

**In The Matter Of:**

*, ET AL*

*v.*

*, M.D.*

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*, M.D.*

*June 2, 2011*

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**MERRILL LAD**

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IN THE CIRCUIT COURT  
FOR MONTGOMERY COUNTY, MARYLAND

, et al., :  
Plaintiffs, :  
v. : Case No.  
, M.D. :  
Defendant. :

DEPOSITION OF , M.D.  
Annapolis, Maryland  
Thursday, June 2, 2011  
4:18 - 6:33 p.m.

Job No. :  
Pages 1-132  
Reported by .

DEPOSITION OF \_\_\_\_\_ M.D.  
 CONDUCTED ON THURSDAY, JUNE 2, 2011

<p style="text-align: right;">Page 2</p> <p>1</p> <p>2</p> <p>3 DEPOSITION OF</p> <p>4</p> <p>5</p> <p>6 held at the offices of:</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13 Pursuant to notice, before</p> <p>14 _____, CSR, and Notary Public of the State of</p> <p>15 Maryland.</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p style="text-align: right;">Page 4</p> <p>1 CONTENTS</p> <p>2 WITNESS: PAGE</p> <p>3 By Mr. Gaston 5, 126</p> <p>4 By Mr. 124</p> <p>5</p> <p>6 EXHIBITS</p> <p>7 (Retained by Counsel)</p> <p>8 DEPOSITION EXHIBIT PAGE</p> <p>9 1 Notice of Deposition.....5</p> <p>10 2 Curriculum Vitae.....5</p> <p>11 3 Death Certificate.....5</p> <p>12 4 Autopsy Diagnosis and Final Conference Note..5</p> <p>13 5A-G Color Photocopies of Slides.....5</p> <p>14 6 Case Containing Slides.....5</p> <p>15 7 Case Containing Slides.....5</p> <p>16 8 Three-Ring Binder.....5</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>
<p style="text-align: right;">Page 3</p> <p>1 APPEARANCES</p> <p>2 ON BEHALF OF THE PLAINTIFFS:</p> <p>3 RODNEY M. GASTON, ESQ.</p> <p>4 MILLER &amp; ZOIS, LLC</p> <p>5 7310 Governor Ritchie Highway</p> <p>6 Empire Towers</p> <p>7 Suite 1001</p> <p>8 Glen Burnie, Maryland 21061</p> <p>9 (410)553-6000</p> <p>10</p> <p>11 ON BEHALF OF THE DEFENDANT:</p> <p>12 _____, ESQ.</p> <p>13</p> <p>14 _____, LLP</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p style="text-align: right;">Page 5</p> <p>1 ( Exhibit Nos. 1 through 8 are</p> <p>2 marked for identification.)</p> <p>3 (It is stipulated by and between counsel</p> <p>4 for the parties that the reading and signing</p> <p>5 of this deposition is not waived.)</p> <p>6 _____, M.D.,</p> <p>7 after having duly declared and/or affirmed under</p> <p>8 penalty of perjury the testimony about to be given</p> <p>9 is the truth, testified as follows:</p> <p>10 EXAMINATION</p> <p>11 BY MR. GASTON:</p> <p>12 Q Could you please state your name and</p> <p>13 business address, Doctor?</p> <p>14 A _____, M.D. Business</p> <p>15 address is _____</p> <p>16</p> <p>17 Q Doctor, my name is Rodney Gaston, and I</p> <p>18 represent _____, and</p> <p>19 _____ in an action that has been filed</p> <p>20 in the Circuit Court for Montgomery County against</p> <p>21 Dr. _____</p> <p>22 I've asked you to appear today for your</p>

2 (Pages 2 to 5)

DEPOSITION OF \_\_\_\_\_, M.D.  
CONDUCTED ON THURSDAY, JUNE 2, 2011

<p style="text-align: right;">Page 6</p> <p>1 deposition. Have you had your deposition taken 2 before, Doctor? 3 A Yes. 4 Q I just want to review a little of the 5 ground rules so we can get through this hopefully 6 without too much difficulty. 7 The court reporter is here to take down 8 my questions and your answers. I'll ask that you 9 wait until after I finish asking my question before 10 you answer, and I'll give you the same courtesy, I 11 won't interrupt you while you're answering the 12 question. 13 Also, if at any time that I ask you a 14 question and you don't understand it or it's 15 somewhat confusing, please stop me and let me know, 16 and I will try to rephrase the question. 17 Otherwise, for the purposes of the deposition for 18 the record that's being kept here today, if you 19 answer one of my questions we will all agree and 20 know that you've understood the question and the 21 response will be to that question. 22 So far have you understood everything</p>	<p style="text-align: right;">Page 8</p> <p>1 A It says medical record, index, the 2 estate of _____ has the 3 County Fire and Rescue Ambulance report; the 4 hospital admission to _____ General Hospital 5 from 5/15 to 5/17. That's in section B. 6 Section C is autopsy report. Section D is chart of 7 one five -- 105 to 507. And then 8 section E is chart of Pulmonologists, PC. 9 Q Doctor, you've also brought with you 10 some other documents that we haven't identified as 11 an exhibit, but I'll briefly go over these. 12 This looks like the civil complaint that 13 was filed in the Circuit Court for Montgomery 14 County; would that be accurate? 15 A Yes. 16 Q Some of the other loose documents we 17 have here would be copies of the autopsy report 18 that was prepared by Dr. _____ from Johns 19 Hopkins University, would that be correct? 20 A Yes. 21 Q And two other documents we have here 22 that are stapled, one looks like a certificate of</p>
<p style="text-align: right;">Page 7</p> <p>1 that I've said, Doctor? 2 A Yes. 3 Q At any time you want to take a break, 4 just let me know. 5 A Okay. 6 Q Doctor, I'll show you what's been marked 7 as Exhibit No. 1 and I'll ask if you have seen that 8 document, and particularly the last page of that 9 document. 10 A Yes, I have. 11 Q Okay. And the last page of that 12 document asks you to bring with you any and all 13 items, documents, photographs, that you reviewed in 14 preparation of providing testimony in that case. 15 Have you done that today? 16 A Yes, I have. 17 Q Okay. And, Doctor, can we go over some 18 of the things that you brought with you today? 19 We have premarked Exhibit No. 8, and can 20 you explain briefly what are the documents 21 contained in Exhibit No. 8, which is a black 22 three-ring binder?</p>	<p style="text-align: right;">Page 9</p> <p>1 qualified expert from Dr. _____, and also a 2 certificate of qualified expert for Dr. _____ 3 _____; would that be accurate? 4 A Yes. 5 Q Okay. Also you brought with you today 6 Exhibits No. 6 and No. 7. Can you describe what's 7 contained in Exhibit No. 6? 8 A Exhibit 6 are 20 microscopic slides that 9 represent the slides of organs and tissue removed 10 at autopsy from Mr. _____ performed at 11 Johns Hopkins Hospital. These are labeled A53259. 12 Q And how many slides are in that exhibit, 13 Doctor? 14 A There are 20 in this folder. 15 Q Are the slides individually numbered so 16 we can reference them? Do they go in sequence from 17 one through 20? 18 A I've organized them in sequence that 19 makes sense to me pathologically in terms of organ 20 systems. But they actually go, I believe -- there 21 are a total of 40 slides, so -- in Exhibits 6 and 22 7.</p>

