we'll get to  
24 the adoption, which I believe was when Crystal was  
25 16.

1           A.     Approximately.

2           Q.     But between the time that you first took  
3 physical custody of Crystal --

4           A.     Uh-huh.

5           Q.     -- and up to the time of the adoption,  
6 what contact did Crystal have with Kenneth that --  
7 that you're aware of?

8           A.     I'm not aware that Kenneth and Crystal had  
9 any contact. Now, Kenneth did come back through the  
10 office and spoke with me on a couple of occasions.  
11 The first year, being right around Christmas, he  
12 brought me a Christmas gift to take to Crystal. And  
13 then sometime the following year he stopped back in  
14 and he was just trying to find -- you know, just get  
15 an update on how she was doing. He -- he did not  
16 want to contact her directly because he didn't want  
17 to uproot what she had already got going. She was  
18 stable. She was at a new school. She was doing  
19 really good. And that's what he explained to me is  
20 he -- he was trying to do the best thing for Crystal  
21 and not come in and out.

22          Q.     Where were you guys living at that time?

23          A.     When Crystal came to live with me, I was  
24 living in Magazine.

25          Q.     And Crystal and Jessica and your son were



1 all in high school together?

2 A. Yes, they were.

3 Q. When did they graduate?

4 A. Jessica and Crystal both graduated in May  
5 of 2003. My son dropped out of high school before  
6 graduation.

7 Q. Okay. What class was -- would he have  
8 graduated with?

9 A. He would have graduated -- actually, he  
10 fell behind, so he had fallen one -- one grade  
11 behind them.

12 Q. Okay. Now --

13 A. But at one time when we did our junior  
14 class rings I had three juniors, so...

15 Q. So you paid for three junior class rings?

16 A. Yes.

17 Q. Now, what kind -- what did Crystal do when  
18 she graduated high school?

19 A. At that time we had all -- I had bought a  
20 house in Van Buren and we all three -- the three  
21 children and myself had relocated to Van Buren.

22 Q. Okay.

23 A. And she enrolled into U of A.

24 Q. Now, what contact did Crystal have with  
25 Kenneth after she moved to Van Buren that you're

1       aware of?

2           A.       Just in conversation of she had mentioned  
3       a time or two that he had showed up at her  
4       employment a couple of times. But other than that,  
5       I don't know of any.

6           Q.       Okay. Now, there was a period of time, we  
7       learned in Crystal's deposition, that she had a  
8       committed relationship with a young man named Brian?

9           A.       Yes.

10          Q.       And they had baby, Kaley?

11          A.       Yes.

12          Q.       Kaley was born, I think she said, the day  
13       before Valentine's Day --

14          A.       Correct.

15          Q.       -- on 2008?

16          A.       Correct.

17          Q.       Now, what kind of contact did you have  
18       with Crystal during the period of time when she was  
19       with Brian? I guess she wasn't living in your house  
20       anymore.

21          A.       No. They had moved out and were living  
22       together. Had bought them a home. And, I mean, I  
23       had normal contact. We talked on the phone,  
24       visited. We were together on holidays.

25          Q.       Okay. Ms. Haynes, what do you remember



1 about Crystal in terms of Kenneth's funeral?

2 A. I know she called me. She came by and got  
3 me. We both went to the funeral home. Other than  
4 that, I don't know.

5 Q. From the perspective of Crystal's mom --

6 A. Yes.

7 Q. -- what can you tell us about how  
8 Kenneth's death affected Crystal?

9 A. I think it upset her because she never got  
10 the opportunity to have the -- to make that  
11 connection. I know they had been talking or -- now,  
12 this is going to her hearsay. I don't know it for a  
13 fact that she had met with him and they had started  
14 getting a relationship back and I think it cut it  
15 short.

16 Q. I'd like to talk a little more  
17 specifically about the adoption. I'm really only  
18 going to have a few more minutes of questions.

19 How did you and Crystal make the decision  
20 to go forward with the adoption?

21 A. Crystal lived -- you got to keep in mind  
22 Crystal had been with me approximately four years.  
23 She just walked up to me one day and said, "Mom,  
24 when are you ever going to adopt me?" And I said,  
25 "That's all I've been waiting for."

1 I wanted it to be her choice and not mine.  
2 I didn't want her to feel like she was being  
3 pressured. Once she made the comment that she  
4 wanted to me adopt her, I picked up my phone and I  
5 called my lawyer and I got the proceedings started.

6 And it's kind of one of our big jokes now.  
7 Crystal's nickname is CC, because at that point in  
8 time I did not have the cash money to hire a lawyer.  
9 All I had was a credit card and my lawyer accepted  
10 the credit card and Crystal's adoption is paid in  
11 full. And so now it's kind of a -- it's fun to us.  
12 Her nickname is CC. She is my credit card child.

13 Q. Okay. What can you tell us about how the  
14 adoption was done in terms of -- of whether it was a  
15 purely private adoption or whether DHS had any  
16 involvement?

17 A. No. DHS had nothing involved in it. I  
18 phoned my lawyer, set up a meeting. It was a  
19 private adoption. At that point I had not had any  
20 contact with Kenneth and didn't know his  
21 whereabouts. So I followed his advise and we did  
22 everything that he told me to do. And his office  
23 published it in the paper, did all the legal aspects  
24 and drew up the petition and I took it to court  
25 and I was awarded custody -- or adoption.



1 Q. And that would have been reflected in  
2 Exhibit 1, the Decree of Adoption --

3 A. Correct.

4 Q. -- from 2001?

5 A. So as far as my knowledge it is totally a  
6 private. I hired the lawyer. I asked, how do I  
7 procedure to adopt Crystal.

8 Q. I think Exhibit 1 mentions a home study  
9 being done. What can you tell us about that?

10 A. I don't have any knowledge of a home  
11 study. If they did any kind of a home study, it was  
12 not much of one because I don't remember ever having  
13 one done. I don't know if it was just an on -- an  
14 overlook in the paperwork or -- I read over it. I  
15 see what it said there. I don't remember having a  
16 home study done.

17 Q. If there is --

18 A. She had already been with me for four  
19 years --

20 Q. Yeah.

21 A. -- when I filed for the petition, so I  
22 don't know.

23 Q. What part would Kenneth have played in any  
24 kind of a home study at that point in time?

25 A. He wouldn't have, because he was not -- I

1 had lost complete contact at that point in time. We  
2 knew that the last whereabouts -- the last known  
3 whereabouts that I knew anything of was he was still  
4 in the Fort Smith area. So that's where it was  
5 publicized was in the Fort Smith paper. So I don't  
6 even know if Kenneth was aware that I did the  
7 adoption until after the fact. Unless he picked up  
8 the paper and read it in the paper, he wouldn't have  
9 known I was doing the adoption.

