IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

RONALD S. GILL, INDIVIDUALLY)
AND AS SURVIVING SPOUSE OF)
CAROL ANN GILL, DECEASED,)
INDIVIDUALLY AND ON BEHALF OF)
THE SURVIVING STATUTORY)
BENEFICIARIES,)
Plaintiffs,)
vs.) No. CV2003-006043
LEE W. PACE, M.D. AND JANE DOE)
PACE, HUSBAND AND WIFE;)
MOUNTAIN VIEW INTERNAL)
MEDICINE, JOSEPH D. CURLETTA,)
M.D. AND JANE DOE CURLETTA,)
HUSBAND AND WIFE; VALLEY PAIN)
TREATMENT CENTER, LLC, AN)
ARIZONA CORPORATION, IASIS)
HEALTHCARE HOLDINGS, INC., A)
TENNESSEE CORPORATION, DOING)
BUSINESS IN ARIZONA AS TEMPE)
ST. LUKE'S HOSPITAL, LP; SMITH)
FOOD AND DRUG CENTERS, INC., AN)
ARIZONA CORPORATION, FORMERLY)
KNOWN AS FRY'S FOOD STORES OF)
ARIZONA, DOING BUSINESS AS)
FRY'S FOOD AND DRUG, JOHN DOES)
AND JANE DOES 1-10; HUSBAND AND)
WIFE, ABC COMPANIES 1-10, SOLE)
PROPRIETORSHIPS, PARTNERSHIPS,)
LIMITED PARTNERSHIPS, JOINT)
VENTURES, AND/OR DOMESTIC OR)
FOREIGN CORPORATIONS,)
Defendants.)
)

THE DEPOSITION OF SRDJAN STEVAN NEDELJKOVIC, M.D.

Phoenix, Arizona
August 3, 2006
1:22 p.m.

PREPARED FOR:

PREPARED BY:
Shari Fain
Arizona Certified Reporter No. 50160

I N D E X

E X H I B I T S

DEPOSITION OF SRDJAN STEVAN NEDELJKOVIC, M.D.,

Commenced at 1:22 p.m., on August 3, 2006 at the Law Offices of DRIVER & NIX, 365 East Coronado, Suite 150, Phoenix, Arizona, 85004, before Shari Fain, Certified Court Reporter, in and for the County of Maricopa, State of Arizona.

APPEARANCES:

For Plaintiff:

By: HARALSON, MILLER, PITT, FELDMAN & MCANNALLY, PC
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For Defendants Curletta:

By: FADELL, CHENEY & BURT
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For Defendant Iasis:

By: KENDHAMMER & COLBURN, LLP
Jeanne Varner Powell
394 North 3rd Avenue
Phoenix, Arizona 85003

Phoenix, Arizona
August 3, 2006
1:22 p.m.

SRDJAN STEVAN NEDELJKOVIC, M.D.,

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

(Exhibit Nos. 1 and 2 marked for identification.)

MR. FADELL: And can we get the technician's name as well, please?

MR. CHALBECK: Sure. My name is Carl, with a C. My last name is spelled C-H-A-L-B, as in boy, E-C-K.

MR. FADELL: Thank you, Carl.

MR. CHALBECK: You're welcome.

E X A M I N A T I O N

BY MR. FADELL:

Q. Doctor, my name is Gary Fadell. You understand that I represent Dr. Curletta in this lawsuit?

A. Yes, I do.

Q. Are you having any difficulties hearing me at this point, Doctor?

A. I hear you loud and clear.

Q. All right. We are taking your deposition via

video conference, correct?

A. That is correct.

Q. And you are able to see me on your TV monitor, correct?

A. Yes.

Q. All right. And we are able to see you. You are located where at this time, Doctor?

A. I'm located at 850 Boylston Street in Brookline, Massachusetts at the Pain Management Center of Brigham Women's Hospital.

Q. And Brookline is very close to Boston, is that correct?

A. Yes, about 2 miles away.

Q. You understand that today is our opportunity to learn all of your opinions and impressions concerning the care of Carol Gill as provided by my client, Dr. Joseph Curletta, correct?

A. Yes.

Q. In fact, Doctor, you have given a deposition before on more than one occasion, is that correct?

A. Yes, I have.

Q. Have you given a deposition in connection within an Arizona case?

A. Not with this case in particular but I don't believe I've given a deposition for another Arizona case

either.

Q. Well, the reason that I'm asking you that is we received a disclosure statement from Mr. Lautz indicating that you have been an expert witness in other cases; am I correct?

A. That's correct, yes.

Q. And Mr. Lautz indicated that among the states where you have been an expert included cases in Arizona. Other than this one, have you been an expert?

A. Yes, that is correct.

Q. Okay. In any of the other Arizona cases have you given a deposition before?

A. I don't believe it was a deposition, no.

Q. All right. Have you been disclosed or identified by the party or attorney who hired you as an expert in any of the other Arizona cases where you've been employed or retained?

A. Have I been disclosed? I believe so, yes.

Q. Why don't you, Doctor, tell me about the other Arizona case or cases that you are involved in or have been involved in up to this point.

MR. LAUTZ: Gary --

THE WITNESS: I believe it was just one case that I was involved with, and it was a case of someone who was injured in Arizona and that filed suit related to that

injury.

MR. FADELL: Okay.

MR. LAUTZ: Gary, just so the record is kind of clear and to help facilitate the dialogue, Dr. Nedeljkovic was a treating physician of a client of mine who was injured here in Arizona, suffered a herniated disk and he testified in that case but I don't believe he was deposed, he just testified at trial.

Q. BY MR. FADELL: All right. Mr. Lautz indicated that the Arizona case that he's aware of concerning your prior involvement was a case where you testified on behalf of his client, are we talking about the same case at this point?

A. Yes, we are, that's the case.

Q. All right. And in that case, Doctor, did you actually come to the courtroom and testify in front of a judge or jury?

A. It was a video testimony, I did not come personally to the courtroom.

Q. Do you recall the name of the party, the plaintiff or the patient for whom you offered your testimony?

A. No, I do not at this moment.

Q. Do you recall when that video deposition was?

A. I believe it was approximately -- it was

within the past year but I would guess about eight or nine months ago.

Q. Do you have a copy of the deposition, whether it be the video copy of the deposition or the paper copy of the deposition, that you gave in that case?

A. I don't have any records related to that case.

MR. LAUTZ: Gary, just so it's clear, he wasn't deposed, it was actually trial testimony.

Q. BY MR. FADELL: Okay. Mr. Lautz indicated that the testimony was for purposes of presenting your opinions to the judge or jury as opposed to a deposition, that's your understanding, Doctor?

A. Yes, it is.

Q. Are you working on any other Arizona cases at this time other than the one involving the Gill family?

A. No active cases that I'm aware of right at the moment.

Q. All right. And the only other Arizona case that you have worked on in your career is the one that we've been discussing involving the patient, the injury and then your testimony via videotape to the court?

A. No, I've consulted on other cases as well.

Q. Understanding that you've consulted on other cases, give me some idea of how many times you've consulted on other Arizona cases?

A. It would only be one or two to the best of my memory.

Q. Do you remember the name or names of any of the attorneys who contacted you concerning those one or two other cases?

A. One of the cases was with Mr. Lautz.

Q. Yes.

A. And the other case, no, I don't recall.

Q. Do you have any plans currently to come to Arizona for any reasons whether they be personal or professional?

A. No, I do not.

Q. Have you, Doctor, in fact, ever been to the state of Arizona for any reason whether it be personal or professional, social, otherwise?

A. Yes, I have once.

Q. And what was the reason for your visit?

A. I came to a medical conference back in 1988 or something like that.

Q. Do you know practitioners here in Arizona, Doctor?

A. Some of my colleagues have moved to Arizona, yes.

Q. Can you give me the name or names of your colleagues that you're aware of who currently live and

practice in Arizona, if you remember?

A. One of my former fellows, David Rosenfeld, is practicing in Arizona somewhere. There were two or three anesthesia residents who I've worked with who went to Arizona, I can't remember exactly who but I know they were moving out to Arizona to practice. That's all I can recall right at the moment.

Q. All right. Doctor, in connection with the opinions you've formed in this case, have you consulted with any of your colleagues, whether they be in the Boston area, somewhere else around the country or any of your colleagues in Arizona, to assist you in forming your opinions?

A. No, no, I have not.

Q. What medical research, whether it be on the computer or consulting publications have you done, if any, to assist you in forming the opinions that you have in this case?

A. Only the items provided by Mr. Lautz, but no other items on my own.

Q. All right. We have been doing the question and answering now for approximately 10 minutes, have you had any difficulty hearing me at all?

A. No, I hear you loud and clear.

Q. And have you had any difficulty understanding any of my questions?

A. No.

Q. All right. You understand from past deposition practice that we are going to proceed in the same manner over the next couple of hours, that is a question and answer format, you understand that, Doctor?

A. Yes, I do.

Q. Okay. And, of course, you have a right to be asked good questions, in other words, questions that make sense to you. Will you please stop me and tell me if I ever ask you a question that does not make sense to you?

A. Yes, I will.

Q. And, conversely, can we have an agreement that if any of us, any of the lawyers here in the room, asks you a question and you answer it without reservation or some indication that you're not really clear as to the meaning of it, can we have an understanding that you will only answer those questions that you do understand?

A. Certainly.

Q. Okay. Great.

We have talked and I want to make sure that I pronounce your last name correctly because I may use it from time to time, is it pronounced Nedeljkovic or Nedeljkovic?

A. Yes, it is.

Q. Nedeljkovic?

A. The former.

Q. Doctor, let me begin by telling you we've had the court reporter mark as Exhibit 2 to your deposition a portion of a legal pleading called Plaintiffs' Second Supplemental Disclosure Statement Regarding Expert Witnesses. And the pages that go along with that identify you and then set forth the work that you have done and conclude with your opinions in this case.

And that document which is Exhibit 2 to your deposition signed by Mr. Lautz is dated November 4, 2005. Do you have a copy of that disclosure statement in your file?

A. I believe that's what I have here, right in front of me.

Q. All right. And I will be referring to that from time to time and I'll assist you by telling you what page I'm looking at and ideally what lines that I'm referring to. But let me just confirm for the record that the disclosure statement I have has at the bottom a page No. 13 so it appears --

A. Yes, I see that here.

Q. So it appears that your opinions start on page 13 and then your opinions conclude on page 24.

A. Yes, that's what I have in front of me.

Q. All right. Doctor, what I would like to do now is find out from you what involvement, if any, you had

in the preparation of Exhibit 2 which is your supplemental disclosure statement.

MR. LAUTZ: Form.

Q. BY MR. FADELL: So can you tell me what involvement, if any, you had in the preparation of this document?

A. I provided Mr. Lautz with my background information via my curriculum vitae. I provided him with information on the number of previous medical/legal cases that I've been involved with. I reviewed the medical summary which was prepared by someone else other than me. And I concurred with section F which is the standard of care and opinion section at the end of the conclusion. I did not write those myself but I concurred with them.

Q. Exhibit 2, at least the final product that became Exhibit 2, did you have a chance, Doctor, to review that and approve it at any time before November 4, of 2005? In other words --

A. I believe so, yes.

Q. Was a copy of this document physically provided to you for your review?

A. Yes, I believe so.

Q. Do you know, Doctor, or do you have in your file any copies or drafts where you may have made changes or amendments to what is now Exhibit 2 to your deposition?

A. No, I don't.

Q. And do you have any idea when you, in fact, saw the final version of your disclosure statement which is Exhibit 2? Do you have any idea when you would have received it?