3 (Pages 6 to 9)

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DEPOSITION OF \_\_\_\_\_, M.D.  
CONDUCTED ON THURSDAY, JUNE 2, 2011

Page 10

1 Q 6 and 7.  
2 MR. \_\_\_\_\_: Just to make sure the  
3 record is correct, when you were referring to  
4 one through 20 you were referring to the  
5 actual cardboard attachment but there are  
6 separate numbers on each slide.  
7 THE WITNESS: Each slide has got a  
8 number on it which is more accurate -- is the  
9 accurate number.  
10 BY MR. GASTON:  
11 Q Right. And they're also 20 individual  
12 glass slides that are contained in, I'll call it a  
13 presentation folder that's identified as Exhibit  
14 No. 7; would that be accurate?  
15 A Yes.  
16 Q And, Doctor, do you know when you  
17 received these slides and who you received them  
18 from? Because this is the first time that I'm  
19 seeing them.  
20 A I probably received them from the law  
21 firm of \_\_\_\_\_, Mr. \_\_\_\_\_. I don't  
22 remember exactly when. I'd have to look at the

Page 11

1 correspondence.  
2 Q Right. And I thought I saw the  
3 correspondence in here, and if I could just -- it  
4 does have the date on it.  
5 A The first correspondence I had was  
6 December of \_\_\_\_\_. I don't know exactly when I  
7 received the slides.  
8 Q I think there's a letter dated January  
9 of '11?  
10 A Oh, yes. January \_\_\_\_\_, the 40 slides.  
11 Q Okay. And, Doctor, have these slides  
12 been in your possession since January \_\_\_\_\_ of \_\_\_\_\_?  
13 A Yes.  
14 Q Up till today's date?  
15 A Correct.  
16 Q Doctor, I've also been provided some  
17 photographs that -- some color photographs that  
18 have been marked Plaintiff's Exhibit 5A through 5G.  
19 I'll ask if you could take a look at these and see  
20 if you can tell me what they are, please.  
21 A These are photographs that I took  
22 through my microscope. I might have to amend the

Page 12

1 numbers, one through 259. I actually have the  
2 wrong number on these. I will have to amend them,  
3 if you don't mind.  
4 Q Okay, we can -- if you don't mind, I'd  
5 like to do that now, and if you could leave the  
6 original notation to the right and to the left, if  
7 you could write the correct notation for us,  
8 please?  
9 A Yes. I got a little dyslexic when I was  
10 writing the number. Sorry. There we go.  
11 Q Okay. And, Doctor, for the record, what  
12 you just did, and you can correct me if I'm wrong,  
13 you wrote on Exhibit No. 5A, 5B, 5D -- 5C, 5D, 5E,  
14 5F and 5G at the lower portion of each color  
15 photograph on the white border a set of numbers  
16 that is separate and apart from the set of numbers  
17 that previously existed on each of these  
18 photographs, which are to the right of the numbers  
19 that you just wrote on the documents; would that be  
20 accurate?  
21 A Yes.  
22 Q Okay. Doctor, have you -- other than

Page 13

1 the items that we've just discussed, are you  
2 relying upon any other document, item, exhibit or  
3 slide for the opinions that you intend to render in  
4 this case?  
5 A No. I'm relying on the medical records,  
6 the autopsy report, the autopsy slides, and some of  
7 the deposition testimony of the \_\_\_\_\_ family as to  
8 how Mr. \_\_\_\_\_ was doing in the hospital. So I'm  
9 relying on those pieces of evidence to formulate my  
10 opinions.  
11 Q And do we have all of those pieces of  
12 evidence in front of us today at this deposition?  
13 A Yes.  
14 Q Doctor, I show you what's been marked as  
15 Exhibit No. 2, and it looks like you might have a  
16 copy of your C.V. I wanted you to see if you could  
17 compare Exhibit No. 2 with what you brought to see  
18 if that's the same document.  
19 A The only change is this is -- I redated  
20 it to November of \_\_\_\_\_. This was \_\_\_\_\_. There's  
21 been no change in the C.V. other than the change in  
22 the date.

4 (Pages 10 to 13)