10 Q. Ms. Haynes, what are you comfortable  
11 telling us about regarding your -- your personal  
12 health status?

13 A. That I have severe COPD, emphysema,  
14 asthma. I have less than 10 percent of my lung  
15 capacity. Stress does not do well with me. Weather  
16 does not do well with me. I don't walk very far. I  
17 don't drive anymore. And y'all saw my daughter  
18 brings me back and forth. It's kind of hard to deal  
19 with sometimes.

20 Q. What kind of problems would you have if  
21 you were asked to come to court to testify at the  
22 trial of this case?

23 A. The stress. Just the getting up and  
24 getting here is a whole -- is hard. I have to  
25 start -- I've been up since 3:00 so I could be here



1 at 1:00. Everything I do takes very -- it takes me  
2 a long time to get it done. You get up. You have  
3 to do your shower. You have to do -- and then I  
4 have to do the breathing treatments in between.  
5 It's -- it's a hard ordeal to get up and get around.  
6 I can't do stairs. And I get winded.

7 Q. And stress does what?

8 A. It increases it. I get -- it's like it  
9 builds up and I -- it shuts down my air intake.

10 MR. KEEVER: Okay. Well, Ms. Haynes, I  
11 want to thank for you coming in today. I mean,  
12 actually, you're here under subpoena, are you not.

13 THE WITNESS: Yes.

14 MR. KEEVER: But I -- I want to thank you  
15 and I want to compliment you on the job you've done  
16 with Crystal. And I'll pass the witness.

17 **EXAMINATION**

18 BY MR. COX:

19 Q. Ms. Haynes, I'm Walter Cox.

20 A. Yes.

21 Q. I'm a lawyer up in Fayetteville. And I  
22 represent Dr. Henry Edwards. Do you know  
23 Dr. Edwards at all?

24 A. No, I don't.

25 Q. Okay. You were an employee of the

1 Department of Human Services --

2 A. Correct.

3 Q. -- when you first met Mr. Bieler; is that

4 correct?

5 A. Correct.

6 Q. When did you stop working for the DHS?

7 A. When I went on my disability. I think

8 I've been disabled now five years.

9 Q. About five years ago?

10 A. Uh-huh.

11 Q. Sometime around 2007?

12 A. Yes.

13 Q. Up until that time, did you remain a

14 caseworker for the DHS?

15 A. All the way up till the end, yes.

16 Q. All right.

17 A. I retired from the State of Arkansas.

18 Q. And it was while you were working at DHS

19 that you first encountered Mr. Bieler; is that

20 correct?

21 A. Correct.

22 Q. Where was that first encounter, at what

23 office?

24 A. At the Van Buren office in Crawford

25 County.



20

1 Q. As I understand it, Crystal was not with  
2 Kenneth Bieler at the time you first met him; is  
3 that correct?

4 A. Correct.

5 Q. When did you actually first meet Crystal?

6 A. Like I said a while ago, I couldn't be  
7 sure on exact dates. My first encounter was with  
8 Kenneth. At some point he had contacted Carol and  
9 Carol brought Crystal up to meet me.

10 Q. When Carol, Mr. Bieler's ex-wife --

11 A. Uh-huh.

12 Q. -- brought Crystal to meet you at the DHS  
13 office, did she thereafter stay with you from that  
14 time on?

15 A. No. Actually, it -- I did not physically  
16 get Crystal until all the paperwork had been drawn  
17 up at the lawyers.

18 Q. Was that the guardianship papers that you  
19 mentioned?

20 A. Yes, the guardianship.

21 Q. Okay.

22 A. Which took us a couple of weeks to get  
23 that done.

24 Q. Okay. Who was the lawyer that drew up the  
25 guardianship papers?

1           A.     I have no idea. I can tell you they were  
2 on Main Street in Van Buren.

3           Q.     At -- at any rate, you were appointed then  
4 the legal guardian of Crystal; is that correct?

5           A.     Correct.

6           Q.     Do you know what guardian of person and  
7 estate means?

8           A.     Not exactly. I knew I was given  
9 permission to take care of her -- take care of any  
10 medical, any finances.

11          Q.     So you were granted guardianship over her  
12 person to make decisions for her and also to take  
13 care of any business activities that might be  
14 required. Is that a fair statement?

15          A.     Yeah.

16          Q.     I want to go back to Carol. I believe her  
17 name is Carol Haute. Do you recall that?

18          A.     I don't.

19          Q.     Okay. Do you know how long she and  
20 Mr. Bieler had been married?

21          A.     No. I do not.

22          Q.     Do you know where Crystal had lived prior  
23 to Carol and Mr. Bieler being husband and wife?

24          A.     No. I do not.

25          Q.     Have -- have you read her deposition that



25  
1 she gave in this case?

2 A. No. I have not.

3 Q. Okay. Have you ever asked her, you know,  
4 about your life, who'd you live with and that sort  
5 of thing, over time?

6 A. Crystal really didn't talk about any of  
7 her -- her past.

8 Q. So -- so you would not know then that when  
9 Crystal was approximately seven years of age,  
10 Mr. Bieler placed her in the custody of one of his  
11 sisters, Donna Dooley, and her husband?

12 A. No.

13 Q. You did not know that?

14 A. (Shaking head.)

15 Q. Did not know that Mr. Bieler had very  
16 little contact during the time that she lived with  
17 her aunt and uncle? Did you know that?

18 A. I know -- I know nothing about anything  
19 prior to Crystal --

20 Q. All right.

21 A. -- coming to live with me.

22 And, like I said, I commended the man for  
23 being able to say he wasn't able to financially  
24 provide or provide her a stable home life. I saw  
25 the little one-bedroom kitchenette. It's not a

1 place I would have asked --

2 Q. Is that where Kenneth and Carol lived?

3 A. That's where Kenneth was residing when I

4 met him.

5 Q. Okay. When -- when you met Kenneth,

6 Crystal was living with Carol, correct?

7 A. Correct.

8 Q. And do you know how long she lived with

9 Carol after she and Kenneth were divorced?

10 A. I didn't get into any of their personal

11 information.