A. I believe I saw the draft before November and then I think I saw the final copy perhaps in April.

Q. Of this year, Doctor, 2006?

A. 2006.

Q. All right. Have you had a chance more recently to go back and review what we are talking about, namely, Exhibit 2 to your deposition?

A. Yes.

Q. All right. Are there any changes or corrections that you wish to make to Exhibit 2 to your deposition at this time?

A. No, there are no changes.

Q. All right. Earlier this morning, Doctor, I will ask you to assume that Mr. Lautz sent me an E-mail which is Exhibit 1 to your deposition. And it sets forth approximately six additional opinions or areas of opinion that you have apparently developed since the preparation of your disclosure statement back in November of 2005. Let me ask you to assume that. Okay?

A. Fine.

Q. My question to you, sir, is, did you prepare anything in writing that you forwarded to Mr. Lautz setting forth your additional or supplemental opinions in this case?

A. Mr. Lautz and I have had a number of electronic conversations via E-mail in the last 24 hours and those E-mail conversations I do have record of.

Q. How difficult would it be for you, Doctor, to retrieve paper copies of those electronic communications, all of them, and make them available to Mr. Lautz and to me? How difficult would that be at this point?

A. Well, Mr. Lautz has all of those documents himself so I don't believe it would be difficult because they were all conversations between he and I which were E-mailed to him.

Q. In addition to the E-mail communications or conversations, did you have telephonic conversations with Mr. Lautz in the, say the past 24 or 48 hours concerning your additional opinions?

A. Yes, I had a conversation with him to review the entire case yesterday evening.

Q. And approximately how long did that conversation last?

A. I believe it was approximately 75 minutes.

Q. And that was the extent of the telephonic or verbal conversations, the one last evening about 75 minutes

in length?

A. That's correct.

Q. Doctor, did Mr. Lautz send to you the proposed outline of your new opinions that he did, in fact, disclose to us earlier today, did he send them to you for your approval?

A. Not in the format that you're suggesting.

Q. All right. Do you have as part of your file or paperwork in front of you today, do you have anything in writing which sets forth your new additional or supplemental opinions?

A. I'm not exactly sure which opinions those are so I can't answer right now.

Q. Well, let me tell you that the E-mail we received from Mr. Lautz which is Exhibit 1 to your deposition has six separate items setting forth what your expected testimony will be in this case with respect to these new issues. Okay? Does that at all sound familiar to you, receiving an E-mail communication from Mr. Lautz where he set forth six additional opinions that he proposed to disclose to us?

A. I don't recall a number of opinions and there were several E-mails so I can't say.

MR. LAUTZ: Gary and Dr. Nedeljkovic, for everybody's benefit, what I did was after receiving some

E-mails from Dr. Nedeljkovic, Gary, I tried to summarize those for you and just sent them to you and did not copy Dr. Nedeljkovic on the E-mail I sent to you because it was contained within our E-mail communications.

MR. FADELL: Okay. Great.

Q. BY MR. FADELL: Doctor, you've heard Mr. Lautz kind of summarize the progression of the development of your opinions and then the communication of them to us. You heard his statement just now on the record?

A. Yes, the one that he made, I did hear it, yes.

Q. Did that fairly summarize your memory of how these additional opinions were not only put down on paper but communicated to us?

A. I don't know what the exact opinions are that you're referring to. I really can't answer until I see what that says.

Q. All right. And I will discuss with you your additional opinions. I just want to make certain these additional opinions at a minimum were discussed and communicated to Karl within the past 24 to 48 hours, is that correct?

MR. LAUTZ: Form.

THE WITNESS: Within the past 24 hours I've had numerous E-mail communications as well as the 75-minute telephone conversation and we had fairly extensive

discussions about different aspects of this case.

Q. BY MR. FADELL: Okay. Great.

Doctor, if you have your copy of the disclosure statement what I would like you to do now is to look at a couple of pages of the disclosure statement and then I'm going to ask you some fairly limited questions. Okay?

A. Okay.

Q. And what I would like to have you do is, what I'd like to have you do is if you would kind of jump over to page 23.

A. I'm looking at page 23 now.

Q. And you see the bolded Section F?

A. Yes, I do.

Q. And in that heading it indicates that you have opinions with respect to or you had opinions with respect to the issue of causation in this case, do you see that?

A. Yes, I do.

Q. All right. And then, and let me ask you foundationally, you have some understanding as to the legal term causation, do you not?

A. Yes, I do.

Q. What is your understanding as to the legal term causation?

MR. LAUTZ: Form, foundation.

THE WITNESS: Causation is a series of events or non events resulting in a certain medical outcome or substantively involved in producing the outcome.

Q. BY MR. FADELL: And you have some understanding looking at the disclosure statement that you are identified as someone who was going to be offering causation opinions in this case, correct?

A. Yes.

Q. All right. When I went through and looked at Section F, other than the heading that uses the word causation, I was not able to see any additional reference to the term causation or to any opinions that you had with respect to causation. Would you take a moment and review the information found in Section F and tell me if there are any causation opinions in there that I have missed?

A. I'm not certain of any discussion of causation in this section.

Q. All right. Then, Doctor, if you would go to page 24, under Section G which is entitled conclusion, correct?

A. That's correct.

Q. Again, if you would take a moment and tell me if there are any causation opinions that you have set forth under Section G or at least approved of the language under Section G, tell me if there are any causation opinions

there?

A. No, there are no causation opinions in that section.

Q. Did you have causation opinions as of November 4, 2005 that you communicated to Mr. Lautz as it related to the care provided by Dr. Curletta?

MR. LAUTZ: Form.

THE WITNESS: I'm not sure which causation in particular that you're referring to.

Q. BY MR. FADELL: My question was hopefully worded broadly enough. I am simply trying to figure out that as of the date of November 4, 2005 were there causation opinions that you held in this case that you had communicated to Mr. Lautz?

MR. LAUTZ: Form.

Q. BY MR. FADELL: Again, as it relates to the care provided by Dr. Curletta?

A. Once again, I'm not sure, you'd have to ask me more specifically what causation then I'd be able to answer that more directly.

Q. Well, Doctor, you understand that the principal claim in this case is a wrongful death claim brought by this estate against Dr. Curletta and the hospital, correct?

A. Yes.

Q. All right. So when I'm using the term causation I'm referring to causation in the context of the wrongful death claim that this family has brought against these two healthcare providers. Does that assist you on focusing in on any causation opinions that you may have formed on or before November 4, 2005?

MR. LAUTZ: Form.

THE WITNESS: I'm not certain.

Q. BY MR. FADELL: All right. So you're not certain that you have formed causation opinions as of November 4, 2005 with respect to the issue of the wrongful death of Mrs. Gill?

A. I'm not certain to which aspects of the case you're referring to because the case, the case that we are discussing took place over a period of time from 1996 to 2001 so I'm not sure which aspects of the causation you're referring to.

Q. All right. Let me ask you these series of questions then, Doctor, that may clarify your opinions or perhaps clarify your understanding of this line of questioning.

Do you have an opinion as you sit here today as to what the cause of death was for Mrs. Gill?

MR. LAUTZ: Form.

THE WITNESS: No, not really.

Q. BY MR. FADELL: Have you looked at the medical records in this case?

A. Yes, I have.

Q. Do you have some understanding as to what the medical records reflected the cause or causes of death to be for Mrs. Gill?

A. Yes.

Q. What's your understanding of what the records reflect?

A. My understanding is that Mrs. Gill was admitted to the hospital having incurred a number of potentially catastrophic medical events. The exact diagnosis and etiology was somewhat uncertain. After a period of time in the hospital she had what appeared to be respiratory distress, there was an attempt to offer her assisted ventilation and in that time frame she shortly thereafter expired.

Q. All right. And did the medical records reflect a diagnosis or a determination as to what the cause or causes of death were for Mrs. Gill?

A. I'd have to review that particular report, which I can if you'd like me to.

Q. Do you have the report or the records in front of you?

A. Yes.

Q. All right. Why don't you take a moment, if you would and locate, whether it happens to be the death summary or the discharge summary or even the death certificate.

A. All right. I have the death note here in front of me. I have a note here in front of me indicating date of death 3/29/01.

Q. And did the note, Doctor, list the cause or causes of death or the diagnosis?

A. It lists a discharge diagnosis, status post code arrest secondary to acute respiratory failure. And then it lists 18 second diagnoses following that.

Q. My question to you, sir, is, should this matter proceed to trial and you come to Arizona, will you be offering an opinion which either supports or goes contrary to the death summary or the death note that you've just alluded to or referred to?

MR. LAUTZ: Form.

THE WITNESS: I have thus far not been asked to review those matters at all so I don't know.

Q. BY MR. FADELL: So as you sit here today you do not have an opinion one way or the other with respect to the accuracy of that death note or discharge summary?

A. I'm not -- I don't know anything about the accuracy of it. It's part of her medical record but I've

not formed an opinion, nor have I reviewed the specific issues noted in this note.

Q. Okay. And I should ask you, do you feel you have completed your review of the materials in this case that you presently are in possession of or do you intend to do additional work from this point forward?

MR. LAUTZ: Form.

THE WITNESS: I've completed a review of all the materials that I've been given, and whether there's additional work, I don't know.

Q. BY MR. FADELL: I understand that Mr. Lautz may send you some deposition transcripts of folks who have been deposed more recently and you'll probably review them, correct?

A. If he asks me too, I will, yes.

Q. Yes, but at least with respect to the materials and information that are in your possession currently, you feel like you've had an opportunity to go through and review them and form your opinions based upon your review up to this time; would that be a fair statement, sir?

A. Yes.

Q. Okay. Doctor, let me next ask you, kind of go to a new area. Let me ask you what depositions, if any, you have had an opportunity to review as part of your work on

this file?

A. I have reviewed Dr. Curletta's deposition, videotaped deposition from December 13, 2005. I reviewed, although I don't have it before me, a deposition from a doctor from -- California.

MR. LAUTZ: Fugar(phonetic).

THE WITNESS: -- who commented on the medical aspects of the case and I've reviewed the partial deposition of another individual and I'm not exactly sure, I can't remember who this person was, who this witness was because it was a partial deposition.

MR. LAUTZ: Gary, just for clarification, he has portions of Dr. Gossler's deposition from earlier this week. Because we don't have the full transcript, I only was able to send him those pages. And I think it is actually as it was sent to me and forwarded to Dr. Nedeljkovic, it didn't even have the cover page or caption so just has the Q and A from maybe 10 to 12 pages.

Q. BY MR. FADELL: All right. Mr. Lautz just indicated, Doctor, that you have a partial deposition transcript of Dr. Gossler, do you recognize that name?

A. Yes. I think we talked about that name. The first page is page 10 and then there's intermittent pages of this deposition here in front of me.

Q. Doctor, were you provided copies of the

depositions of the members of the Gill family?

A. No.

Q. Do you have an understanding that before Mrs. Gill was taken to Tempe St. Luke's Hospital that she was found in her home?

A. Yes.

Q. All right. And where did you get that understanding from, Doctor?

A. From the records that were provided to me.

Q. All right. You have some understanding, do you not, that Mrs. Gill was initially found in her home on the floor in one of the bedrooms?

A. My recollection is she was found on the floor, I'm not sure where, in her home though, yes.

Q. Do you have some understanding as to who discovered Mrs. Gill?

A. My recollection is that it was her husband.

Q. All right. Do you have some understanding as to whether or not other members of the Gill family then came to the Gill home before Mrs. Gill was transported to the hospital?

A. No, I'm not aware of that.

Q. So you don't know of any conversations or discussions that may have taken place between or among Mrs. Gill and members of her family, correct?

A. I'm not aware of any of those conversations, no.

Q. Do you have any information as to what observations the family members made of Mrs. Gill's condition before she was transported to the hospital?