DEPOSITION OF \_\_\_\_\_, M.D.  
CONDUCTED ON THURSDAY, JUNE 2, 2011

<p style="text-align: right;">Page 14</p> <p>1 Q See Exhibit No. 2 would reflect your 2 current C.V.? 3 A Yes. 4 Q Okay. Thank you. 5 And, Doctor, are you board certified in 6 any medical specialty? 7 A Yes. Anatomic and clinical pathology. 8 Q Okay. Can you describe briefly what 9 clinical pathology is and what anatomical pathology 10 is? 11 A I'll start with anatomic pathology. 12 Anatomic pathology involves the study of tissues 13 from the human body; that is, surgical specimens 14 removed from the operating room, biopsy specimens, 15 cells in the field of cytopathology such as Pap 16 smears, and also doing autopsies. That encompasses 17 anatomic pathology. 18 Clinical pathology -- pathology deals 19 with laboratory sciences, including chemistry, 20 hematology, microbiology, blood banking, 21 toxicology, immunology. 22 Q Are there any subspecialties in</p>	<p style="text-align: right;">Page 16</p> <p>1 Center? 2 A Yes. I've been chief of pathology at 3 Medical Center since August of 1986. 4 Q Did you receive any training at Johns 5 Hopkins Hospital? 6 A Yes. 7 Q When was that, Doctor? 8 A 1974 to 1980. 9 Q And what did you do for Johns Hopkins 10 Hospital from 1974 through 1980? 11 A I spent four years in training in 12 anatomic pathology and two years in training in 13 clinical pathology as an intern, resident and a 14 fellow. 15 Q Do you know Dr. _____? 16 A I've spoken with her on the phone from 17 time to time. I don't know her personally. 18 Q Did you speak with her on the phone on 19 this case? 20 A No. 21 Q Did you speak with any other medical 22 provider?</p>
<p style="text-align: right;">Page 15</p> <p>1 pathology that you're not board certified in? 2 A Oh, there's probably 20 3 subspecialties -- 4 Q Okay. 5 A -- such as -- 6 Q Let me ask it this way: Are these the 7 only two subspecialties that you're board certified 8 in, anatomic pathology and clinical pathology? 9 A Yes. 10 Q And when did you become board certified 11 in those two areas of pathology? 12 A May of 1980. 13 Q Did you have to take a written and oral 14 exam? 15 A Just written. 16 Q Just written. Did you pass your first 17 go-around? 18 A Yes. 19 Q Did you have to recertify? 20 A No. I'm grandfathered. 21 Q And it's my understanding since 1986 22 you've been affiliated with _____ Medical</p>	<p style="text-align: right;">Page 17</p> <p>1 A No. 2 Q Relative to this case? 3 A No. 4 Q Okay. So you've never spoken to Dr. 5 _____? 6 A No. 7 Q With respect to the number of hours at 8 the hospital, do you also have administrative 9 duties versus actual hands-on clinical duties? 10 A Yes. As chief of pathology I'm 11 responsible for the quality assurance of the lab, 12 policies and procedures, budgeting, personnel to 13 some extent. 14 Q Can you tell me approximately how many 15 hours or percentage of hours each week are devoted 16 to administrative duties versus actual hands-on 17 pathology work in the lab? 18 A I'd say -- it varies from week to week, 19 but about 90 percent of my time is done with what 20 you call hands-on time, mainly in anatomic 21 pathology. I'd say 70 to 75 percent is anatomic 22 pathology, 25, 30 percent clinical pathology, 10</p>

5 (Pages 14 to 17)

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DEPOSITION OF \_\_\_\_\_, M.D.  
CONDUCTED ON THURSDAY, JUNE 2, 2011

Page 18

1 percent administrative.  
2 **Q Do you intend to give any opinions in**  
3 **this case on standard of medical care or breaches**  
4 **of the standard of medical care?**  
5 A Not to my knowledge. Since I run the  
6 blood bank, I have some knowledge of transfusion  
7 criteria that are used at \_\_\_\_\_ Medical  
8 Center, so I might have some comments regarding the  
9 need for transfusion or not having any transfusion.  
10 **Q Well, I --**  
11 MR. \_\_\_\_\_ : He's not going to be asked  
12 any opinions at the trial of this case  
13 relating to the standard of care as far as Dr.  
14 \_\_\_\_\_ is concerned.  
15 BY MR. GASTON:  
16 **Q Nor breaches of the standard of care?**  
17 A Correct.  
18 **Q Do you intend to render any opinions on**  
19 **this case with respect to any treatment that Mr.**  
20 **received at \_\_\_\_\_ County Hospital?**  
21 MR. \_\_\_\_\_ : Well, let me, just to  
22 clarify and move things along. He won't be.

Page 19

1 expressing any opinions as far as just  
2 concerning standard of care. He is testifying  
3 as a causation expert.  
4 **Q Okay. But it still doesn't -- my**  
5 **question is, Doctor, do you plan on providing any**  
6 **opinions in the case whether Mr. \_\_\_\_\_ should have**  
7 **received blood products, should not have received**  
8 **blood products, should have received IV fluids,**  
9 **should not have received IV fluids, anything that**  
10 **has to do with his day-to-day care while he was an**  
11 **inpatient at the hospital?**  
12 A You know, I'll leave that for the  
13 clinicians to discuss. As I said, I -- since I do  
14 run the blood bank here at \_\_\_\_\_, I'm aware  
15 of transfusion criteria. But I'll leave the  
16 clinicians -- let the clinicians talk about that.  
17 **Q Is that no?**  
18 A Yeah, no.  
19 **Q Okay, thank you.**  
20 A Okay.  
21 **Q All right. We have been informed in**  
22 **this case that you intended to give opinions that**

Page 20

1 were identified by another attorney representing  
2 Dr. \_\_\_\_\_. And I pulled out that identification  
3 and I want to read the opinions that we were  
4 informed of, and I want to ask you if you intend to  
5 give those opinions, and also if you intend to give  
6 any other opinions.  
7 The opinions are as follows. It says:  
8 Dr. \_\_\_\_\_ is expected to testify that Mr.  
9 \_\_\_\_\_'s death was proximally caused by Kayexalate  
10 aspiration. Is that an opinion that you intend to  
11 give in this case?  
12 A Yes.  
13 **Q And that pathology does not support the**  
14 **proposition that Mr. \_\_\_\_\_ had any preexisting**  
15 **cardiac processes, problems or inquiries -- or**  
16 **injuries. Is that another opinion that you intend**  
17 **to give?**  
18 A He has cardiac abnormality in terms of  
19 the weight of his heart, the size of his heart. In  
20 terms of the muscle itself, the muscle looks fine  
21 under the microscope.  
22 **Q With that modification, do you intend to**

Page 21

1 give any other opinions other than those two  
2 opinions in this case?  
3 A Well, I mean, he has a number of -- he  
4 has a number of findings at autopsy that I think I  
5 should discuss just to make the record complete.  
6 **Q Okay. Why don't we, if you could tell**  
7 **me, what are the -- if you can just list them one**  
8 **by one, what are the other opinions that you intend**  
9 **to give in this case other than the two that I've**  
10 **just read into the record?**  
11 A That Mr. \_\_\_\_\_ had moderate to focally  
12 severe fatty liver disease, and the most common  
13 cause of that in the United States is alcohol use;  
14 that Mr. \_\_\_\_\_ had preexisting kidney disease, with  
15 evidence of old kidney damage secondary probably to  
16 infection, chronic pyelonephritis with inflammatory  
17 changes in the kidney; that Mr. \_\_\_\_\_ also had  
18 testicular atrophy, or hypogonadism, as was already  
19 known clinically. So those are the main findings I  
20 noted pathologically.  
21 He's got other minor findings as listed  
22 in the autopsy report that were not significant in

6 (Pages 18 to 21)