12 Q. Okay. So Crystal was approximately or

13 close to 12 years of age --

14 A. Correct.

15 Q. -- when she came to live with you?

16 A. Correct.

17 Q. And she lived with you, with you being her

18 guardian, up until the time that she was 16; is that

19 correct?

20 A. Approximately 16, when we filed for the

21 adoption.

22 Q. Okay. And it was Crystal's idea for you

23 to adopt her, correct?

24 A. Correct.

25 Q. Now, from the time that Crystal came to



1 live with you --

2 A. Uh-huh.

3 Q. -- as -- as you being her guardian until  
4 she was adopted by you, did Mr. Bieler contribute  
5 any money for her support to you?

6 A. No. Because I didn't ask for any.

7 Q. I understand that. But he didn't offer  
8 either, did he?

9 A. He brought me Christmas gifts that one  
10 year.

11 Q. And that was -- was that -- was that the  
12 first year that Crystal was with you?

13 A. Uh-huh.

14 Q. Is that a "yes"?

15 A. Yes. I'm sorry.

16 Q. Okay. So when Crystal was 12 years of age  
17 and you had her as a -- as a ward and you were her  
18 guardian --

19 A. Uh-huh.

20 Q. -- Mr. Bieler -- Bieler bought her some  
21 Christmas presents to -- to what, your place of  
22 business --

23 A. Yes.

24 Q. -- where you worked?

25 A. Yes. He brought me -- brought it to my

1 employment.

2 Q. Okay. And -- but did not see Crystal  
3 himself?

4 A. No.

5 Q. And you did not ever receive any support  
6 during the time that you were guardian of Crystal  
7 and providing for her support, correct?

8 A. I'm sorry. Reword.

9 Q. You did not receive any support --

10 A. No. I did not.

11 Q. -- from Mr. Bieler during the time that  
12 you were guardian over Crystal, correct?

13 A. No. I did not.

14 Q. And you're -- you're not aware of any  
15 money that Mr. Bieler would have given directly to  
16 Crystal during that period of time?

17 A. Not to my knowledge.

18 Q. And did he have any contact with her  
19 except through Christmas presents the first year  
20 that she was in your custody?

21 A. Not to my knowledge.

22 Q. Now, let's jump ahead four years. We've  
23 gone from 12 years of age almost when you became her  
24 guardian until now. We're up to 16 years of age and  
25 Crystal asked you to become her adoptive mother,



1 correct?

2 A. Correct.

3 Q. And that made you happy, I -- I assume.

4 A. Yes.

5 Q. Okay. Now, who was your lawyer that  
6 handled that adoption?

7 A. Herschel Cleveland. And he's from Logan  
8 County.

9 Q. Now, you understood -- I think you said  
10 that you understood that Mr. Bieler was living  
11 somewhere in the Fort Smith area?

12 A. The last I knew he was in the Fort Smith  
13 area.

14 Q. Do you know whether or not your attorney,  
15 Mr. Cleveland, made efforts to locate him to give  
16 him notice of the pending adoption?

17 A. My understanding is we tried.

18 Q. And could not find him?

19 A. He could not.

20 Q. As a matter of fact, the adoption order  
21 says that Mr. Bieler's whereabouts were unknown.

22 A. Correct.

23 Q. Do you recall reading that?

24 And I assume that's something you -- you  
25 and Mr. Cleveland would have put in the petition for

1 adoption, correct --

2 A. Yes.

3 Q. -- that you don't know?

4 And did you also say in the petition for  
5 adoption that you had provided the support for  
6 Crystal since she has been in your custody?

7 A. If that's what it was wrote. I'd have to  
8 reread it.

9 Q. Well, that's a fact, though, isn't it?

10 A. Yes. I provided all support.

11 Q. You -- you had no money from the State of  
12 Arkansas --

13 A. No.

14 Q. -- for her support. It was strictly out  
15 of your pocket that you --

16 A. Out of my pocket.

17 Q. -- that you raised Crystal from the time  
18 she was 12 years of age?

19 A. Correct.

20 Q. The adoption was filed sometime during the  
21 year 2000, I believe it was. And it became final --  
22 the final decree was entered by the court, I  
23 believe, on May 16th, 2001?

24 A. Correct.

25 Q. Do you know how long the proceedings



1       lasted before you got the adoption approved?

2           A.     It was a very short time. I mean, within  
3       a couple of months it --

4           Q.     Well, the case has a 2000 number so it had  
5       to have been filed sometime in the year 2000.

6           A.     Okay.

7           Q.     So the decree didn't take effect until  
8       May --

9           A.     Of 2001.

10          Q.     -- of 2001. So we know it took at least  
11       five months if it was filed in December, correct?

12          A.     Correct.

13          Q.     All right.

14          A.     Now, the contact we had with Crystal's  
15       family would be her grandmother.

16          Q.     Okay.

17          A.     And then she did have steadily contact  
18       with the grandmother.

19          Q.     All right. But -- but never any contact  
20       with Mr. Bieler. From the time she came to live  
21       with you through her graduation from high school,  
22       you're not aware of any contact she had with  
23       Mr. Bieler?

24          A.     Correct.

25          Q.     And you do agree that from 12 years of age

1 until graduation from high school, Mr. Bieler had no  
2 contact and contributed no support to Crystal?

3 A. Correct.

4 Q. Now, when do you understand that  
5 Mr. Bieler first had some contact with Crystal after  
6 she graduated from high school?

7 A. I'm not sure when they made that contact.

8 Q. Okay. Tell me again what year it was that  
9 Crystal graduated from high school.

10 A. She graduated in May of 2003.

11 Q. Now, I think you told us that she and her  
12 boyfriend moved in together and lived for a period  
13 of time. How long did they live together?

14 A. Oh, gosh. I'm guessing a couple of years  
15 before they had Kaley.

16 Q. Okay. Now, when we took her deposition, I  
17 believe she said that she and the father of her  
18 child were not living together, correct?

19 A. At this time, no, they are not.

20 Q. And that she was living in a house in  
21 Van Buren that you actually own; is that correct?

22 A. Correct.

23 Q. When did she move into your house in  
24 Van Buren?

25 A. I'd have to -- it's just a guess. I'm



1 going to say June of last year.