A. Only from the medical records that I have, not from any direct family communications, no.

Q. Well, based upon your review of the medical records, let me ask you if your recollection is that Mrs. Gill was conscious when she was found?

A. May I refer back to the records again?

Q. Absolutely, sir.

A. I have a note here from a consultant from Nevada named Dr. Sanja Landa(phonetic) that indicates that she was found unresponsive at home and that then she got intubated and was admitted to the hospital, so that she was unresponsive at home is what the records, what that particular record indicates.

Q. All right. And did you at the time you formulated your opinions, both your original opinions and then most recently your supplemental opinions, did you operate under the assumption that Mrs. Gill was unresponsive at home?

A. That was one of the medical records that I've seen.

Another record that I saw was, once again, the death discharge which states that she was found down by her husband. And on the day of admission the patient's husband reported that she was confused with complaints of left arm numbness, being cold and not being able to move the legs. She was last seen approximately three hours prior to being found and was complaining that she was not feeling well with slight throat dryness.

I think those are the two, at least two of the records that I have here indicating what her status was at the time that her husband found her.

Q. All right. Doctor, let me go back and follow up with some questions then.

The term unresponsive that is used in the medical record that you read to us from the initial medical record was that she was found unresponsive?

A. On the note from the consultant, Sanja Landa, uses that term, unresponsive.

Q. Correct. Right. What's your understanding or your interpretation of the term unresponsive?

A. Unresponsive means that the patient is not reacting to stimuli.

Q. Does that mean the patient is unconscious?

A. It may or it may not.

Q. If I ask you to assume that the testimony in

this case has been that when Mrs. Gill was found she was, in fact, conscious and able to carry on a conversation with members of her family, does that comport with your interpretation of the term unresponsive?

A. No.

Q. All right. If I ask you to assume that the testimony in this case has been by members of the family that when Mrs. Gill was found she was carrying on a conversation with members of the family, that she told family members that she did not want to go to the hospital that afternoon, does that comport with your interpretation of the term unresponsive?

A. No.

Q. Doctor, with respect to the issue of Mrs. Gill needing to be intubated, do the medical records or the records that you have reviewed, do they give you any indication as to when Mrs. Gill was first intubated on February 22, 2001?

A. The death discharge states that while in the emergency room the patient went into respiratory failure and was emergently intubated.

Q. Did you have a chance to look at the fire department and paramedic records that were created in this case as a result of Mrs. Gill being transported from her home to the hospital?

A. I don't believe so. I don't recall seeing them and I don't believe that I have seen those records, no.

Q. Would it be a fair statement then to say either because you haven't seen records or you haven't been provided information you don't have any information one way or the other to know whether Mrs. Gill was intubated in the field by the paramedics?

MR. LAUTZ: Form.

THE WITNESS: The only information I have is on the death summary regarding that particular question which states that while she was in the emergency room the patient went into respiratory failure and was emergently intubated, so my assumption until now has been that she was intubated in the emergency room.

Q. BY MR. FADELL: All right. So if Mrs. Gill did not require intubation in the field, if Mrs. Gill was able to carry on a conversation with her family members at her home, if Mrs. Gill was adamant with her family members that she did want to even be taken to the hospital, would you agree with me, sir, that Mrs. Gill more probably than not was found in a responsive state on February 22, 2001 before she got to the hospital?

A. Other than what you're just telling me, I really don't know what kind of state she was in other than what I have in these medical records.

Q. Okay. Doctor, I'm going to refer now to Exhibit 1 which is, for your benefit, that's the E-mail that Mr. Lautz sent to us earlier today with your supplemental opinions. Okay?

A. That's fine.

Q. And I'm going to refer to the very last item and I'm going to read for you portions of it because I don't think you obviously have a copy of it in front of you. Let me begin by first reading a section of it and it says: Dr. Nedeljkovic will testify that the patient's recumbency on February 22, 2001 was most likely multifactorial. Okay? That's a portion of the opinion that Mr. Lautz provided to us. Okay?

A. That's right, yes.

Q. Okay. Now, I want to ask you about recumbency. What did you mean to communicate or what do you intend by the term recumbency?

A. Well, that's not specifically a term that I used but I think in defining recumbency, I think it means the state of not being ambulatory, of being seated or lying down.

Q. Okay. Are you referring specifically to the state that Mrs. Gill was in at her home at the time that she was found?

A. Yes, that statement refers to her situation,

that she was found down.

Q. And found down at home, correct?

A. That's correct.

Q. Okay. Doctor, were you given any information as to what the testimony was from the family members as to where they found Mrs. Gill down in her home?

A. No.

Q. Were you told, for instance, what the position of Mrs. Gill's body was on the floor at the time that she was found?

A. From the medical records there was a question that she might have been laying on an extremity which may have been responsible for causing some muscle breakdown but I don't know exactly the position that she was in at the time that she was found down.

Q. And the muscle breakdown you are referring to, can that lead to a condition called rhabdomyolosis?

A. Yes.

Q. Was a diagnosis of rhabdomyolosis made on Mrs. Gill?

A. Yes, I believe so.

Q. All right. Do you agree that -- agree with the diagnosis?

A. From what I've seen in the medical records, yes.

Q. And that condition can, in fact, lead to problems with the kidneys, it can lead to renal failure, can it not?

A. Yes, it can.

Q. And in Mrs. Gill's case apparently her physicians felt that because of her renal failure she required dialysis, correct?

A. Yes.

Q. Okay. Let me ask you to assume that at least one of the family members has testified that Mrs. Gill was found lying on her back as opposed to her side, all right? May I ask you to assume that's been the testimony in this case from her daughter; all right?

A. Sure.

Q. Is that information that you received from any source before today, before this hypothetical question was posed to you?

A. Not prior to you just saying it, no.

Q. Did you get any information to help you understand what Mrs. Gill had been doing, if anything, immediately before she ended up either on her back or her side in her home?

A. No.

Q. So I would be accurate in saying that you had not been told of the deposition testimony of the daughter

who was told by her father that Mrs. Gill apparently was standing on a chair reaching for an object when she lost her balance or somehow fell over and ended up on her back, that's information you had not received before today?

A. No, not until now, no.

Q. Can you, Doctor, picture or imagine someone like Mrs. Gill or for that matter someone like any of us who is standing on a chair reaching to take an object off of a piece of furniture could slip and fall down?

A. Yes.

Q. All right. There could be any number of reasons why someone like Mrs. Gill or you or me could fall under those circumstances, correct?

A. Absolutely.

Q. And those reasons wouldn't necessarily involve medications that Mrs. Gill or you or me or anyone might have taken earlier that day or the day before, it could have simply been because of a clumsiness or an unfortunate circumstance that someone like Mrs. Gill would fall in that type of setting, true?

A. Yes, it could be what would be called an accident.

Q. Yes, it's an accident?

A. Yes.

Q. Did you ever learn or see anywhere in the

records what it was that prevented Mrs. Gill from getting up from the spot on the floor where she was at?

A. There were some notes about her having some numbness on one of her sides. Let me just refer to those notes, but I seem to recall that there was an issue of -- that she had trauma to her left shoulder, left breast, left-sided weakness. So those were the notes that I had. The weakness on her left side could potentially prevent someone like this from getting up after falling.

Q. Did you know from your review of the records that Mrs. Gill had high blood pressure before the events of February 22, 2001?

A. Yes.

Q. All right. And did you know from your review of the records that there is an indication of the possibility or the suspicion that Mrs. Gill had one or more TIAs before the events of February 22, 2001?

A. Yes, I've seen that.

Q. All right. If you were testifying in front of a jury, how would you explain the term TIA so that the jury would have an understanding of that?

A. TIA is a neurological event. It's a transient ischemic attack, TIA. It refers to momentary loss of function related to a central nervous system problem, might be related to a vascular problem, could be a bleed, a blood

clot. Could be a number of different things that cause a TIA that results in a momentary loss of some type of functionality, whether it be speech, motor, sensory, balance, cognition.

Q. And I've heard that a TIA is something less than a stroke, what an average person, man and woman on the street, would understand a stroke to be, TIA is something less than a stroke?

A. It can precede a full-blown stroke but by definition it's transient so it's expected to resolve in a short period of time.

Q. So, for instance, if someone like Mrs. Gill is standing on a chair reaching for an object and experiences a TIA could that be sufficient enough to cause her to lose her balance?

A. Yes, if she experiences a TIA at that moment, absolutely.

Q. Would a TIA be serious enough to cause her to lose consciousness?

A. It may be or it may not, depends on the severity of the actual episode of the TIA.

Q. All right. I want to go on and complete the rest of item No. 6 that we had talked about, Doctor, and so I will go back and read it from the very beginning to give you the context of what Mr. Lautz has told us. So going

back to the sixth item on this E-mail it says:
Dr. Nedeljkovic will testify that the patient's recumbency on February 22, 2001 was most likely multifactorial and included endocrine issues, renal issues, potential cerebral vascular issues and issues with improper use of medications. Let me break that down for you and ask you questions.

Do you believe that Mrs. Gill's recumbency or being found down in her home on February 22, 2001 was in part because of endocrine issues?

A. It's possible.

Q. All right. And what possible endocrine issues would cause her to have been found in that state?

A. Well, I learned that her blood sugars were over 900 when she was admitted to the hospital so she may have been having a hyperglycemic event and that could be related to unconsciousness with such high blood sugars that are 900, that alone could be related to the unconsciousness and falling.

Q. All right. So at least up to this point having a TIA could lead to her falling, correct?

A. That's correct.

Q. Having these high blood sugars could lead to her falling, correct?

A. That's correct.

Q. The next item is renal issues being one of the

factors in terms of her being down. What renal issues or renal conditions do you believe could have caused or contributed to her being found down?

A. Well, she was found to have renal insufficiency and rhabdomyolosis on admission to the hospital. The question is when did this rhabdomyolosis start, was there some kind of muscle breakdown that occurred before or after she was found down. It's unclear, unknown to me when this happened, before or after. So it's possible that the combination of these factors may have caused her to fall or to be found down.

Q. When you examine what happens to be documented in the record, at least that she was down for up to three hours, is a three-hour period of time in a woman Mrs. Gill's size a long enough period of time to allow for the development of rhabdomyolosis?

A. Depending on what type of muscle damage may have occurred, the answer is yes.

Q. All right. Did you get any indication from any source, and, again, I understand you haven't read the depositions of the family members, but did you get any indication from any source as to what Mrs. Gill's level of functioning was, her motor activities were before the events of February 22, 2001?

MR. LAUTZ: Form.

THE WITNESS: My recollection is that she was having a hard time basically making appointments and getting around so I think she was unable to work. I think that her level of function was diminished prior to February of 2001.

Q. BY MR. FADELL: All right.

A. Also, she had put forth a disability claim and that would also indicate that her level of function was reduced.

Q. And, Doctor, on that point, did you see or did you observe that, actually, Mrs. Gill had put forth more than one disability claim?

A. I don't recall if it was one or more than one, no.

Q. Do you have some memory that the initial disability claim that Mrs. Gill put forth was actually denied and that she had to go back and reapply a second time?

A. I know that there was a note of it, just looking at the chart, in September of 2000. And I don't know of other disability, disability claims. I know that she hadn't been working since the mid 1990s so it had been several years since she had been working.

Q. Let me follow up on that issue, Doctor, of her mobility, limited, restricted or change in her mobility.

The portions of Dr. Gossler's deposition that

Karl sent to you, did any of those deposition excerpts deal with Dr. Gossler's opinions about the quality or improvement of Mrs. Gill's day-to-day activities on pain medication?