DEPOSITION OF \_\_\_\_\_, M.D.  
CONDUCTED ON THURSDAY, JUNE 2, 2011

Page 22

1 causing his death, or clinically significant.  
2 **Q Can you elaborate upon the minor**  
3 **findings in the autopsy report that were not**  
4 **clinically significant in causing his death?**  
5 **A** Well, his coronary arteries showed only  
6 minimal plaque formation; it listed minimal  
7 atherosclerosis, coronary arteries.  
8 He had a small benign tumor on his liver  
9 known as a hemangioma. He had a benign thyroid  
10 nodule. He had an area of old infarction of the  
11 right kidney; that's not clinically significant.  
12 He had swelling of his parotid glands noted at  
13 autopsy. He had a small aneurysm of his right  
14 middle cerebral artery that was intact; it had not  
15 ruptured. He had diverticulosis of his colon. He  
16 had thickening of his bladder wall. He had an  
17 enlarged prostate, and some stenosis of the  
18 prosthetic urethra.  
19 So these are all minor problems that did  
20 not cause any significant thing relating to his  
21 death.  
22 **Q Okay. Doctor, can you tell me when you**

Page 23

1 reached -- other than the last set of minor  
2 findings in the autopsy report, can you tell me  
3 when you reached the opinions that he had fatty  
4 liver disease most likely caused by alcohol use?  
5 When did you reach that opinion?  
6 **A** When I looked at the slide of the liver  
7 under the microscope.  
8 **Q** When was that?  
9 **A** Oh, sometime after I received the  
10 slides. I can't tell you an exact date or time.  
11 **Q** Was it between January and -- January of  
12 and March of ?  
13 **A** I probably looked at the slides shortly  
14 after I received them, yes.  
15 **Q** Okay. Did you relate that opinion to  
16 any attorney or any of the doctors who hired you in  
17 this case at that time?  
18 **A** I don't recall.  
19 **Q** Don't recall whether you did, or did  
20 not?  
21 **A** Right. I just don't recall if I spoke  
22 to them about all the findings or the most

Page 24

1 significant findings of Kayexalate aspiration.  
2 **Q** Okay. When is the first time that you  
3 spoke to -- strike that. We know that you never  
4 spoke to Dr. . When is the first time that  
5 Dr. 's attorneys retained you as an expert  
6 in this case?  
7 **A** I guess it was probably when I received  
8 the first letter on or about December  
9 I more likely than not had a phone call ahead of  
10 that, asking me if I would review a case. But it  
11 says -- actually, it does say: As we recently  
12 discussed over the telephone. So sometime before  
13 December  
14 **Q** Okay. If I could just refer to the  
15 letter, Doctor, and just point out two different  
16 things. The attorneys that are on the letter that  
17 you referred to are from the law firm of  
18 . They're not Mr. lawyers. Mr.  
19 's lawyers are from the law firm of  
20 So --  
21 MR. : It should be Dr.  
22 MR. GASTON: Doctor. Excuse me. Dr.

Page 25

1 Right.  
2 **Q** Are from the law firm of  
3 What I'm trying to figure out, when is the first  
4 time that you had any communication from Dr.  
5 's lawyers from the law firm of  
6 ?  
7 **A** I assume probably in May of  
8 **Q** Okay. And --  
9 **A** Sometime before this letter was written  
10 on May.  
11 **Q** Okay. You believe it was the month of  
12 May of ?  
13 **A** I don't recall, to be honest with you.  
14 I mean, I don't know when -- I don't exactly know  
15 when I was first contacted. I just know I have  
16 this letter dated May .  
17 **Q** Okay. And do you have the corresponding  
18 bill for the time that you spent on this case from  
19 the law firm of that would indicate  
20 the first time that you did work for Dr. ?  
21 **A** I have not sent them a bill. I usually  
22 wait until after deposition before I send a bill



DEPOSITION OF \_\_\_\_\_, M.D.  
CONDUCTED ON THURSDAY, JUNE 2, 2011

<p style="text-align: right;">Page 26</p> <p>1 out.</p> <p>2 Q Do you have some notes that indicate the</p> <p>3 amount of time that you spent on the case somewhere</p> <p>4 on your computer or in some other form?</p> <p>5 A No. I usually keep it in my head.</p> <p>6 Q In your head?</p> <p>7 A Yes. I know what these average. I know</p> <p>8 what these cases take on average, so. This is a</p> <p>9 little more complicated than an average case</p> <p>10 because of length of the autopsy, the number of</p> <p>11 slides. And all the record.</p> <p>12 Q So would it be fair to say that, as</p> <p>13 we're sitting here today, it's impossible for you</p> <p>14 to go back through time and recreate as we're</p> <p>15 sitting here today the exact dates, the exact</p> <p>16 hours, and the exact type of records that you</p> <p>17 reviewed in reaching your opinions in this case?</p> <p>18 A Well, I know what records I reviewed. I</p> <p>19 reviewed all the records in front of us as we</p> <p>20 mentioned.</p> <p>21 Q But I'm referring to -</p> <p>22 A I know the approximate number of hours</p>	<p style="text-align: right;">Page 28</p> <p>1 slides?</p> <p>2 A Yes.</p> <p>3 Q Okay. So all of these additional</p> <p>4 opinions, three of the - actually, the - well,</p> <p>5 would that include also the fourth opinion</p> <p>6 regarding the minor findings in the autopsy report</p> <p>7 not clinically significant in the cause of Mr.</p> <p>8 's death, were they all reached at the same</p> <p>9 time you looked at the slides?</p> <p>10 A Yes. And also review of the autopsy</p> <p>11 report.</p> <p>12 Q Okay. Have you communicated in writing</p> <p>13 with defense counsel regarding your opinions on</p> <p>14 this case?</p> <p>15 A No.</p> <p>16 Q Okay. And so all your communication</p> <p>17 with defense counsel, Dr. 's current - Dr.</p> <p>18 's lawyers, would be on the phone, would</p> <p>19 that be correct?</p> <p>20 A Phone or a personal meeting.</p> <p>21 Q Okay. And can you tell me when's the</p> <p>22 first time you met with Dr. 's attorneys?</p>
<p style="text-align: right;">Page 27</p> <p>1 I've spent, yes.</p> <p>2 Q What I'm talking about is, can you tell</p> <p>3 the members of the jury, or anyone here today,</p> <p>4 that, yes, I remember in March, on the fourth day</p> <p>5 of March, I spent three hours looking at the case;</p> <p>6 on the seventh day of March I spent three hours</p> <p>7 looking at the case? Are you able to reconstitute</p> <p>8 that schedule?</p> <p>9 A No.</p> <p>10 Q Okay. The second opinion was</p> <p>11 preexisting kidney disease, evidence of an old</p> <p>12 infarct?</p> <p>13 A Yes.</p> <p>14 Q Did I read that correct?</p> <p>15 A Yes.</p> <p>16 Q Do you know when you reached that</p> <p>17 opinion?</p> <p>18 A When I looked at the slides of the</p> <p>19 kidney.</p> <p>20 Q Okay. And testicular atrophy?</p> <p>21 A Yes.</p> <p>22 Q Same time, when you looked at the</p>	<p style="text-align: right;">Page 29</p> <p>1 A I think I had a meeting last week. Or a</p> <p>2 week or two ago.</p> <p>3 Q Okay. And did they ask you what</p> <p>4 opinions you had and did you tell the attorney what</p> <p>5 opinions you had?</p> <p>6 A Yes.</p> <p>7 Q Anything different from what you've</p> <p>8 already told us here today?</p> <p>9 A No.</p> <p>10 Q Did Dr. 's attorney ask you any</p> <p>11 specific questions regarding the autopsy report,</p> <p>12 regarding the blood that was found, the hematomas</p> <p>13 that were found; did you have any discussions with</p> <p>14 them about those findings in the autopsy report?</p> <p>15 A Yes, I think we went through the entire</p> <p>16 autopsy report and discussed the findings basically</p> <p>17 line by line, organ system by organ system.</p> <p>18 Q Okay. Were you asked to determine the</p> <p>19 quantity of blood that was found by the doctor who</p> <p>20 performed the autopsy on Mr. that was in</p> <p>21 the area around his left hip?</p> <p>22 A Yes, I was asked that, and I find it</p>