2 Q. Okay.

3 A. June, July. Because due to health  
4 reasons, I moved back to my home in Magazine.

5 Q. Okay.

6 A. And Crystal moved into my home.

7 Q. Okay. Is she living there with your  
8 daughter as well?

9 A. No. She's just living there with her and  
10 Kaley.

11 Q. Okay. Was --

12 A. A stepdaughter had lived there for a short  
13 time.

14 Q. Okay. Okay. One of your stepdaughters?

15 A. Uh-huh.

16 Q. I didn't realize you had a stepdaughter.

17 A. Yeah.

18 Q. How many children did you raise?

19 A. Well, actually, I have three --

20 Q. Okay.

21 A. -- including Crystal.

22 Q. Okay.

23 A. And then my husband now has three of his  
24 own.

25 Q. Okay. So the person or the young lady who

1 lived with Crystal is your husband's daughter --

2 A. Correct.

3 Q. -- is that correct?

4 Okay. That straightens that out.

5 Okay. Now, Crystal enrolled at University  
6 of Arkansas in Fort Smith?

7 A. Correct.

8 Q. Did you contribute to her education?

9 A. We filed for the scholarships, yes.

10 Q. And were given a State of Arkansas  
11 scholarship --

12 A. Uh-huh.

13 Q. -- is that correct?

14 A. Yes.

15 Q. I suspect it wasn't enough to cover the  
16 complete cost of her first year, was it?

17 A. I'm trying to think. I had two daughters  
18 going to U of A at the same time. So we applied for  
19 all the scholarships and the Pell Grants that we  
20 could apply for.

21 Q. Okay. Crystal has -- has talked to us  
22 about her meeting Mr. Bieler after all of those  
23 years and about him giving her some money for some  
24 books. Were you aware of that?

25 A. No, I'm not.

1 Q. Do you have any knowledge of any support,  
2 yourself, that Mr. Bieler gave to Crystal after she  
3 graduated high school?

4 A. Personally, no, I don't. I do know that  
5 he left her as beneficiary --

6 Q. Of --

7 A. -- on life insurance policy.

8 Q. Of a life insurance policy.

9 Okay. Now, tell me how old Crystal's  
10 child is.

11 A. You're going to put my memory back.

12 Q. I'm sorry.

13 A. She should be five come this February.

14 Q. Okay. So she's about four and a half now?

15 A. Yes.

16 Q. Okay.

17 A. And I do apologize. I've -- I've had four  
18 mini strokes, so I have some problems with some  
19 memory --

20 Q. You're doing fine.

21 A. -- with dates.

22 Q. You're doing fine. You don't have to  
23 apologize.

24 Crystal told us that Mr. Bieler was aware  
25 that she was expecting a child.



1 A. Yes.

2 Q. And are you aware that Mr. Bieler never  
3 did see the child prior to his death?

4 A. My understanding is she was in the process  
5 of taking Kaley to the hospital to see him.

6 Q. Do you know how old Kaley was at the time  
7 he died?

8 A. And he passed away when?

9 MR. KEEVER: January 29, 2009, I believe,  
10 Walter.

11 MR. COX: I believe she was about a year  
12 old.

13 THE WITNESS: That's what I'm thinking,  
14 approximately a year.

15 BY MR. COX:

16 Q. So if -- if that's correct that Kaley was  
17 about a year old, Mr. Bieler had not seen his only  
18 grandchild prior to his death, had he?

19 A. To my knowledge, no.

20 Q. And are you aware that he was living in  
21 the Fort Smith area, as was Crystal, that entire  
22 time?

23 A. No.

24 Q. Let me go back to Carol, the former wife  
25 of Kenneth. What -- did you ever go to her house

1 where Crystal and she were living?

2 A. I only went there long enough to pick  
3 Crystal up and her belongings.

4 Q. Okay.

5 A. I don't know that I even went in the home.

6 Q. Okay. Did -- did Carol actually tell you  
7 that she could not or would not continue to take  
8 care of Crystal?

9 A. Yes. Carol did tell me that.

10 Q. Okay. When Crystal was in school, did she  
11 go by the last name of Haynes?

12 A. No. She went by Bieler.

13 Q. And did that change when the adoption took  
14 place?

15 A. No. It did not.

16 Q. Okay. Are you telling me that she never  
17 used the name Haynes as --

18 A. The only time that Crystal have ever used  
19 Haynes is last month when she filed for a passport.  
20 Her legal name is Bieler-Haynes. But her birth  
21 certificate, her -- or not birth certificate, social  
22 security card, driver's license, had all been in  
23 Bieler because I didn't want to change everything.  
24 I just wanted the Haynes there for the legal aspects  
25 of it.

1 Q. Okay. Her -- her legal --

2 A. And she ran into problems trying to get a  
3 passport.

4 Q. Because her birth certificate does show --

5 A. It says Bieler-Haynes. So she has never  
6 went by Haynes. She was always known as Crystal  
7 Bieler. And that's -- we left it as Crystal Bieler.

8 Q. Crystal was very active in high school, as  
9 I understand it, was she not?

10 A. Yes.

11 Q. She was cheerleader?

12 A. Yes.

13 Q. And did some athletic stuff. What -- what  
14 did she do?

15 A. Basketball.

16 Q. Okay. And was she pretty good at it?

17 A. Yes.

18 Q. Okay.

19 A. It's funny that you ask that. The day we  
20 went to court on the adoption she had a broken nose  
21 where she had been playing basketball and her nose  
22 was all wrapped up and everything when we went to  
23 court that day for the adoption.

24 Q. Okay. So you probably had to explain  
25 that?



1           A.     Yeah. It was like, okay, well, there's  
2     medical.

3           Q.     Let me just kind of go back over some  
4     things from -- with the exception of the first year  
5     at Christmas when you took custody of Crystal when  
6     she was almost 12 years of age, from that time  
7     forward you're not aware of any other gift that  
8     Mr. Bieler ever gave to her, correct?

9           A.     Not to my knowledge. Not that came  
10    through me.

11          Q.     And as far as you know, he made no effort  
12    to contact you or Crystal from the time of that  
13    first Christmas when she was almost 12 years of age?

14          A.     Well, now, the following year he came by  
15    the office.

16          Q.     To see --

17          A.     To see me to see how she was doing.

18          Q.     But did not see Crystal or ask --

19          A.     No.

20          Q.     -- to see Crystal, correct?

21          A.     (Shaking head.)

22          Q.     Who -- who filled the role of parent for  
23    Crystal from the time you took her at age 12 until  
24    she graduated high school?

25          A.     I did.

1 Q. What did she call you when -- when y'all  
2 were together?

3 A. Started out I was Geneva.

4 Q. Okay. When did it change?

5 A. Probably after she had been with me for a  
6 couple of years.

7 Q. And what did she call you then?

8 A. Mom.

9 Q. Would you agree that from the time she was  
10 12 years of age through high school, and I'm  
11 assuming that was about age 18, that you were the  
12 only parent she had?