A. I don't believe so, having read these just once, but I don't recall that I came across that.

Q. And the reason I'm asking you that, Doctor, is I want you to assume that, and I'm paraphrasing, that one of Dr. Gossler's opinions was that Mrs. Gill seemed to be functioning at a better level on the pain regimen that Dr. Curletta had prescribed for her and he reached that opinion in part because of the description Mrs. Gill's son gave at his deposition of his mother taking the grandson for walks and walking around the block, going approximately a quarter of a mile at the time. Did you ever get any information that Mrs. Gill's activity level in the month or two months before these events, at least as observed by her son, was improving?

MR. LAUTZ: Form and foundation.

THE WITNESS: Well, Dr. Curletta's I believe last note of when he saw Mrs. Gill the very last time, which was September of 2000, indicates that she was experiencing more swelling and pain and stiffness, indicates that she states that she cannot walk. It states that she's considerably heavier and that her overall condition has deteriorated considerably over the past six months. He

mentions she has new complaints of pain and stiffness in the joints. It mentions sensory changes that are going on and those are the references to her functionality in that last note that he wrote when he saw her September 6 of 2000.

Q. BY MR. FADELL: All right. Doctor, again, I know that you've not had the benefit of reviewing Jeffrey Gill's deposition. You understand Jeffrey to be the son?

A. If you say so.

Q. For instance, were you aware that Jeffrey Gill is, in fact, an attorney?

A. No.

Q. Were you ever made aware that Jeffrey Gill does medical malpractice law like the folks here in this room?

A. No.

MR. LAUTZ: Form.

THE WITNESS: No, that is new to me.

Q. BY MR. FADELL: That is news to you. Okay. I want to read to you from a portion of Mr. Gill's deposition in terms of what he observed with his mother's condition actually in February of 2001 in the two or three weeks before his mother was found down. Okay?

I'm going to ask you to assume that on page 25 of his deposition he was asked the following question, Doctor, if you'll kind of bear with me, it's short. All

right? And the question was: And then you saw what you characterized as some positive signs of old behavior on the part of your mother during the month of February? That was the question that was asked of him. Okay? Assume that.

A. Which kind of behavior, I'm sorry, which behavior was that?

Q. Some positive signs of old behavior.

A. Old?

Q. Old behavior, O-L-D.

A. Okay.

Q. That was the question. His answer was: I would describe them as extremely positive. I was thrilled she got up out of the house, got dressed, put Jacob -- the grandson -- in the stroller, walked the quarter mile down back to the park. We were approaching a normal lifestyle.

That's the answer that he gave at his deposition describing his mother's behavior during the month of February 2001. Okay? Assume that that's his testimony.

A. Yes.

Q. When you compare that testimony from Mr. Gill with the note that Dr. Curletta wrote in September of 2000 that tells you, does it not, sir, that Mrs. Gill was functioning at a much better level in February than in September?

MR. LAUTZ: Form and foundation.

THE WITNESS: I wasn't aware of that testimony. The last two notes I have of her functionality are the notes by Dr. Curletta in September and also from primary care doctor, Dr. Pace, dated August 29, 2000 where he states she can't walk due to pain, stiffness, tiredness in her lower extremities and also pain in her back and generalized weakness.

And so those are the two notes prior, those are the last two visits with her primary care doctor and with Dr. Curletta, but I have not heard any, read or heard any testimony afterwards until she got admitted to the hospital --

Q. BY MR. FADELL: All right.

A. -- or until she was found.

Q. And, Doctor, and I understand you've not had the benefit of reading his testimony, but if you assume that what I've read is accurate, then what Mr. Gill is describing in terms of his mother's level of activity in February of 2001 is significantly different than what the two doctors have noted in August and September of 2000, true?

MR. LAUTZ: Form and foundation.

THE WITNESS: Yes, absolutely.

Q. BY MR. FADELL: And the change you certainly would agree is a more positive change as far as Mrs. Gill's ability to get up and move around and walk?

MR. LAUTZ: Same objection.

Q. BY MR. FADELL: True?

A. Yes, based on his report, yes, or based on his testimony I should say.

Q. Yeah. That was testimony under oath, Doctor. I'll ask you to assume that.

Okay. Going back to item No. 6, you said, or at least Mr. Lautz disclosed to us that part of the reason possibly why Mrs. Gill was down was potentially cerebral vascular issues. And what did you mean to communicate by that term or concept?

A. Well, that has to do with the issue of whether or not she may have had a TIA or whether there was some other kind of neurological process going on that could be responsible for her being found down.

Q. All right. Doctor, did you form an opinion in this case that Mrs. Gill suffered a stroke sometime before being hospitalized on February 22, 2001?

A. Based on my review of the records it was unclear whether she had suffered a stroke. My recollection is that there was no specific evidence of that on an MRI that was done. However, if some of the doctors in their direct care of her opined that there was a possibility that she might have incurred some kind of a neurological event like a stroke because she was having issues, I believe in

her speech and then the weakness in parts of her body that may have indicated that there might have been some type of neurological event.

Q. For you at least that remains an open question as to whether she did or did not have some type of neurological event maybe to the degree or extent of a stroke?

MR. LAUTZ: Form.

THE WITNESS: It remains a possibility, yes.

Q. BY MR. FADELL: Then the last item under opinion 6, which I'm going to call opinion 6, is your reference to issues with improper use of medications. That might explain part of the reason that she was found laying on the floor on February 22, 2001. What did you mean to communicate by that term?

A. It's possible that her medications may have also caused her to become momentarily dizzy or sedated to the point where she might have incurred a fall or that might have been a cause of her being found down.

Q. All right. And with respect to her medications, can you tell me based upon your review of the records, or if you need to go back and look, can you tell me what medication or medications Mrs. Gill at least was prescribed to take on February 22, 2001?

A. Well, she was on a number of different

medications. She was on Oxycontin, and I believe that she was on 80 milligrams, 4 tablets per day, so 320 milligrams of OxyContin per day. She was also on OxyIR, which is also an oxycodone and a narcotic medicine. I believe she was on 15 milligrams every six hours as needed. She was also on some other medications which I'll have to just review the file, but cyclobenzaprine which is a muscle relaxant. She was taking 10 milligrams of cyclobenzaprine. Atenolol which is both a blood pressure medication and heart pill. It's a beta blocker. She was taking 50 milligrams. Clorazepate, which I believe is another name for an anti-anxiety type drug. And she was taking 7.5 milligrams of that. I can't recall how many times a day but that was on the list. And I think those were the major medications.

I know that in the preceding two or three months she was written for Estradiol, which is a hormonal treatment. She was written Clonidine which is a blood pressure pill. She was written for Naproxin which is an anti-inflammatory analgesic medication. When I look at her pharmacy records and the medical notes I think at the time of February or in the immediate time preceding that those were the potential medications that she would have been taking at that time.

Q. Of those medications which ones did Mr. Curletta prescribe or order?

A. I believe Dr. Curletta was responsible for ordering OxyContin and the OxyIR and I believe all the rest of the medications were through Dr. Pace.

Q. And you have some understanding that Dr. Pace was Mrs. Gill's primary care physician?

A. Yes.

Q. And so within the practice of the pain management specialists, the primary care physician would normally be responsible for issues related to a patient's blood pressure, hypertension, correct?

A. Normally, that's correct, yes.

Q. If there were issues with blood sugar, again, the primary care physician would be responsible for addressing those as well, correct?

A. Normally if he was aware of it, yes.

Q. Now, Doctor, with respect to the medications that Dr. Curletta was prescribing, have you been able to figure out how much of the OxyContin and how much of the oxycodone Mrs. Gill would have ingested on February 22, 2001 before she had her fall or her mishap at the home?

A. I couldn't say exactly how much she took on that particular day but based on her prescription records it seems that she had been taking the medications regularly. She certainly called in for prescription refills on a regular basis and in some cases even a little early for her

prescriptions.

She did have a urine drug abuse screen that was done on February 22, 2001 indicating that she was positive for benzodiazepines, for opiates, also for tricyclic antidepressants. And I believe that those were the three positives on this particular drug abuse screen.

Q. And do you have any opinion as to what the levels were, whether they were subtherapeutic, therapeutic, abnormally high or did they appear within appropriate ranges given Mrs. Gill's history?

MR. LAUTZ: Form and foundation.

THE WITNESS: It was just a qualitative test which is basically positive/negative, there was no indication of the concentrations in the blood or any numbers per se.

Q. BY MR. FADELL: All right. Doctor, I know you've had a chance to review the medical records of Dr. Pace and Dr. Curletta, correct?

A. That's correct.

Q. Did you see any indication from the time that either one of these physicians began taking care of Mrs. Gill that she had experienced a fall or falls similar to the one that folks believe happened on February 22, 2001?

A. No, I don't believe so. Just looking at the medical records I don't recall and I don't see right now

that there were any falls that I can see in the records.

Q. All right. The dosages of the OxyContin and the oxycodone and the frequency of those doses that Mrs. Gill was taking on February 22, 2001, how long had she been on those doses?

A. Well, she had been on the Oxycontin regimen for quite some time. She had, for instance, in September of 2000, Dr. Curletta wrote in his note that she was on Oxycontin, 80 milligrams, once again, four times a day. OxyIR, 15 milligrams every 6 hours. So it had been at least since September, going back to December of 1999. She then was taking three OxyContin, 80 milligram tablets per day so there was an increase. I believe it happened in July of 2000 she went from three OxyContin 80 milligrams to four OxyContin 80 milligrams.

At some point around that time she also had transitioned from a medication called Norco which is a hydrocodone opioid medication to OxyIR, so there was a change in her therapy.

And at some point between December of '99 and September of 2000, I'd have to review the records to tell you more specifically when that change occurred, but it was at some point then between December of '99 and September of 2000. But since September of 2000, since that time that note, the medication regimen with OxyContin and OxyIR was

consistent.

Q. With respect to then the sixth item on Mr. Lautz's E-mail to us, when you look at the various factors that could have led to Mrs. Gill being found down, do you have an opinion as to which one or more than one of these were the likely cause or causes for her being found down?

A. I really think it could have been any of those or a combination of them so I don't really have any way to know and I don't have an opinion as to which was more likely than another or whether it was a combination of one or more of them together that resulted in her being found down.

Q. Okay. We've been going for just about an hour and a half. I want to give you a break and I want to give our court reporter a break. I want to run to the restroom. How about if we take a five-minute break and come back and do part two of this?

A. That's fine. Thank you.

(Recess from 2:47 p.m. to. 2:55 p.m.)

Q. BY MR. FADELL: I want to kind of switch subjects with you a little bit and find out some more information about you and your background and the work that you're currently doing. Okay?

A. Sure.

Q. From the information that Karl has sent to us

I understand that you recertified your board certification most recently in 2003?

A. That is correct, yes, for pain medicine.

Q. Was that a special board or an exclusive board for pain medicine, pain management?

A. That's correct, yes.

Q. Was that your first crack at becoming board certified in that subspecialty?

A. No. I took the exam as soon as I finished my training so after 10 years you basically have to recertify so that was the second time I took an exam for purposes of recertification.

Q. All right. The 2006 was a recertification, is that correct?

A. Yes.

Q. And when you --

A. That's correct, yes.

Q. When you recertified in 2003 it was both as an anesthesiologist and also as a pain management specialist, correct?

A. No, for anesthesia I certified in 1993 as well but that did not require recertification.

Q. All right.

A. My board certification in anesthesia is from 1993. The most recent from pain management is

recertification in 2003.

Q. When did you first become certified in pain management?

A. In 1993.

Q. So between 1993 and 2003, as I look at your C.V., I understood that you were teaching and practicing in the field of anesthesia?