8 (Pages 26 to 29)

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DEPOSITION OF \_\_\_\_\_, M.D.  
CONDUCTED ON THURSDAY, JUNE 2, 2011

<p style="text-align: right;">Page 30</p> <p>1 impossible to find out how much blood there is. 2 Q Okay. 3 A It was not described quantitatively at 4 all in terms of how much blood there was present. 5 Q Were you able to determine the size of 6 the hematomas? 7 A No. It's not described at all. There's 8 no measurement given, there's no volume given. And 9 I thought that was not a good performance by the 10 intern who did the autopsy. 11 Q That was going to be my next question. 12 Do you have any criticisms of the manner in which 13 the autopsy was performed? 14 A Well, yes. I mean, if I was going to 15 say there's bleeding here, I'd give a quantitative 16 amount. There's no quantitation at all. 17 Q And that brings to us the next question. 18 Have you ever performed an autopsy? 19 A I do about 10 a year personally. 20 Q Ten a year yourself? 21 A Yes. 22 Q Okay. And are you certified in forensic</p>	<p style="text-align: right;">Page 32</p> <p>1 jeez, 30 years ago? 2 A Yes. 3 Q And -- 4 A Hasn't changed. 5 Q How do you know that? 6 A Because I know the people at Hopkins. I 7 know the staff at Hopkins, I know the autopsy 8 assistants at Hopkins; I know the procedures have 9 not changed. The intern always does the autopsy. 10 Q Are you saying that there's no way that 11 Dr. _____ assisted the intern in the autopsy? 12 MR. _____: Objection to the form. To 13 the term assist. You can answer. 14 A I don't know what Dr. _____ did. She 15 probably reviewed the report as the attending, but 16 the intern does the autopsy. 17 Q But there's no way for you to determine 18 whether any of the other doctors were present, 19 watching the intern or supervising the intern, 20 based upon your knowledge, correct? 21 A No, I have no idea. 22 Q Okay. And when you were at Hopkins 30</p>
<p style="text-align: right;">Page 31</p> <p>1 medicine? 2 A Forensic pathology? 3 Q Right. 4 A No. Anatomic pathology, which crosses 5 over to forensic pathology in many respects. 6 Q Okay. And where did you get your 7 training for the work you perform in autopsy? 8 A Johns Hopkins Hospital. All interns at 9 Hopkins do autopsies. All pathology interns do 10 autopsies; if you're a pathology intern, you're 11 going to do all the autopsies. 12 Q Okay. 13 A Which was done by an intern in this 14 case. 15 Q Okay. And how do you know that from the 16 record? 17 A Because I know that's the system at 18 Hopkins. The intern does the autopsy. Dr. 19 _____ did not do the autopsy. Dr. _____ did the 20 autopsy. 21 Q And that's from your knowledge of the 22 procedures of Hopkins when you were there; oh,</p>	<p style="text-align: right;">Page 33</p> <p>1 years ago, when the interns did the autopsy were 2 they usually supervised by a pathologist, one of 3 the senior members of the pathology department 4 during the autopsy itself? 5 A No. 6 Q They did it all by themselves, without 7 supervision? 8 A They had the resident, the second-year 9 resident becomes the supervisor. The resident who 10 has trained for one year in autopsy pathology is 11 now the supervisor -- 12 Q Okay. 13 A -- of the intern. 14 Q And can you tell from the report who 15 that second-year resident, assuming that they have 16 the same procedures now that were in effect 30 17 years ago, was there supervising the autopsy? 18 A Doesn't look like it. It looks like Dr. 19 _____ was both the prosecutor and what is called 20 the charge. The charge is the supervisor. 21 Q Charge is supervisor; the prosecutor is 22 the person that actually performs the autopsy?</p>

DEPOSITION OF \_\_\_\_\_, M.D.  
CONDUCTED ON THURSDAY, JUNE 2, 2011

Page 34

1 A Yes. Usually the charge has a different  
2 name than the intern who did the autopsy. In this  
3 case, there was no resident attending.  
4 Q Other than the prosector failing to  
5 denote the quantity of blood that was found in Mr.  
6 do you have any other complaints of the  
7 manner in which the autopsy was performed?  
8 A The way it says cause of death, I  
9 disagree with that. It says: See Death  
10 Certificate. That's nonsensical to me. Why would  
11 a pathologist say see death certificate that was  
12 filled out before the autopsy was even completed?  
13 So that makes no sense to me.  
14 Q Okay. Any other complaints?  
15 A It's a very wordy autopsy that's not to  
16 the point. It goes through a lot of twists and  
17 turns, but I would have written it up in a more  
18 concise manner.  
19 Q Okay.  
20 A Personally.  
21 Q Other than the writing style, do you  
22 have any other complaints?