13 A. Yeah.

14 Q. And I will tell you what Mr. Keever said.  
15 My hat's off to you for doing such a good job. You  
16 did well.

17 A. I -- I don't know why. I was just -- I  
18 just happened to be in the right place at the right  
19 time.

20 Q. It was meant to be, wasn't it?

21 A. It was meant to be.

22 MR. COX: That's all I have.

23 THE WITNESS: And she's a very important  
24 person. She's done real well.

25

## FURTHER EXAMINATION

BY MR. KEEVER:

Q. Ms. Haynes, I just have one additional question. You talked about difficulties that going to testify live in court might cause you. What would you ask Judge Medlock to do in terms of allowing us to use this deposition testimony instead of you coming to court?

A. This would make it so much easier if this deposition could be used in place of me actually having to appear in court.

Q. Thank you.

A. It just --

Q. And again --

A. It makes it so much easier on me and my health.

MR. KEEVER: Thank you, Ms. Haynes. I --  
I have no further questions.

MR. COX: I have no further either. Thank you, ma'am.

THE WITNESS: Thank you.

(Deposition concluded.)



## C-E-R-T-I-F-I-C-A-T-E

I, Cynthia Minks Myers, a Certified Court Reporter of Arkansas, duly certified under and by virtue of the laws of the State of Arkansas, do hereby certify that the proceedings had in the foregoing cause were taken in shorthand by myself and later reduced to typewritten form by me, and that the foregoing transcript contains a full, true, complete and correct transcript to the best of my ability of all of the proceedings had; that I am not an attorney for any of the parties in this matter, nor do I have an interest in the event of the same.

WITNESS MY HAND AND SEAL, in the City of Spiro, County of LeFlore, State of Oklahoma, this

29th date of Oct, 2012.

*Cynthia Minks Myers*  
Cynthia Minks Myers, CCR

CYNTHIA MINKS MYERS  
CERTIFIED COURT REPORTER  
ARKANSAS SUPREME COURT  
LICENSE CERTIFICATE NO. 581

**IN THE PROBATE COURT OF LOGAN COUNTY, ARKANSAS**

**SOUTHERN DISTRICT**

**IN THE MATTER OF THE  
ADOPTION OF CRYSTAL  
LEE BIELER-HAYNES**

**CASE NO. P-2000-42(III)**

**FINAL DECREE OF ADOPTION**

ON THIS DAY comes on to be heard the above styled cause, the Petitioner, Geneva Haynes, appearing in person and by and through her attorney, Herschel W. Cleveland, along with the child to be adopted, Crystal Lee Bieler, appearing, the testimony of the Petitioner having been taken; Waiver and Consent of Crystal Lee Bieler filed herein; Proof of Publication of Warning Order for the natural father, Kenneth Bieler, filed herein and the Respondent answering not; and other matters and proof before the Court, the Court finds as follows:

I.

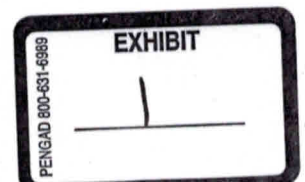
That Crystal Lee Bieler is a minor female child born on October 6, 1984, in the County of Trego, City of Wakeeney, State of Kansas; that the natural mother of said child, Debbra Jean McLeer, is believed to be deceased and has not been seen or heard from for over ten years; that Kenneth Lewis Bieler is the natural father of said child, but his whereabouts are unknown; that the minor child possesses no property of any kind. The Petitioner is 35 years old and has been a resident of the Southern District of Logan County, Arkansas since 1970. Said child is in the custody of the Petitioner.

**CERTIFIED COPY OF THE ORIGINAL INSTRUMENT**

*Lisa Cole*  
COUNTY AND PROBATE CLERK  
SOUTHERN DISTRICT OF LOGAN COUNTY, ARKANSAS

2001 MAY 16 A 10:20

1418



II.

That the Petitioner has had the care and custody of the minor child for the past five years. That the required Home Study has been completed, filed of record, and is hereby approved.

III.

That it is in the best interest of Crystal Lee Bieler that Petitioner be permitted to adopt said child and a substituted birth certificate should be issued showing the Petitioner as the mother of said child and changing her name to Crystal Lee Bieler-Haynes.

IV.

The Petitioner is physically and financially able to furnish suitable support, nurture and education for said child, and she should be permitted to adopt said child.

V.

That a copy of the Birth Certificate of Crystal Lee Bieler is filed herein with the Petition for Adoption.

**IT IS, THEREFORE, BY THE COURT, CONSIDERED, ORDERED and DECREED** that the child named in the Petition as Crystal Lee Bieler shall be and by this Decree has become for all legal purposes the child of the Petitioner, Geneva Haynes; that the name of the child shall be Crystal Lee Bieler-Haynes; that the name of the Petitioner, Geneva Haynes, as adopting mother, shall be shown be shown on the birth certificate of said child; further the Clerk of this Court is hereby ordered to file an adoptive coupon with the Bureau of Vital Statistics of the state of the birth of the child and they are hereby ordered to issue a substituted birth certificate in



accordance with the terms of this Decree; and that this Decree heretofore entered  
be and hereby is declared final in all respects.

William R. Bullock  
HON. WILLIAM R. BULLOCK

ENTRY DATE: 5-16-01

NT

**BLOOD COUNTS  
(HEMOGLOBIN/HEMATOCRIT)**

- 1/13/09—10.2/30.3
- 1/15/09—10.6/30.7
- 1/15/09—11.1/33.6
- 1/17/09—10.0/30.9
- 1/18/09—9.3/29.1
- 1/19/09—8.7/25.8
- 1/20/09—9.1/27.4
- 1/21/09—8.9/26.0
- 1/24/09 THROUGH 1/26/09--8.7/25.1
- 1/27/09—11.2/32.9
- 1/28/09—10.4/30.2

+ DR. Daniels

+ DR. Me

DATE RISK BLOOD  
FACTORS THINNERS?

SEQUENTIAL  
COMPRESSION  
DEVICES?