A. That's correct.

Q. All right. And within what I'll refer to as the broad field of anesthesia, between '93 and 2003 were you limiting or focusing your practice to one aspect of anesthesia?

A. No, no one aspect in particular.

Q. So you were doing pain management during that 10-year period?

A. Yes, I was.

Q. And were you doing inpatient anesthetic procedures, putting people to sleep for surgeries, that sort of thing?

A. Yes. I was doing anesthesia separate from my pain management practice.

Q. All right. Starting in 1993 through the present has there been some point in time when you have limited your professional practice to pain management?

A. No.

Q. All right. So do you still do cases in the hospital where you put patients to sleep in connection with surgeries?

A. Yes, I do.

Q. All right. Dr. Nedeljkovic, can you break down for me say in the past 12 months what percentage of your professional practice is devoted to pain management, what percentage is devoted to what I'll call putting people to sleep or surgical procedures?

A. Well, we don't always just put them to sleep, but my anesthesia practice is probably about 20 percent of my time during any given week or month. And my pain management practice is probably 80, represents 80 percent of my time during any given week, any given month. It really hasn't changed much so I could say during any given year.

Q. All right. Now you have some understanding, do you not, that Dr. Curletta when he started out treating Mrs. Gill had his offices based at or very near a hospital, Tempe St. Luke's?

A. Yeah, from his testimony I remember reading something about that, yes.

Q. And do you have some understanding that over time he has transitioned his practice physically away from the hospital and more to an office practice?

A. Yes, I do recall reading that in his

deposition, yeah.

Q. Now, when you do your pain management part of your practice, your 80 percent, do you do it in a community office setting or do you do it in connection with your work at the hospital?

MR. LAUTZ: Form.

Q. BY MR. FADELL: Or both?

A. That's an interesting -- well, the answer is both, but even though this is two miles away from the hospital this is still technically administratively considered as part of the hospital, as if it were immediately adjacent to it. So this is a hospital practice even though I'm in an ambulatory/surgical/tech type setting.

Q. Do you have a private practice in pain management?

A. No, I work for Brigham Women's Hospital.

Q. Has that been the case since you became board certified, that you've had what I will refer to as a hospital based or ambulatory based pain management practice?

A. Both hospital and ambulatory.

Q. And do you have colleagues in the Boston area who have an office based or community based pain management practice?

A. Yes.

Q. All right. Are there any significant

differences in your view, any advantages or disadvantages to practicing in one setting or the other?

A. Nothing in particular. That's a matter of preference I think for the practitioner and also for the patient.

Q. In connection with your current practice, do you have residents or fellows with whom you work?

A. Yes, both.

Q. Both? And give me some --

A. Both residents and fellows.

Q. Give me some idea of say on a week-to-week or month-to-month basis how often will you be working with residents or working with fellows in your practice?

A. Approximately three to three-and-a-half days per week working with trainees, residents and fellows and approximately one to one-and-a-half days a week on my own.

Q. I saw by going on the internet, Doctor, that you are a member of the New England Pain Association, is that correct?

A. That's correct.

Q. Okay. And can you help me understand what the association or organization is all about? In other words, what are your goals, what are your objectives as an organization?

A. Well, the New England Pain Association is a

regional chapter of the American Pain Society, which is the national chapter of the International Association for the Study of Pain which is, of course, an international group that includes pain practitioners throughout the world. So that our local, regional chapter is called the New England Pain Association and our organization is primarily focused on education and we occasionally get involved in policy and legislative issues as well.

Q. All right. And I saw, again, looking at what's available on the internet, that fairly recently you were involved in a debate or a public forum talking about the pros and cons of the use of opioid treatment. Did I find the right guy?

A. Yes, I was, yeah, you did.

Q. All right.

A. I get roped into these things every once in a while.

Q. And the thing, the topic or the debate was in connection with chronic non cancer pain, if that helps you to --

A. That's correct. Oh, yeah, my buddy, Gil Vantrudo(phonetic).

Q. What I'm trying to understand is if they roped you into this and gave you one side to argue and your buddy took the other side to argue or whether the association

asked you to speak because you are an advocate for one side or the other.

A. No, it was planned as a debate and I was asked, I was asked if I would mind taking either side. I said I don't mind taking either side. Later I learned that I was going to be taking this particular side.

Q. And the particular side that you took was, if I remember correctly, against the use of opioids in chronic non cancer pain patients?

A. The side that I took was to present information that would be a con on the use of opioids.

Q. Within that definition of chronic non cancer pain patients, would Mrs. Gill fall under that category?

A. Yes, she would.

Q. And while I don't -- I'm not asking you to present your entire position, what I'd be interested in knowing is, did you generate any written materials in connection with your presentation?

A. No.

Q. So your presentation, again, would have been based on your education, correct?

A. That's right.

Q. And your experience?

A. That's correct.

Q. And your reading and understanding of the

literature and the research?

A. Yes.

Q. Okay. Do you know if the debate was recorded in any way or any fashion?

A. I don't believe it was recorded, no.

Q. All right. Did you get high marks for it? I suspect you probably did, didn't you?

A. I did. I whopped his butt.

Q. Good. Good. Want to switch subjects slightly with you. I know you're at Brigham and Women's Hospital, how long have you been there?

A. Since I began my fellowship here in 1992.

Q. And within the hospital, Doctor, and your practice, do you specialize or concentrate your practice in any particular area or areas of pain management?

A. No, not in particular.

Q. I think I saw some reference to you either writing articles or being a contributor or collaborator to articles involving pain management of cancer patients. Have you ever done that?

A. Yes. Yeah, sure, I do that.

Q. But in terms of patients that come through the hospital, if it's a cancer patient with a difficult pain problem you are not necessarily going to be the first person called?

A. I may be. One day a week I cover the in-patient service. On that particular day I'm the person who covers the patients in the hospital.

Q. All right. The pain that apparently brought Mr. Gill to Dr. Curletta and to a number of other specialists, as you understand it, was as the result of a diagnosis of human Parvovirus?

A. That was the diagnosis that she reported to Dr. Curletta, yes.

Q. Yes. And did you see evidence in the medical records that Mrs. Gill was tested by specialists for the presence of the human Parvovirus? And if it helps you, Doctor, Dr. Rubin's name came up most often in connection with the human Parvovirus diagnosis. I don't know how you're --

A. Yeah, I recall that name. And I recall seeing in the hospital notes some I think articles on this condition. And I also seem to recall seeing some type of records in reference to DNA testing, antibody titers. That's what I'm actually looking for, but I do recall mention of this diagnosis.

And I recall that the patient had entertained that diagnosis and it had been entertained by a number of practitioners, but I think that it was still somewhat questioned onto what that diagnosis, what her diagnosis

really was because from my recollection I believe that some of the tests were -- actually, here, from January 14, 1999, her Parvovirus test was negative for antibodies. And I can't recall the note that I read somewhere about the DNA testing, what that actually showed.

Q. Dr. Nedeljkovic, did you get Dr. Meyerowitz' records? And I will just ask you to assume Dr. Meyerowitz is the primary care physician who predated Dr. Pace. Were you ever supplied those records?

A. No, I don't believe so.

Q. All right. For instance, let me ask you to assume that the laboratory testing for human Parvovirus in 1994 by Dr. Meyerowitz, if the reference range is correct, was antibody value of 1.20 indicating the presence of the virus, that Mrs. Gill's test results came back at 1.37. Is that information that you ever saw?

A. No, I definitely didn't see that. The only information that I saw was June 2, 1997, a note that the antibody levels were undetectable. And then the other reference that I mentioned was from 1999, January 14, 1999, I'm sorry.

I'm not an expert on Parvovirus so I'm not exactly sure the significance of these tests and the meaning of these tests.

Q. Thank you, because I was going to ask that

question.

The follow-up question then would be, have you ever treated a patient who was either diagnosed or reported to you having been diagnosed with human Parvovirus?

A. In terms of chronic pain management?

Q. Yes, sir.

A. Really any other kind of management, I never heard that particular cause of chronic pain.

Q. And I gather from your previous answer you haven't done any research of the literature or textbooks or writings to help you better understand how a patient with human Parvovirus would be treated from a pain management standpoint?

A. I don't know of any such references, no.

Q. All right. When you, Doctor, when you look at the kind of pain medications that Dr. Curletta prescribed for Mrs. Gill and you compare that with her complaints of pain and her symptoms of pain, were the pain medications that he prescribed appropriate for her symptoms?

A. Well, I have to go back to the period of time when this was occurring, which was 1996, 1997. And I think in the pain management community in my practice there was a feeling that patients with chronic pain, regardless of diagnosis, who did not seem to respond to immediate treatments should be titrated on opiate medications like

Mrs. Gill was by Dr. Curletta. And so that treatment that he provided her in that time period -- 1996, 1997, 1998 -- was a treatment that would be recognized as acceptable treatment for a chronic pain disorder that was manifested by severe pain and decreased functionality and other manifestations of chronic pain.

Q. Then as we progress beyond the 1998 time frame to 1999, 2000, and then obviously we know what happened in early 2001, were there different or more advantageous pain medications that Dr. Curletta could have prescribed for Mrs. Gill other than the OxyContin and oxycodone that she was taking?

A. Well, it's hard to know because once she came onto that regimen she pretty much stayed on a regimen of, well, of either morphine or Oxycodone or hydrocodone or oxycodone. That was her primary management so there weren't significant trials of any other potential medications or any other potential treatments so it's hard to say whether or not she would have responded to other treatments during those years.

Q. Were there other potential treatments out there that could have been employed, other regimens, other drugs, that could have been employed?

A. There were a number of other medications, yes, that would be available and potentially available for trial.

Q. And can you give me a list of those other potential medications for trial that could have been employed?

A. I can give you some examples.

Q. Please.

A. Different types of antidepressant medications, anti-convulsant medications were very commonly used for the treatment of chronic pain syndromes. Types of anti-inflammatory medications, muscle relaxant type drugs. Those are all medications that might be employed.

Procedures, I'm thinking specifically of intravenous Lidocaine infusion as a method for treating diffuse pain syndromes like this.

So there's a number of different modalities in addition to nonpharmacologic modalities, kind of behavioral and psychological type treatments; acupuncture, chiropractic care, a whole slew of different modalities and then different subsets of exercise programs and regimens that may be employed in the treatment of a patient like this.

Q. I know that one of your opinions in this case is that Dr. Curletta did not see Mrs. Gill often enough to satisfy the standard of care. Mr. Lautz told us in the E-mail this morning that you believe Mrs. Gill should have been seen every three to four months, correct?

A. Well, the patients like this I would expect

that they would be seen and there's a debate, you know, how frequently a patient like this should be seen. Three to four months is a reasonable period of time up to six months might even be considered a reasonable period of time. Somebody that is stable, doing really well, they are working and functioning normally, their mood was good, everything was just grand. And, you know, that doesn't mean that there wouldn't be a lot of communication, but maybe they wouldn't necessarily have to be physically seen as a patient in an office.

So I think it's somewhat open to debate as to how often do you have to see one, especially if they're completely stable, fine, doing great and reporting back to your office or yourself over the phone, everything's fine, I'm just calling for my refills. But I think there's a general consensus that somewhere in that three- to six-month time period, that's when every effort should be made to have the patient come back and be seen to physically evaluate them. Especially if there's some issue, they're not doing so well, so in case there might be some new treatments you might be thinking of offering them that you might not think of until you actually saw the patient in front of you.

Q. Do you believe that the standard of care required Dr. Curletta, had he seen Mrs. Gill in say the three- to six-month time frame we've been just been talking

about, do you believe the standard of care would have obligated Dr. Curletta to offer Mrs. Gill a different modality to deal with her pain had he thought it appropriate or necessary?