Page 35

1 A Not that I can think of at this point in  
2 time.  
3 Q Okay.  
4 A I mean, there's some speculation as to  
5 what disease process Mr. \_\_\_\_\_ had, and I might  
6 disagree with that disease process and have another  
7 disease process in its place.  
8 Q Okay. That goes back to your opinions?  
9 A Yes.  
10 Q So is what you just mentioned about a  
11 disease process, is that included in the two  
12 opinions that we talked about that was in discovery  
13 from Dr. \_\_\_\_\_'s lawyers, and the four additional  
14 opinions that you provided me earlier? Or are  
15 those now new, more opinions that we're talking  
16 about?  
17 A Well, I came to a conclusion that Mr.  
18 \_\_\_\_\_ might have had chronic alcoholism based on  
19 his neuropathy, his myopathy, his fatty liver  
20 disease, his testicular atrophy. Those all go  
21 together with chronic alcoholism.  
22 -Q And when did you reach that opinion,

Page 36

1 Doctor?  
2 A After I looked at the autopsy and the  
3 slides, and looked at the clinical record.  
4 Q Does that opinion change any opinions  
5 regarding the cause of death?  
6 A No.  
7 Q Okay.  
8 A That he died from Kayexalate aspiration.  
9 Q Okay. And do any of the other opinions  
10 regarding one, two, three-- the four additional  
11 opinions you provided, now what we have is a fifth  
12 additional opinion, do any of those opinions change  
13 your original opinion that Mr. \_\_\_\_\_'s death was  
14 proximately caused by Kayexalate aspiration?  
15 A No.  
16 Q Let me ask you a question. Have you  
17 ever provided medical care to a live patient?  
18 A I see live patients a couple of times a  
19 week for doing biopsy procedures, so if you want to  
20 say doing a biopsy on a live patient is medical  
21 care, yes, I do it on a weekly basis.  
22 Q Is that the extent of your treatment of

Page 37

1 medical patients, to perform a biopsy procedure?  
2 A Yes. I did one today.  
3 Q Okay. And would it be fair to say that  
4 in the last year or two the percentage of the time  
5 that you testified on behalf of defendant doctors  
6 versus the injured patient is usually 90 percent  
7 versus 10 percent?  
8 A It's probably in that ballpark. I've  
9 been doing more plaintiffs' work recently. I've  
10 gotten more cases for review. I just did a  
11 plaintiff's deposition a couple of months ago.  
12 Q And what was that case?  
13 A It was a pulmonary embolism case for Mr.  
14 \_\_\_\_\_'s firm. I don't remember the -- the name  
15 of the case is escaping me at this point in time.  
16 Q And, again, you're not providing  
17 opinions on standard of care in those cases, simply  
18 the pathology associated with that case?  
19 A Correct.  
20 Q And, in the last five years, have you  
21 ever testified in court on behalf of an injured  
22 patient or a patient who died?

10 (Pages 34 to 37)

Page 38

1 A I've testified quite -- over the last  
2 five years. I know I've testified for plaintiffs  
3 D.C. Superior Court; Maryland, Baltimore City;  
4 Texas; Florida. So I've testified for plaintiffs.  
5 I don't know the exact time span. It might have  
6 been more than five years. In the last 10 years  
7 I'm sure I have.  
8 Q Last 10, but not -- you can't remember a  
9 particular case, plaintiff's case, in the last five  
10 years where you testified in court on behalf of a  
11 injured plaintiff?  
12 A I think it has been in the last five  
13 years. D.C. Superior Court I had two cases. I  
14 think it's within the last five years.  
15 Q Has your medical license ever been  
16 suspended, restricted, or have you ever had any  
17 adverse action taken against your medical license?  
18 A No.  
19 Q Have you ever had any privileges at any  
20 of the hospitals been suspended, revoked or  
21 refused?  
22 A No.

Page 39

1 Q Have you ever been sued for medical  
2 malpractice?  
3 A Yes.  
4 Q And how many times?  
5 A Personally once; my corporation a couple  
6 of more times.  
7 Q And what is the name of your  
8 corporation?  
9 A \_\_\_\_\_, M.D., P.A.  
10 Q Are you the president of that  
11 corporation?  
12 A Yes.  
13 Q Do you have any other employees other  
14 than yourself?  
15 A No.  
16 Q And when were you incorporated?  
17 A 1986.  
18 Q And one time personally, would that be  
19 before you were incorporated?  
20 A No. It was in 1989 I was sued.  
21 Q Okay. And what were the allegations in  
22 that case?

Page 40

1 A What type of cancer a gentleman had. I  
2 thought it was one type and other experts thought  
3 it was a different type.  
4 Q And did that case go to trial?  
5 A No. It went to arbitration.  
6 Q Arbitration. Do you remember the  
7 plaintiff's lawyer in the case?  
8 A I think he's dead. It was \_\_\_\_\_,  
9 \_\_\_\_\_.  
10 MR. \_\_\_\_\_: Yes, he has. He passed  
11 away about 10 years ago. I knew him well.  
12 Q Okay. And what type of cancer did you  
13 diagnose in that case?  
14 A Lung cancer.  
15 Q And what was the type of cancer that  
16 they claimed the plaintiff had?  
17 A Lymphoma. Large cell lymphoma.  
18 Lymphoma.  
19 Q And that was the one case. Any other  
20 cases?  
21 A Not against myself personally.  
22 Q Well, against your corporation?

Page 41

1 A I've had probably five other cases  
2 against my corporation, because of contractual  
3 relationships with other pathologists or with  
4 \_\_\_\_\_ Medical Center.  
5 Q Okay. Can you describe -- and let's go  
6 with the most recent and work our way back.  
7 A I think there were two cases against  
8 \_\_\_\_\_ for a blood bank problem with  
9 hepatitis transmission to two patients. I never  
10 had any relationship with those patients but I was  
11 sued because I'm medical director of the  
12 laboratory. That was dropped by \_\_\_\_\_ He  
13 dropped it.  
14 Q Okay. And how about the other three?  
15 A Another was a gentleman had -- actually,  
16 two of them. A gentleman had salivary gland  
17 tumor -- or tumors. Two different patients. I  
18 never had anything to do with their work, but  
19 another pathologist or another doctor got sued, and  
20 I got sued in the same time.  
21 Q But you had nothing to do with the  
22 review of the slides, review of any --

DEPOSITION OF \_\_\_\_\_, M.D.  
CONDUCTED ON THURSDAY, JUNE 2, 2011

Page 42

1 A No, you never saw --  
2 Q -- pathology in those two cases?  
3 A Correct. I never saw anything on those  
4 cases, but I had contractual relationships, or had  
5 some type of relationship with either the  
6 pathologist or another doctor looking at the case.  
7 And I got sued, and I was dropped in those.  
8 Q Okay. That leaves us with the last  
9 case.  
10 A I remember that was \_\_\_\_\_ versus  
11 \_\_\_\_\_  
12 Medical Center, and I got dropped out of  
13 that case, too. My associate pathologist made the  
14 diagnosis in that case and was sued, and I was sued  
15 because I had a contract with that pathologist.  
16 Q No personal involvement in the pathology  
17 involved in that case, correct?  
18 A Correct.  
19 Q Were you asked by Dr. \_\_\_\_\_'s lawyer  
20 to make a determination when his internal bleeding  
21 stopped at the hospital, or if it did stop?  
22 A No.  
Q Do you have any opinion on that issue?