BLEEDING

1/14/09	<u>6</u>	<u>no</u>	<u>no</u>
1/15/09	<u>6</u>	<u>no</u>	<u>no</u>
1/16/09	<u>6</u>	<u>no</u>	<u>no</u>
1/17/09	<u>6</u>	<u>no</u>	<u>no</u>
1/18/09	<u>6</u>	<u>no</u>	<u>no</u>
1/19/09	<u>6</u>	<u>no</u>	↓
1/20/09	<u>6</u>	<u>no</u>	
1/21/09	<u>6</u>	<u>no</u>	
1/22/09	<u>6</u>	<u>no</u>	
1/23/09	<u>6</u>	<u>no</u>	
1/24/09	<u>6</u>	<u>no</u>	
1/25/09	<u>6</u>	<u>no</u>	

\* NO DO CUMULATION



Merced

INITIAL  
SESSION  
S?

STOCKINGS? MEDICAL REASONS  
TO AVOID B.T.  
SURGERY

*Internal*  
Bleeding

yes

yes

yes

yes

yes

yes

?\*

?

?

?

?

?

yes

yes

yes

yes

no

↓

yes

↓

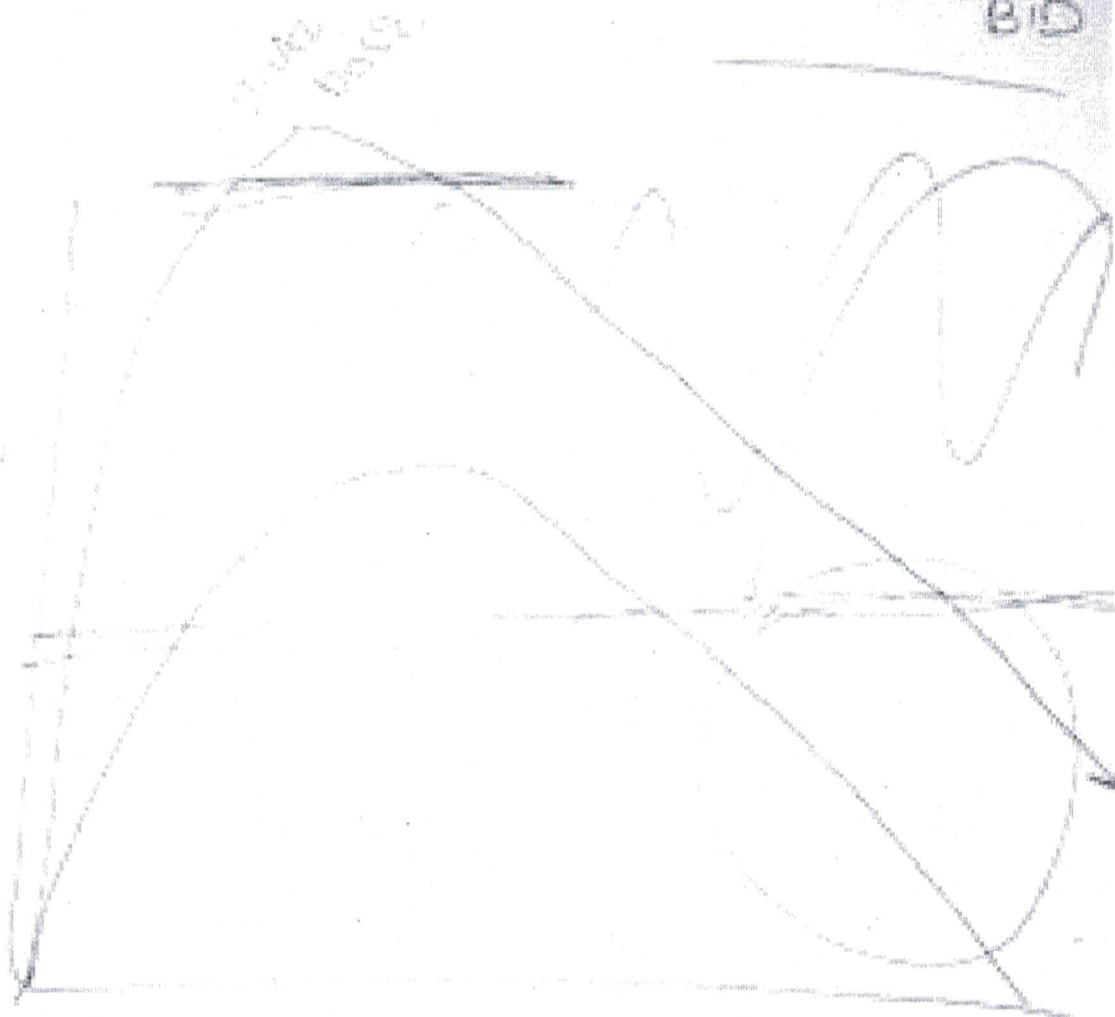
1422

1422  
PLAINTIFF'S  
EXHIBIT

10

$1 \text{ mg} / K_d \approx 56$   
BID

conc



time

PLAINTIFF'S  
EXHIBIT  
//

PLAINTIFF'S  
EXHIBIT

12







## Twenty-third Psalm

The Lord is my Shepherd; I shall not want.  
He maketh me to lie down in green pastures; He leadeth me beside the still waters. He restoreth my soul; He leadeth me in the paths of righteousness for His name's sake.

Yea, though I walk through the valley of the shadow of death, I will fear no evil; for Thou art with me; Thy rod and Thy staff they comfort me; Thou preparest a table before me in the presence of mine enemies; Thou anointest my head with oil, my cup runneth over.

Surely goodness and mercy shall follow me all the days of my life; and I will dwell in the house of the Lord forever.

PLAINTIFF'S  
EXHIBIT

14

1426

## When I Must Leave You

When I must leave you  
For a little while-  
Please do not grieve  
And shed wild tears  
And hug your sorrow to you  
Through the years,  
But start out bravely  
With a gallant smile;  
And for my sake,  
And in my name  
Live on and do  
All things the same,  
Feed not your loneliness  
On empty days,  
But fill each waking hour  
In useful ways,  
Reach out your hand  
In comfort and in cheer  
And I in turn will comfort you  
And hold you near;  
And never, never  
Be afraid to die,  
For I am waiting for you in the sky!

Helen Steiner Rice



## Relatives and Friends

Evelyn Greenwalds

Deanna Schielko

David Reynolds

Bob Carmack

STEVE FRANKENBERGER

Ellen Sanchez

Chae Sanchez Daughter

CHICK SUTTON

Larry Gable

Donny Russell

Kyrene Russell

Tommy Wright

Jeddie Ashworth

Pat Hogberg

Ray + Edith Wacker

Rain Vaughan

Arnold + Jennifer Clatsen

Gary Rogers

Harold Rogers

Bob + Baby Mary

## Relatives and Friends

Burlak Acorn.