A. Well, I'll answer that question by saying that in the one or two years prior to her unfortunate death and based on the notes that I saw immediately prior to her death, let's say August or September of 2000, which were the last notes available before she went to the hospital, indications were she wasn't doing that great. At least that's what Dr. Curletta felt, that's what Dr. Pace felt. Her functional level wasn't that good. There was a hint that her mood wasn't, you know, that good, that she was sad and she wasn't really able to do very much with herself. And based on outcome measures such as function, mood and even pain, that her situation certainly wasn't optimal.

Now I understand and I see lots of patients who no matter what you do their situation isn't optimal. You try your hardest. I'll answer the question by saying perhaps in a patient who's not doing so well and their medications are very, very high doses and they're still not so well, that's a person who I might think would be a candidate for other types of alternative types of treatments and maybe an evaluation that what Dr. Curletta had implemented is really the appropriate treatment.

Q. Okay. And I think what I'd like to have you do then is that if you could go back and look at Dr. Curletta's evaluation of September 6, 2000. As you said, that's the last evaluation that you see in the record. When you go back and look at it, Doctor, and when you did look at it, did you formulate an opinion or an impression that there might very well be the need to look at a different modality or modalities to address her pain problems?

A. Well, I can't say that I formed an opinion based on that single note, no.

Q. All right. So if we come to the point that we have a trial in this case and I ask you at trial, Doctor, should Dr. Curletta have tried to tackle this pain problem from a different perspective as of September 2000, your opinion at least as of today is that you haven't analyzed that visit enough to know whether a different modality would have been more appropriate?

MR. LAUTZ: Form.

Q. BY MR. FADELL: Correct?

A. I think I'll have to answer that a little more generally. Not based on that one visit but based on a period of two or three years of visits. Here's a patient who is taking very high doses of opioids, which I'm prescribing, and putting myself in Dr. Curletta's shoes for

a moment, yet she was having all sorts of medical problems, aching and back pain and she can't walk. And there's some things that are good. Her attacks are less frequent, they're less severe, but the whole general picture is they're very concerned about the weight gain that's going on, blood pressure is not really in the greatest control, a lot of stiffness. And so just maybe not based on this one single note, you know, based on this one single note I might continue, but certainly I would want to see the patient more frequently. I definitely would consider the possibility that maybe there are some alternative treatments I should be implementing or at least I should be talking to the patient about those treatments and engaging her opinion as to whether she's willing to proceed with a different treatment plan.

Q. So as we sit here today and discuss your opinions you would have wanted to talk to her about different possibilities, correct?

A. Yes, I think I would have brought it up. I can't say which visit, it would have been this visit, the visit before. But at some time in this time frame from 1996 to 2000, at some point I would have wondered, is this the best treatment that there is, knowing that her, her appearance, and her functional abilities really weren't apparently benefitting or at least not benefitting

significantly based on the treatment that I was implementing for her.

Q. Doctor, I want you to assume for this next question, and I'm paraphrasing Dr. Gossler, the standard of care expert for Dr. Curletta, on Monday said that in his experience doing pain management he believes his efforts can generally help about 60 to 70 percent of the people that he sees and that there's about a 30 to 40 percent group of patients that no matter what's done the pain for the most part remains and he didn't feel that he had that much to offer to about 30 to 40 percent of his patient population.

If I ask you to assume that that was his testimony, have you had similar kinds of experiences in your practice as a pain management specialist?

MR. LAUTZ: Form.

THE WITNESS: I can't say that I agree with that, with that statement, based on my practice. I have had an occasional patient who regardless of what attempts I've made I can't seem to have helped them, but even if I haven't helped them with their pain perhaps I helped them improve their mood or become more functional or gain a better understanding and a greater ability to cope with the diagnosis that they have or perhaps I helped their primary care doctor manage them in a way to decrease their stress over their condition.

So, yes, there are a few patients, it's pretty infrequent, who just can't -- I feel like I can't help them. In those cases I refer them to another doctor, say, look, I've tried everything I can, why don't you see another doctor. I'll give them other names, there might be another pain doctor or doctors in other medical specialties as well.

Q. BY MR. FADELL: Again, Doctor, I know you've not had the benefit of reading all of Jeffrey Gill's deposition, the son's deposition, but if I ask you to assume that Jeffrey testified under oath that he saw positive changes in his mother's level of functioning in February of 2001, do you have any thought or any opinion on what caused or contributed to those positive changes?

MR. LAUTZ: Form and foundation.

THE WITNESS: I don't know just other than what he said because there's no medical documentation of it so I don't know, if there was some change in her medical status or psychological status or functional status, there's simply no medical notes so it's just by his word.

Q. BY MR. FADELL: All right. I want to ask you about some business issues. I don't think coming here today I knew what you were going to charge me for your time in deposition so what are you charging me for your time today?

A. I don't know yet because I just don't know. I always decide later after the experience is ended.

Q. So that means --

A. I won't charge as I much --

Q. Go ahead.

A. I won't charge as much as my plumber charges me.

Q. All right.

A. I really won't, I won't.

Q. When you spent time with Mr. Lautz either going through the facts of the case or reviewing records that he sent you, what did you charge him per hour?

A. My general charge is $300 an hour.

Q. And should you --

A. But I take all factors into consideration so sometimes I spend many hours and don't charge for all of it, which my wife tells me to stop doing but --

Q. You should probably listen to her.

A. Probably should.

Q. Should we have a trial in this case in Phoenix, Arizona, do you have a fee schedule for your time in trial?

A. No. Oh, for trial?

Q. Yes.

A. Well, usually I charge, for local trials I usually charge $5,000.

Q. And so if you have to come to Phoenix,

obviously, you're going to charge more for your time, correct?

A. Yeah. Frankly, I prefer not to have to come to Phoenix. I'm sure Phoenix is wonderful, probably be great in the winter, but I have a lot of small kids at home and I'm a homebody so I prefer not to come unless I have to.

Q. All right. Do you have in your file some indication of when you were first contacted to assist Mr. Lautz?

A. Well, I believe it was about a year ago. I couldn't tell you an exact date but I remember it was last summer.

Q. And the medical records and other paperwork I gather would have followed after the initial contact?

A. Yes. I know I got this book right afterwards, yeah.

Q. Actually, the date here is June 17, 2005.

A. June 17, 2005.

Q. Is there a cover letter with that, Doctor?

A. That's what I'm looking at now.

Q. Who sent the notebook to you?

A. Well, it was sent through Haralson, Miller, Pitt, Feldman and McAnnally.

Q. Is there a signature on the letter, a name on the letter?

A. Yes, there is, Michelle Petrano(phonetic) legal nurse consultant to Karl L. Lautz.

Q. Have you talked with Michelle about this case?

A. Yes.

Q. Would you say you've discussed the case more with Michelle than with Karl --

A. No.

Q. -- when you look back on all your contacts?

A. No, with Karl more.

Q. Give me some idea of how many depositions you've done in your professional career.

A. Maybe about 20.

Q. Mr. Lautz told us in the disclosure statement that about half of your medical/legal work has been done on behalf of healthcare providers and about half on behalf of patients. Is that still true today, Doctor?

A. Yes.

Q. Do you keep a list of cases or medical/legal matters that you currently are working on?

A. No, not a list.

Q. Do you keep any type of ledger or any sort of documentation to help us understand what the current number of cases or medical/legal matters are you're working on?

A. Nothing like that. Active cases, I do keep them until I hear otherwise. There may be three or four

active cases that I'm involved with but I really don't recall. Sometimes I might be consulted, it might be three or four years then suddenly I get a phone call and I find out the case is still active. So I don't know how many I'm involved with right now to tell you the truth.

Q. Do you keep a bank or a depository of your deposition transcripts or deposition testimony?

A. No.

Q. How is it you send your bills out to Mr. Lautz or attorneys who retain you? Do you have some sort of formal billing system where you would send out for compensation?

A. No. I mean, I would just send either an E-mail or in some cases a fax or a note.

Q. Are you able to tell us today, give as an approximate number of hours you've spent on your review of the case?

A. Well, last summer when I first got the case I probably spent two or three hours on it. And then just in the last couple of days maybe same thing, maybe three or four hours up until this deposition, maybe three hours up until this deposition. I have to look at my files to just kind of look at that again but that's a gross estimate.

Q. Mr. Lautz in a disclosure statement at one point told us that you have not prepared any kind of a

report or statement or letter concerning your opinions in this case, is that still the case today?

A. That is, yes.

Q. Have you made any personal notes on the record or tabbed or flagged or in some way put something on the records to help you recall important parts of them?

A. No. Mr. Lautz gave me a nice file with all the tabs in it, then I just have these papers that are stapled together and paper clipped, so nothing in particular.

Q. Do you have any sort of writing from Karl's office, other than the disclosure statements, we've talked about that, with summaries of either the facts in the case or the issues in the case or the medical records in the case?

A. No, just intermittent E-mail exchanges which are fairly brief.

Q. Did you keep copies of those, make hard copies of those E-mail exchanges?

A. No.

Q. Would you be able to go back into your system and give us some idea of when those E-mail exchanges would have taken place?

A. Well, E-mail exchanges that took place this week are still on my system, the other ones I don't know

that I could locate those or dig those up.

Q. All right. I want to switch subjects with you a little bit, Doctor, and ask you about the issue of referrals for Mrs. Gill by Dr. Curletta. One of the newer opinions that Mr. Lautz sent us today was that Dr. Curletta recognized the need for referrals and recommended patient referrals but did not ensure that the patient was in referral. I can read that over again to you but I understand that to mean one of your opinions is that Dr. Curletta should have done more to make certain that Mrs. Gill was referred out to other specialists. Is that a fair summary of your opinion?

A. Well, I think Dr. Curletta mentioned on a number of occasions that Mrs. Gill should be seen by other specialists. And, for instance, in his last note he mentioned arrangements were made for her to see a psychologist, Dr. Obitz, but it doesn't look like Mrs. Gill saw that doctor. Dr. Curletta doesn't seem to follow up on some of these recommendations for her to see other doctors.

There was a note of her perhaps seeing a rheumatologist to reevaluate her condition, and I'm not sure that rheumatology consultation ever took place. And I don't see in the records that Dr. Curletta made any further efforts to facilitate that consultation or to follow up on whether that consultation was taking place or not.

Q. All right. My question to you, Doctor, is, when you went back and looked at the records did you see any indication, for instance, that Mrs. Gill scheduled appointments, including an appointment or two with Dr. Curletta, where she cancelled the appointment?

A. Yes, I did see that in records.

Q. Did you see an indication in the record where Dr. Curletta told Mrs. Gill that he wanted her back in three or four months for follow up?

A. Yes, absolutely.

Q. And did you see indications in the record, and let's stay with the area of the psychologist, where Mrs. Gill indicated that she either could not or was not able to schedule an appointment with the psychologist, Dr. Obitz?

A. Well, I just wrote here, I just see here that in a note from September 6, not the typed one but a written one with I believe it's Curletta's signature down there, said that she cancelled the appointment with Dr. Obitz, had an appointment with Dr. Moran, rheum consult, to be scheduled. So that she cancelled an appointment I guess is the answer to the question, previous one was a no show.

Q. Doctor, in that same note did you see indication that Mrs. Gill told Dr. Curletta that she had been evaluated by a different psychologist as part of a

disability evaluation?

A. Yes.

Q. So at least as of September 2000 the records would reflect that Mrs. Gill was evaluated by a psychologist, correct?

MR. LAUTZ: Form and foundation.

THE WITNESS: As part of the disability evaluation, yes.