Page 43

1 A No. Because there were actually -- if I  
2 had had a slide of the blood around the -- that was  
3 described in the autopsy, I could have maybe made a  
4 determination how old that blood was. But the  
5 intern did not make any slide of the hematoma or  
6 the hemorrhage or bleeding around the fracture  
7 site.  
8 Q No way to determine the age of the blood  
9 simply because of the description that was listed  
10 in the autopsy report?  
11 A No. You'd have to look at it  
12 microscopically to get some assessment of the age  
13 of the blood.  
14 Q Can you describe the area, sizewise,  
15 that was identified in the autopsy report where the  
16 hematomas were located?  
17 A No, there's no description at all of the  
18 size of the hematoma.  
19 Q That's a different question, Doctor.  
20 The question was, can you determine the size of the  
21 area where the hematomas were found in the autopsy  
22 report? Does the description -- a medical

Page 44

1 description of anatomy there, and I believe it's  
2 three different locations, can you tell me,  
3 literally speaking, or if you want to use an object  
4 such as a tennis ball, a football, something to  
5 that effect to describe the area that the hematomas  
6 were found in?  
7 A Well, it says the left perinephric fat  
8 also contains small hematomas. Small. What does  
9 small mean? To me, small is one or two centimeters  
10 in diameter. So that gives me some idea. It says  
11 small hematomas. It says soft tissue hematoma  
12 dissecting through --  
13 THE REPORTER: I'm sorry.  
14 A Soft tissue hematoma dissecting through  
15 fascial plane of left retroperitoneum. I don't  
16 know how far it extended, how big it was. So the  
17 only descriptive word I have is "small" in the left  
18 perinephric fat. I have no descriptive term in the  
19 other area.  
20 Q So you're unable to tell the members of  
21 the jury from the description of the area that the  
22 hematomas were found in how large of an area that

Page 45

1 is in the human body?  
2 A Well, did it extent through the entire  
3 area, or did it extend through part of the area?  
4 It doesn't really say. It just --  
5 Q And where did --  
6 A I can't tell.  
7 Q What is the area that's described in the  
8 autopsy report, the three areas that the hematomas  
9 were found in?  
10 A It says left retroperitoneum.  
11 Q What page are you on, Doc? I'm just --  
12 A This is autopsy page 506. Hopkins  
13 page 506.  
14 Q I'm on the wrong -- I'll tell you what,  
15 we're going to have to -- hang on one second. If  
16 we can work from one exhibit.  
17 I'll show you what's been marked as  
18 Exhibit No. 4, and ask if you can identify that  
19 document for us.  
20 A That's the autopsy report on Mr. \_\_\_\_\_  
21 autopsy 53259, performed at \_\_\_\_\_ Hospital.  
22 Q Right. And if you could in that

12 (Pages 42 to 45)

DEPOSITION OF \_\_\_\_\_, M.D.  
CONDUCTED ON THURSDAY, JUNE 2, 2011

Page 46

1 exhibit, because I have a copy of that exact  
2 exhibit in front of me, if you can tell me where  
3 you're reading from. Is it the final conference  
4 note at the top.  
5 A Yes. That's what it says.  
6 Q Okay. What page are you on, Doctor?  
7 A It says page 4.  
8 Q Okay, page 4. Which paragraph, sir?  
9 A It's the first paragraph down from the  
10 top. Said: Examination of the abdominal cavity  
11 revealed soft tissue hematomas dissecting through  
12 the fascial planes of the left retroperitoneum, hip  
13 and left lateral abdominal wall. The left  
14 perinephric fat also contains small hematomas.  
15 Q Okay. From those areas of the anatomy  
16 that were described by the prosector, what are the  
17 sizes of those areas of the anatomy?  
18 MR. \_\_\_\_\_ Let me just object to the  
19 form of the question as to area, because  
20 there's no delineation as to what you're  
21 referring to as an area.  
22 But if you can answer, you can go ahead.

Page 47

1 A Well, I can't tell you, because the left  
2 retroperitoneum either can extend for 15  
3 centimeters or it could be two centimeters; it just  
4 doesn't give any dimension in here. So it doesn't  
5 say it involves the entire left retroperitoneum, it  
6 just says — mentions it. It doesn't say how much,  
7 how big, how little; it just says it's there. So I  
8 can't tell you based on this autopsy report how  
9 much hemorrhage is there.  
10 Q So, then —  
11 A Other than I can say there's a small one  
12 around the left kidney; that's the description.  
13 And small to me means one to two centimeters.  
14 Q And from the lack of a definitive  
15 description in the autopsy report, would it be fair  
16 to say that you cannot then testify within a  
17 reasonable degree of certainty how large or how  
18 small the area of the bleeding was in Mr. \_\_\_\_\_'s  
19 body that was found at autopsy?  
20 MR. \_\_\_\_\_ Object to the form of the  
21 question and to the definition of area, but  
22 you can answer.

Page 48

1 A Again, I can say I have no size  
2 definition here at all. None based on the intern's  
3 autopsy report.  
4 Q Does that mean that you would be unable  
5 to render an opinion as to the size of the area in  
6 Mr. \_\_\_\_\_'s body that the hematomas were found in  
7 at the time of autopsy?  
8 MR. \_\_\_\_\_: Objection to form.  
9 A Yes, I can't accurately give a  
10 description as to how big or small these things  
11 are.  
12 Q Okay. Can you explain to me the basis  
13 for your opinion that — oh, excuse me. Let me  
14 show you what's been marked as Exhibit No. 3. I  
15 want to ask you if you've seen that document  
16 before?  
17 A Yes. Death certificate of Mr. \_\_\_\_\_.  
18 Q Have you ever had to fill out a death  
19 certificate?  
20 A No. I don't do that.  
21 Q Okay. Then would it be fair to say that  
22 you're unable to comment on the procedures that

Page 49

1 doctors are supposed to follow when they fill out  
2 death certificates?  
3 A Well, the procedure is you're supposed  
4 to take the disease process the patient has and put  
5 that down as the primary diagnosis as to what  
6 caused their death.  
7 Q Okay. And what is the cause of death on  
8 that death certificate?  
9 A It says renal failure.  
10 Q And what's the second one?  
11 A Hepatic failure.  
12 Q Third one?  
13 A Exacerbation of autoimmune disease.  
14 Q And the fourth one?  
15 A Left pelvic fracture.  
16 Q Do you agree that when doctor signed  
17 that as a certifying physician that he certified  
18 that those were the four causes of death on that  
19 death certificate?  
20 A Well, Dr. \_\_\_\_\_ signed this before he  
21 had the knowledge of the autopsy finding, so I  
22 don't see how he can accurately fill this report