Richard & Alice Charlton  
Nave Mills

Billy & Jessie Perkins

Floyd Wormke

Ken and Tatis Wormke

Kugi W. Brown

Walter Jones, AR Air Museum

Donnie Canoe

Glenn Johnson

Pam Rice

Connie Hill

Leslie Fornoff

Rita Champion

Mike Eads

Lona Dadds

Teri Echiel - Love You My Brother

Bonnie Kilday

Connie Hayden

Jim Banner

BOOGER MR. & MRS. RICHARD HOFER



# Relatives and Friends

Velma Lucille Amick

♥ Harry and Earnestine Schoen ♥

Dale Turkey Scott City K.S.

Chad's + Ann Parmenter

Robert Cravens UFW POST 8845

Leroy Larmer UFW POST 8845

Crystal Bieler + Cailee

Jan Batten Bond

Janie Hoover

Paul Brooke

~~John Zyl~~ and spouse

Bonnie Benson

Loyana Benson

Bill Lawler

Jean Miller

Steven Hens

Carolyn Wheat

Andrew Wong

Mike Rice

Isabtha Byle



# Relatives and Friends

Thomas Rhodes +

Colonel (Ret) Ed Beman

Alan Sebue Sebastian

Caren Sebastian

LARRY Jones

Rhonda Nechaise

STEVEN D. HUNT

STEVEN HUNTINGTON

Charles Brown

Shene Underwood

Camela Elmore

NOX NORMAN

Sharon Justice (Wife) - co-worker

Fran Roam

Jambo R.N.P Forever on a Day

(Jessica + Chad Harold)

R.I.P See u @ the crossroads

Arnold + Diane Reynolds

Gods speed little Brother

KENNETH BIELER

1951 - 2009



PLAINTIFF'S EXHIBIT	15
------------------------	----

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**\$89**/mo  
now for 24 months with 1-yr term  
 after which price may vary

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## Kenneth L Bieler

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Image is scaled. Click image to open at full size.

Added by: [mileto77](#)  
 9/17/2010

[Accuracy and Copyright Disclaimer](#)

1433





# KENNETH BIELER 1951- 2009

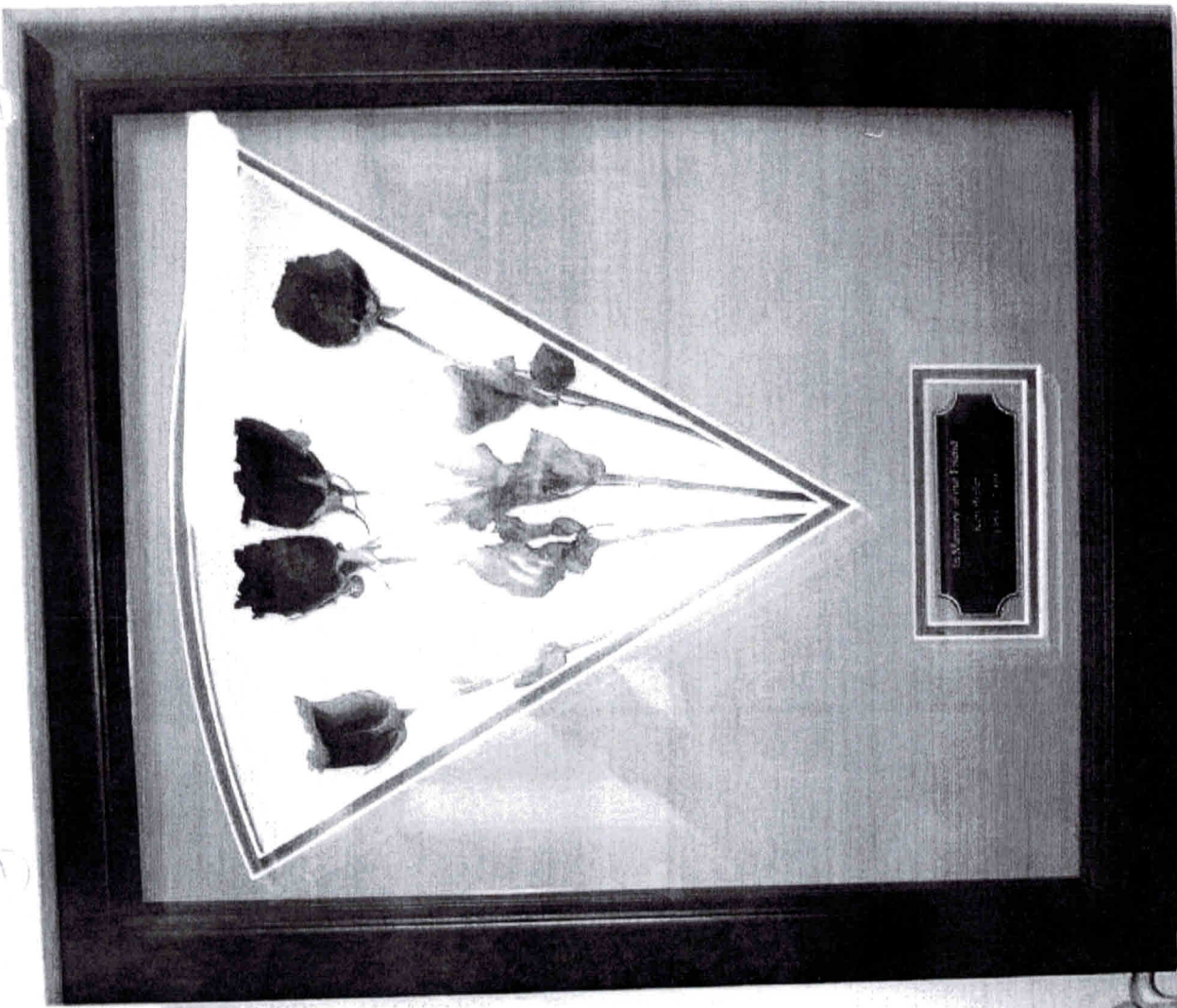


1434

PLAINTIFF'S  
EXHIBIT  
17

PLAINTIFF'S  
EXHIBIT

18





IN THE PROBATE COURT OF LOGAN COUNTY, ARKANSAS

SOUTHERN DISTRICT

IN THE MATTER OF THE  
ADOPTION OF CRYSTAL  
LEE BIELER-HAYNES

CASE NO. P-2000-42(III)

FINAL DECREE OF ADOPTION

ON THIS DAY comes on to be heard the above styled cause, the Petitioner, Geneva Haynes, appearing in person and by and through her attorney, Herschel W. Cleveland, along with the child to be adopted, Crystal Lee Bieler, appearing, the testimony of the Petitioner having been taken; Waiver and Consent of Crystal Lee Bieler filed herein; Proof of Publication of Warning Order for the natural father, Kenneth Bieler, filed herein and the Respondent answering not; and other matters and proof before the Court, the Court finds as follows:

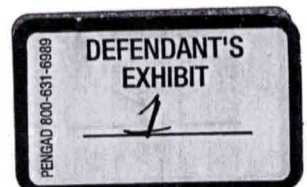
I.