Q. BY MR. FADELL: Yes. You don't know what that evaluation involved or what it revealed, is that correct?

A. I have not seen an evaluation.

Q. That same note does indicate that Mrs. Gill agreed to be seen by a rheumatologist, correct?

A. In that same note it says that Dr. Curletta agrees with Dr. Pace's recommendation for rheumatology consultation. Dr. Curletta says that. It says that appointment has not yet been set up.

Q. Doctor, since we are looking at notes I'd like you to go back to the December one, 1999 note that Dr. Curletta did.

A. I have it right in front of me.

Q. And do you see there in that note it appears that arrangements were made for Mrs. Gill to be evaluated by the psychologist, Dr. Obitz?

A. Arrangements have been made for her to proceed

with psychological evaluation with Dr. Obitz. Yes, I see that. I don't know that it happened but I see that it was documented that arrangements have been made.

Q. Right. And then does the note go on to indicate that by having her undergo the psychological evaluation the evaluation might very well help to rule out if there's a significant psychosocial overlay to her pain?

A. Yes. And also to provide tools to help her control pain and reduce the impact of it on their life.

Q. And, Doctor, in a situation where you or Dr. Curletta, the pain management specialist, encourages the patient to be seen by a psychologist or a psychiatrist, and you're at the point where there's actually an appointment scheduled and yet the patient doesn't show up for the appointment, what is it that you can do or the reasonable pain management specialist can do to encourage the patient or somehow have the patient go in and be evaluated? What is it you can do beyond giving the recommendation, assisting in scheduling the appointment, what else can be done under those circumstances?

A. Well, when I see the patient at the next time I certainly would want to follow up on whether or not that appointment took place. And so, number 1, a phone call or a conversation with the doctor I'm referring the patient to to advise him or her what my expectations are and why I'm

giving the referral. Especially if it's a complicated case, I might want to have a personal conversation to discuss what might be done with the patient. But then at the subsequent visit with the patient I'd want to find out if the patient followed through with the recommendation and if they haven't, why not. And if there's any way I could facilitate the patient to actually make that appointment.

In some cases it comes down to me sitting in the room and literally picking up the phone and saying, I'm going to help you make that appointment right now with the patient in the room. But if there becomes a relationship where the patient is simply unwilling to follow my recommendation, then I might not be able to continue to provide complete care for that patient any longer. In which case I may want to talk to the patient's primary care doctor and let that doctor know, at this point I'm not able to provide care for a patient who's not willing to comply with my recommendations and my treatments. And that goes along with the treatments that are provided, other treatments that I'm providing, such as medications, prescriptions and the like.

As part of our opioid agreement here in our program it's implicit and explicit as well that the patient agrees to participate in all aspects of her pain program. It's not just a matter of getting a prescription and going

off. There are other aspects of pain management and they need to be willing to participate in those as part of the agreement that we made to continue with management with that particular form of therapy.

Q. Did you see an indication in the records, Doctor, of Dr. Curletta and/or Dr. Pace that there was an exchange of information between Dr. Pace, the primary care physician, and Dr. Curletta?

A. Well, I know that notes were copied to Dr. Pace from Dr. Curletta. I did read Dr. Curletta's deposition and I recall that he was asked that question and he seemed to remember that he might have spoken to Dr. Pace early on in the treatment but not on a regular basis afterwards. But other than the carbon copy type notes, I don't think there was a lot of conversation that went on between them, from what I know, from what I've seen in notes and from reading Dr. Curletta's own deposition.

Q. Was it a reasonable practice for Dr. Curletta to send copies of his notes to Dr. Pace?

A. Yes.

Q. Did you see, Doctor, how often Mrs. Gill saw Dr. Pace?

A. Yes, yes, I saw it.

Q. Did it appear that she saw Dr. Pace more frequently than she saw Dr. Curletta, less frequently or

about the same?

MR. LAUTZ: Form and foundation.

THE WITNESS: I would say about the same.

Q. BY MR. FADELL: Did it appear that the visits with Dr. Pace and Dr. Curletta coincided roughly in the same time frame?

A. I haven't really looked to see if that was the case but I can look now. I mean, there was a note here from August 29, 2000 which was fairly close in time to the September 6, 2000 note of Dr. Curletta. And Dr. Pace had prior to that seen the patient January of 2000, whereas Dr. Curletta had seen the patient in December of '99. And prior to that there was a note here from July of 1998 and Dr. Curletta's previous note was April of '99, and prior to that December of '98. And then there's something here in August I believe '98 that comes up.

Q. So roughly --

A. And some --

Q. Go ahead.

A. I was going to say in some cases they seem to coincide fairly closely, in other cases they didn't seem to coincide that closely either.

Q. Doctor, did you have some understanding that Mrs. Gill had other challenges in her life in the 2000 time frame, namely the chronic illness of her daughter?

A. Yes, I was aware of that.

Q. And did you have some understanding as to when her daughter passed away in relationship to when she passed away?

A. I believe their daughter passed away in the summer of 2000, maybe July or August, somewhere in there, and she passed away in March of 2001.

Q. Did you also get some indication from reviewing the records that Mrs. Gill in some form or another, perhaps more than one way, provided support for her chronically ill daughter?

A. I want to answer yes but I would have to review the notes to tell you why I'm answering that yes. I believe that she did provide support --

Q. Did you also --

A. -- for her daughter.

Q. Did you also have some understanding that her daughter was a patient of Dr. Curletta's?

A. I did learn that through reviewing the records, yes.

Q. And did you also have some understanding that there would obviously be times when both mother and daughter would be seen by Dr. Curletta, in other words, the two of them would be there together?

MR. LAUTZ: Form.

THE WITNESS: I wondered that, but I didn't see any evidence of that in her notes or in her chart.

Q. BY MR. FADELL: Did you see based on your review of Dr. Curletta's deposition testimony that he made reference to two or perhaps three occasions when while treating the daughter Mrs. Gill was there with the daughter?

A. Well, I don't recall specifically.

Q. I want to go back to the list of opinions that Mr. Lautz provided us today and ask you about a couple more of the opinions.

One of the opinions he indicated you were prepared to express is that Mrs. Gill's chronic opioid use did not prevent her overall medical decline, either in terms of psychological status, function or overall medical health. And I can read it for you again, it's one of the new opinions provided to us today. But if you need me to read it over again I'll be happy to do that. My question --

A. Please do.

Q. Okay. It says: Dr. Nedeljkovic will testify that her, meaning Mrs. Gill's, chronic opioid use did not prevent her overall medical decline, either in terms of psychological status, function or overall medical health.

Doctor, my question to you is, when you employ opioids of the type that were used in this case, is the goal to prevent medical decline, psychological functioning and

overall medical health, is it the goal to prevent?

A. I would say that that is a goal. That the goal of providing opioids in this case and in other cases is not only to decrease subjective complaints of pain but to improve the overall quality of life, to improve the ability of the patient to do things to improve and do things to promote the patient's ability to work and exercise. All those behaviors are ultimately healthy behaviors that would potentially result in better health for a patient.

In this particular case that didn't happen, but that would be a goal. That my treatment with opioids and other modalities as well would be to improve the overall quality of the patient's functional, psychological and ultimately medical status.

Q. All right. And so, for instance, over the course of the four years or so that Dr. Curletta took care of Mrs. Gill we see an increase in her blood pressure, okay, to values where she would be considered, clinically considered as hypertensive. Is that the type of change you would associate or attribute to chronic opioid use?

A. No. Chronic opioid use has not been associated with an increase in blood pressure per se, no. Certainly those issues were not considered back in the 1990s. People are looking at things such as long-term opioid therapy or endocrine function, androgen levels such

as testosterone, estrogen. These are relatively new areas of expertise because back in the 1990s or up until the time she passed away it would not have been something to be considered.

Q. Ask you to assume that when you read Dr. Gossler's deposition testimony from beginning to end the subject of weight gain you will see in the deposition testimony, and ask you to assume that Dr. Gossler testified -- and, again, I'm paraphrasing -- that he does see with many of his chronic pain patients an increase in body weight. First of all, have you had a similar experience with your chronic pain patients, again, non cancer chronic pain patients?

MR. LAUTZ: Form.

THE WITNESS: Well, I have had patients who have increases in their weight, but when you see patients over a period of time and patients are advancing in years and if patients are not able to function well and exercise then it does occur that patients will begin to gain weight.

There are certain medications that can cause fluid retention and weight gain. I can't say that opioids per se would be something I would consider in that category as a direct cause of it, but I have seen patients who have gained weight. I've seen other patients who have lost weight.

Q. BY MR. FADELL: In Mrs. Gill's case, again, if I ask you to assume or you may have already grafted this out, that there was an approximate weight gain of 70 to 75 pounds from the time Mrs. Gill first began treating with Dr. Curletta till near the end of the treatment. Do you attribute that weight gain to either the type or the quantity of pain medication that she was receiving from Dr. Curletta?

A. No.

Q. Mr. Lautz in one of his other opinions that he provided to us said that you will testify that it's possible that changes in the patient's regimen and treatment plan as well as referrals may have helped Mrs. Gill's overall medical condition in the year 2000, 2001. So change in her regimen and treatment plan may have increased her overall health condition in 2000, 2001. Assuming that to be your opinion, what I'm trying to understand is what you meant be the term patient's regimen, what does that mean to you?

A. Well, as I mentioned before, it's obviously hard to look back now and predict what could have or would have been. But this is a patient who I may have implemented different types of treatment and modalities. Those include anything from different types of analgesic medications to physical therapy to behavioral treatment and psychological therapy, use of antidepressants, anti-convulsants, other

drugs.

So from the pain management standpoint those are the changes that may have improved her overall health status. From the standpoint of her other medical needs, such as weight gain, such as blood pressure control, I didn't really see any indication that there was a lot of effort undertaken to address those issues. She came in frequently with a very high blood pressure and that continued to be the case throughout the treatment.

So when I talk about regimen, I'm referring to pain management regimen that might have improved her health status and I'd also refer to general medical regimen. Not that I'm an expert in blood pressure management or weight loss or weight control but perhaps certain consultations and changes in therapy, I would postulate they might have been helpful in these areas as well.

Q. And did you note in looking either at the pharmacy records or at Dr. Pace's records that he was the physician, for instance, who was prescribing medication to control her hypertension?

A. Yes.

Q. And I think you had told us earlier that as far as weight gain, weight loss, weight control, that would primarily fall under the purview of Mrs. Gill's primary care physician, correct?

A. I would also, as a pain practitioner, I would be concerned about it and be very anxious about the fact that she gained so much weight because I think it could potentially affect her overall health and her pain management itself.

Q. All right. Doctor, when I went back and looked at the disclosure statement setting forth your opinions which is Exhibit 2 to your deposition, one of the standard of care statements that I found there was that the standard of care required development of a pain management care and treatment plan. And I can refer you to the particular page unless you have it in front of you.

A. I do have it on the bottom of page 23 and the top of page 24.

Q. Yes. Okay. First of all, is this typically a formal written plan that a pain management specialist prepares?

A. It's part of the documentation of the patient's visits and consultations. In the documents I would expect that there would be an assessment and a plan for further management of the patient pointing out all the different options and the anticipated treatments.

Q. Is there supposed to be in a doctor's chart, your chart, Dr. Curletta's chart, if they're practicing within the standard of care, a document that is in fact

entitled the pain management care and treatment plan or can you find that in the doctor's notes?

A. No. It may be part of -- let's say if there's a multi-disciplinary meeting that takes place, there might be a document generated that's called such a plan, but in the normal course of treating a patient it's part of the documentation that's found in the day notes, in the history and physical, in the reassessments of the patient.

Q. Did you see within Dr. Curletta's notes a document that you felt would qualify or might be characterized as a pain management care and treatment plan?

A. Well, I think this statement regarding my opinion on standard of care is whether or not the notes reflect whether certain objectives were being met in terms of pain relief, physical functioning, doing those particular evaluations and the such. And I think that's what that's referring to in particular.

Q. And the reason I'm asking you this question is I think you did see, did you not, from 1996 when Mrs. Gill first saw Dr. Curletta, you did see a history and physical, did you not?

A. Yes.

Q. And within that history and physical there were, for instance, sections that talked about assessments and then a plan for this patient?

A. Yes.

Q. Now, again, should we have a trial in this case, are you going to tell the jury that what was written in 1996 was a start but not sufficient to constitute a pain management care and treatment plan or are you saying there should be a separate document that sets forth the four subparts that we see in your disclosure statement?

A. No. I think the history and physical is a good start at a management plan. He indicates what his assessment is and he certainly indicates what some options for the plan are, indicates that he'll follow up with the patient too later. I think that's appropriate. But in the intervening period of time, from then until 2001, I didn't really see indication that the patient was meeting certain objectives of her treatment and that those were identified either in terms of justifying the maintenance treatment or in terms of changing treatment.

Q. Do you have some understanding that Dr. Curletta either in his records or at his deposition indicated that for lack of better phraseology he was cutting Mrs. Gill some slack because of her training and education and experience as a nurse?

A. I do distinctly remember reading that, yes.

Q. Is it your thought or is it going to be your opinion at trial that that was inappropriate on

Dr. Curletta's part, that he should not have cut Mrs. Gill slack, if you will, even though she was an experienced nurse?

MR. LAUTZ: Form.

THE WITNESS: I think it's risky and I wouldn't say that I have not done that but when I've done it I've often regretted it. But I would say it's risky at best, patients have to be treated equally.

Q. BY MR. FADELL: One of the four criteria set forth in the disclosure statement in terms of developing a treatment plan which stated objectives is an analysis of inclusion and exclusion criteria for opiate management. And I know that this was an area that Mr. Lautz asked Dr. Gossler about. I would like you if you would to tell me now what you meant by inclusion criteria for opiate management and then what you mean by exclusion criteria for opiate management.

A. I'll preface that by saying it's a complicated question that can be answered in different layers but I'll try to answer as directly as I can.

Inclusion therapy for opiates is something that's not agreed upon by many members of pain communities. Some folks say you have to have a well-defined diagnosis, that you have to show a consistent response to the effects of the medications once they're prescribed, that you need to

show improvement not only in pain but in functional behavior, that you have to have exhausted other modalities for treatment, that you tried a number of different medications and all the other treatment that I mentioned earlier in my testimony today before you're really considered for opiate therapy. And in a nutshell those would be more or less inclusion criteria.

Exclusion criteria is also very debateable. Some people would have say if you had an history of drug abuse you're not a good candidate for opioids. And certainly if you had an allergy to the medication you're not a good candidate for it. But there are other folks that say, even if you have a history of drug disease, because it is a disease, just because you have that disease that now you have a chronic pain syndrome and you can't take opioids. So there's a lot of data on the opioids. Some people have a lack of efficacy to the treatment. That's in and of itself exclusion criteria for continuing the treatment of medications.

Most people agree that any overt, illicit and illegal behaviors, using controlled substances such as opiates, that would be indication to not prescribe these drugs, it would not be an appropriate modality. So I think for both inclusion/exclusion criteria, I think there's a lot of debate and lot of discussion and there is not a whole lot

of consensus on that.

Q. Did you see in your review of the information in this case exclusion criteria, either at the beginning of Dr. Curletta's care of Mrs. Gill or at any point during the time that he provided care to her up to her death?

A. There were no specific inclusion criteria that Dr. Curletta identified regarding Mrs. Gill in the time that he treated her.

Q. Did you see based upon your review of any of the other records, Dr. Pace's records, hospital records, anything else that you looked at, behavior or criteria that would have called for her to be excluded from management in this fashion?

A. No, I wouldn't say excluded, but I would have to say reevaluated.

Q. And that goes along with seeing Mrs. Gill more frequently than she was seen, correct?

A. More frequently and also considering the implication of alternative treatment and even considering the implication of adjusting or decreasing her opioid doses when she failed to respond to them as hoped for.

Q. Doctor, if we can, let's take a five-minute break. I just want to review my notes. I may very well be close to finished or done. Okay?

A. Okay. Thank you.

(Recess form 4:11 p.m. to 4:16 p.m.)

Q. BY MR. FADELL: All right. Just a few more questions in follow up and then I will let these other folks in the room, if they have questions, proceed next.

Are you scheduled to testify again in deposition in connection with a medical/legal matter that you're involved in? In other words, do you have another deposition scheduled in another case at this time?

A. No.

Q. All right. When was your last deposition that you gave in connection with a medical/legal matter?

A. Maybe about a year ago. I'm trying to remember exactly, but, yeah.

Q. Do you remember anything about --

A. About a year ago.

Q. Do you remember anything about the facts of that case?

A. There was a case here in Massachusetts of somebody who had, I don't remember all the details but it was related to ankle fracture and the chronic pain that developed following the ankle fracture and certain procedures that were done and things of that nature.

Q. Do you recall which party retained you in that case?

A. Yeah, that was the defense. That was on the

defense side of that one.

Q. Do you recall the lawyer that you worked with?

A. Yeah, his name was Ken. I'm blanking on his last name right now. It was Ken something.

Q. Boston area attorney?

A. Yes. Yeah, he was here in Boston.

Q. Do you recall the last time you testified in trial, with the exception of the videotaped trial testimony that you did for Mr. Lautz?

A. Probably about a year and a half ago I testified at trial.

Q. A judge or jury trial?

A. It was, yeah, it was a judge and there was a jury, yes.

Q. Do you recall what the issues were in that case?

A. I don't recall exactly.

Q. Do you have any trial testimony currently scheduled, meaning have you been told you will need to come to a courthouse and testify at a trial at some point in the near future?

A. Yeah, there is a case, I'm not sure when it's going to happen, maybe in the fall sometime, that I'm involved with that I might have to go testify for.

Q. Is that a local Massachusetts case?

A. Yes.

Q. And tell me which side retained you in that case?

A. That one is a defense case also.

Q. And what are the issues in that case, Doctor?

A. Generally it's a pain management practitioner who was implanting a device in a patient when as part of the prep for surgery the patient somehow slid off the table in the O.R. and the doctor actually was able to catch the patient on the way down to the ground. He was able to support him but the case had to be cancelled because the sterility had been violated. I think the patient had a lot of pain and suffering related to that and his procedure was delayed so he's suing the surgeon who actually caught him from falling.

Q. Okay. Interesting. Since we're talking about suits and, obviously, not to embarrass you or make you feel uncomfortable, have you ever been the subject of a medical malpractice lawsuit?

A. Yes.

Q. How many occasions, Doctor?

A. Twice.

Q. And tell me generally how each of those cases was resolved, if they have been resolved? Meaning trial, settlement, dismissal. I don't necessarily need the

specifics.

MR. LAUTZ: Doctor, just before you answer the question, the only thing I'd caution you about is if --

(Recess from 4:22 p.m. to 4:40 p.m.)

Q. BY MR. FADELL: I think the last question or questions were concerning whether you had ever been on the receiving end of a malpractice claim and I think you indicated on two occasions, is that correct?

A. I have been, yes, a party to a malpractice claim where I was a defendant.

Q. And we don't need any kind of numbers, if there was a settlement and money paid, but if you could just tell me what the ultimate outcome was in each of the two cases.

A. They were both, the verdict was for the defense, which is me.

Q. All right. And did each of those cases involve you having to go to trial in front of a judge or jury?

A. One was a trial in front of a jury and jury. The other was I guess arbitration where I just went before a judge, the plaintiff was there as well.

Q. Did either of those cases involve issues similar to the issues in this case?

A. No, nothing whatsoever similar to this.

Q. All right. And was each of the cases back in Massachusetts?

A. Yes.

Q. All right. Next question is slightly different, while there might not have been a formal lawsuit, have you ever been subject to any claim for the payment of money damages?

A. Well, there's one ongoing issue now which is, I'm not sure where it's going to go so I'm not sure where that's going to end up.

Q. And is that one where there has not yet been a formal lawsuit filed?

A. No, the lawsuit has been filed but it has not been -- I guess they're in the process of discovery, it's not gone to trial yet.

Q. All right. Is that in the Massachusett's courts as well?

A. Yes.

Q. All right. I don't want any sort of long statement at all, but do you have some understanding of what the allegations are in that case?

A. Yes.

Q. And tell me what the allegations are. And, again, you don't need to tell me your position but just what you understanding has been said in the lawsuit.

A. In general it's that a procedure that I was involved in doing, procedure actually done by a fellow who I was supervising, that that procedure resulted in an infection that led to complications.

Q. Okay. Any license issues or questions as far as the state medical board where there's been disciplinary action taken?

A. No.

Q. Doctor, I think the last thing that I want to ask you at this point is, I've asked a lot of questions concerning the disclosure statement and what Mr. Lautz has provided to us, and your interpretation and view of the medical records and the issues in this case. Are there any opinions, any other opinions or thoughts that you have in this case that I have not asked you about that you anticipate offering to a jury should this matter proceed to trial?

A. Nothing that we haven't discussed today.

Q. Okay. Thank you, Doctor. Those are all the questions I have for now.

A. Okay. Are we all done?

MR. LAUTZ: Do you have any?

MS. VARNER POWELL: I don't have any questions.

THE WITNESS: Oh, there's more?

MR. LAUTZ: No, Doctor, I think we're done. I was just checking with counsel for the hospital to see if she has questions. She doesn't so that will conclude your deposition. And we'll read and sign, which, Doctor, if you haven't been through the drill, in Arizona our rules allow for you to read the transcript to ensure that the transcript has been properly transcribed and reflects your testimony. And then if it didn't you can make changes on a page that allows for that and then you'll be required to sign the final original transcript authenticating it.

THE WITNESS: Uh-huh.

MR. LAUTZ: That will all be done here in the next approximately 30 days but we'll deal with the logistics of that, getting you that transcript and then go from there.

THE WITNESS: Okay.

MR. FADELL: Doctor, for purposes of payment, if you would, would you send Karl a statement for the time in deposition. I think we started at 1:22, so that's Arizona time. I'll be happy to pay you for three and a half hours of your time. So if you'll send through Karl a statement for three and a half hours of your time, I need a tax ID number, Social Security number, so I can get a check back to you.

THE WITNESS: With depositions I don't bill them by time, I bill them by deposition. So I'll send the

bill to Karl with my tax ID number, he'll forward it to you.

MR. FADELL: Great. Thank you very much.

THE WITNESS: Thank you. Have a good evening everyone.

(Deposition was concluded at 4:46 p.m.)

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SRDJAN STEVAN NEDELJKOVIC, M.D.

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CERTIFICATE

I, Shari Fain, Certified Court Reporter for the State of Arizona, certify:

That the foregoing deposition was taken by me; that I am authorized to administer an oath; that the witness before testifying was duly sworn by me to testify to the whole truth; that the questions propounded by counsel and the answers of the witness were taken down by me in shorthand and thereafter transcribed under my direction; deposition review and signature was requested; that the foregoing pages are a full, true and accurate transcript of all proceedings and testimony had upon the taking of said deposition, all done to the best of my skill and ability.

I FURTHER CERTIFY that I am in no way related to any of the parties hereto, nor am I in any way interested in the outcome hereof.

DATED at Phoenix, Arizona, this 10th day of August, 2006.

_____

Shari Fain
Certified Reporter
Certificate No. 50160