That Crystal Lee Bieler is a minor female child born on October 6, 1984, in the County of Trego, City of Wakeeney, State of Kansas; that the natural mother of said child, Debbra Jean McLeer, is believed to be deceased and has not been seen or heard from for over ten years; that Kenneth Lewis Bieler is the natural father of said child, but his whereabouts are unknown; that the minor child possesses no property of any kind. The Petitioner is 35 years old and has been a resident of the Southern District of Logan County, Arkansas since 1970. Said child is in the custody of the Petitioner.

CEMENTED COPY OF THE ORIGINAL INSTRUMENT

*Bill Lee*  
COUNTY AND PROBATE CLERK  
SOUTHERN DISTRICT OF LOGAN COUNTY, ARKANSAS

1436





II.

That the Petitioner has had the care and custody of the minor child for the past five years. That the required Home Study has been completed, filed of record, and is hereby approved.

III.

That it is in the best interest of Crystal Lee Bieler that Petitioner be permitted to adopt said child and a substituted birth certificate should be issued showing the Petitioner as the mother of said child and changing her name to Crystal Lee Bieler-Haynes.

IV.

The Petitioner is physically and financially able to furnish suitable support, nurture and education for said child, and she should be permitted to adopt said child.

V.

That a copy of the Birth Certificate of Crystal Lee Bieler is filed herein with the Petition for Adoption.

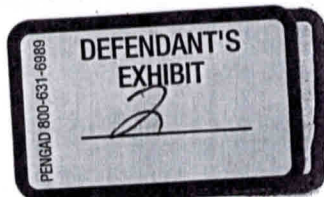
**IT IS, THEREFORE, BY THE COURT, CONSIDERED, ORDERED and DECREED** that the child named in the Petition as Crystal Lee Bieler shall be and by this Decree has become for all legal purposes the child of the Petitioner, Geneva Haynes; that the name of the child shall be Crystal Lee Bieler-Haynes; that the name of the Petitioner, Geneva Haynes, as adopting mother, shall be shown on the birth certificate of said child; further the Clerk of this Court is hereby ordered to file an adoptive coupon with the Bureau of Vital Statistics of the state of the birth of the child and they are hereby ordered to issue a substituted birth certificate in

accordance with the terms of this Decree; and that this Decree heretofore entered  
be and hereby is declared final in all respects.

William R. Bullock  
HON. WILLIAM R. BULLOCK

ENTRY DATE: 5-16-01

NT



Kansas Department of Health and Environment  
Office of Vital Statistics

CERTIFICATE OF LIVE BIRTH

115—  
OCT 11, 1984

84-031869

STATE FILE NUMBER

1. CHILD'S NAME FIRST MIDDLE LAST CRYSTAL LEE BIELER-HAYNES			2. DATE OF BIRTH (Month, Day, Year) OCT. 06, 1984		3. TIME OF BIRTH 10:21 P		
4. SEX FEM.		5. CITY, TOWN, OR LOCATION OF BIRTH WA KEENEY			6. COUNTY OF BIRTH TREGO		
7. PLACE OF BIRTH: <input checked="" type="checkbox"/> Hospital <input type="checkbox"/> Freestanding Birthing Center <input type="checkbox"/> Residence <input type="checkbox"/> Clinic/Doctor's Office <input type="checkbox"/> Other (Specify)			8. FACILITY NAME (If not institution, give street and number) TREGO COUNTY LINCOLN MEMORIAL HOSP				
9. I certify that the stated information concerning this child is true to the best of my knowledge and belief. Signature X /S/ GORDON LANG			10. DATE SIGNED (Month, Day, Year)		11. ATTENDANT'S NAME AND TITLE (Type) Name: GORDON LANG <input checked="" type="checkbox"/> M.D. <input type="checkbox"/> D.O. <input type="checkbox"/> C.N.M. <input type="checkbox"/> Other Midwife <input type="checkbox"/> Other (Specify)		
12. CERTIFIER'S TITLE: <input checked="" type="checkbox"/> M.D. <input type="checkbox"/> D.O. <input type="checkbox"/> Hosp. Adm. <input type="checkbox"/> C.N.M. <input type="checkbox"/> Other Midwife <input type="checkbox"/> Other (Specify)			13. ATTENDANT'S MAILING ADDRESS (Street and Number or Rural Route, City, or Town, State, Zip Code) 323 RUSSELL AVE WA KEENEY, KS 67672				
14. MOTHER'S PRESENT NAME (First, Middle, Last) GENEVA R HAYNES			15. MAIDEN SURNAME WILKS		16. DATE OF BIRTH (Month, Day, Year) OCT. 12, 1964		
17. STATE OF BIRTH (If not in U.S.A., name country) NEW MEXICO		18. PRESENT RESIDENCE—STATE ARKANSAS		19. COUNTY LOGAN		20. CITY, TOWN, OR LOCATION MAGAZINE	
21. STREET AND NUMBER OF PRESENT RESIDENCE 48 W ELLINGTON			22. INSIDE CITY LIMITS? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		23. MOTHER'S MAILING ADDRESS (If same as residence, enter Zip Code only). 72943		
24. FATHER'S NAME (First, Middle, Last)			25. DATE OF BIRTH (Month, Day, Year)		26. STATE OF BIRTH (If not in U.S.A., name country)		
27. PARENTS REQUEST SOCIAL SECURITY NO. ISSUANCE? <input type="checkbox"/> YES <input type="checkbox"/> NO			28. IMMUNIZATION REGISTRY I wish to enroll my child in the Immunization Registry <input type="checkbox"/> YES <input type="checkbox"/> NO				
29. I CERTIFY THAT THE PERSONAL INFORMATION PROVIDED ON THIS CERTIFICATE IS CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF. Signature of Parent (or Other Informant) <i>Geneva R Haynes</i>					30. DATE SIGNED *****		