DEPOSITION OF \_\_\_\_\_, M.D.  
CONDUCTED ON THURSDAY, JUNE 2, 2011

Page 50

1 out. There's no way for him to fill this out.  
2 accurately.  
3 **Q That's a different question. When Dr.**  
4 **signed that, doesn't the box say as a**  
5 **certifying physician I hereby certify that the**  
6 **cause of death and manner is what's listed above?**  
7 **A That's what \_\_\_\_\_, Dr. \_\_\_\_\_,**  
8 **thought at the time. But this is before the**  
9 **autopsy results were available. So it's**  
10 **inaccurate.**  
11 **So this death certificate should be**  
12 **amended to actually reflect the actual cause of**  
13 **death, which was aspiration of Kayexalate.**  
14 **Q Did you find any need to ask Dr.**  
15 **why he did not submit an amended death certificate?**  
16 **MR. \_\_\_\_\_: I'll object.**  
17 **A That's not my job to do. I would not**  
18 **talk to Dr. \_\_\_\_\_ about that. That's his choice.**  
19 **Q When you say that the death certificate**  
20 **should have been amended, whose job would it be to**  
21 **amend the death certificate?**  
22 **MR. \_\_\_\_\_: Object to the form of the**

Page 51

1 question; also foundation. If he has any  
2 knowledge.  
3 **A I don't know. I don't know who should**  
4 **amend it. Maybe the state health department should**  
5 **amend it based on the autopsy results generated by**  
6 **\_\_\_\_\_ Hospital, because this is a state**  
7 **document.**  
8 **Q And why is it important to file an**  
9 **amended death certificate?**  
10 **MR. \_\_\_\_\_: Objection; foundation.**  
11 **Didn't say it was important.**  
12 **You can go ahead and answer.**  
13 **A Well, I think it is important because it**  
14 **makes all the records inaccurate in the state vital**  
15 **statistics records.**  
16 **Q And if a doctor is aware of conditions**  
17 **where a document that's filed with the state vital**  
18 **statistics, such as a death certificate, is**  
19 **inaccurate, doesn't the doctor have an obligation**  
20 **to correct that false document?**  
21 **MR. \_\_\_\_\_: Objection to form, and the**  
22 **foundation is still off. You haven't**

Page 52

1 established any foundation as to knowledge  
2 about that.  
3 **You can answer.**  
4 **A I don't know whose job it is to amend a**  
5 **death certificate, as I mentioned earlier.**  
6 **Q Well, whoever's job it is, would you**  
7 **agree that they had a duty to amend the death**  
8 **certificate if they believe the causes of death**  
9 **were different than what was written on the death**  
10 **certificate?**  
11 **MR. \_\_\_\_\_: Objection to form and**  
12 **foundation.**  
13 **A Well, maybe the doctor at**  
14 **Hospital who performed the autopsy and said in her**  
15 **report cause of death; See death certificate, is**  
16 **the one who actually should have amended the death**  
17 **certificate. Because she had the actual knowledge**  
18 **as to what caused Mr. \_\_\_\_\_'s death.**  
19 **Q And if Dr. \_\_\_\_\_ had spoken with the**  
20 **person that did the autopsy and was aware of the**  
21 **autopsy findings, then the same would apply to him;**  
22 **would you agree?**

Page 53

1 **MR. \_\_\_\_\_: Objection; form,**  
2 **foundation, and speculation.**  
3 **You can answer.**  
4 **A I don't know what Dr. \_\_\_\_\_ should do**  
5 **in this situation.**  
6 **I'm just saying this is an inaccurate**  
7 **death certificate and someone should amend it, and**  
8 **I'm not sure who's responsible for doing that.**  
9 **Maybe \_\_\_\_\_ General Hospital. This is**  
10 **speculation. State health department. The intern**  
11 **who did the autopsy. I don't know who's**  
12 **responsible for amending the death certificate.**  
13 **Q When is the first time that you informed**  
14 **Dr. \_\_\_\_\_'s attorneys that this death certificate**  
15 **should be amended to reflect what you believe is a**  
16 **correct cause of death?**  
17 **A I told him that the death certificate**  
18 **was inaccurate; that it did not reflect what caused**  
19 **his death. So I think the first discussion I ever**  
20 **had with him said that the death certificate is not**  
21 **accurate.**  
22 **Q When was that first discussion with Dr. \_\_\_\_\_**

DEPOSITION OF \_\_\_\_\_, M.D.  
CONDUCTED ON THURSDAY, JUNE 2, 2011

Page 54

1 \_\_\_\_\_'s attorneys? That would be the attorneys  
2 from \_\_\_\_\_.  
3 A When I talked to him either on the phone  
4 or in conference.  
5 Q That would be around May of \_\_\_\_\_, would  
6 that be accurate?  
7 A Yes.  
8 Q Do you know if anyone has made an  
9 attempt to amend the death certificate?  
10 A No.  
11 Q Did you notify the state Department of  
12 Health and Mental Hygiene that there was an  
13 inaccurate document in their files that reflected a  
14 incorrect cause of death for \_\_\_\_\_?  
15 A That's not my job.  
16 Q That's a different question. I'm asking  
17 if you called them and told them about that.  
18 A No. I did not.  
19 Q All right. Thank you, Doctor.  
20 A Again, it's not my job.  
21 Q Now, did the autopsy findings reflect  
22 that Mr. \_\_\_\_\_ suffered from renal failure?

Page 55

1 A He had renal disease, yes.  
2 Q Do you agree that he was in renal  
3 failure at the time of his death?  
4 A Based on laboratory studies, yes, he was  
5 in renal failure and he had underlying kidney  
6 disease.  
7 Q And that brings me to the next one  
8 regarding the -- no, actually, hepatic failure, and  
9 it has to do with diseases of the liver?  
10 A Yes.  
11 Q Do you believe he was in hepatic failure  
12 at the time of his death?  
13 A No, I don't.  
14 Q Okay. Why not?  
15 A Because looking at his microscopic  
16 slides of his liver, he did not have any evidence  
17 of what I would term hepatitis, hepatocellular  
18 necrosis, or death of the liver tissue. He only  
19 had fatty liver disease, as I mentioned earlier.  
20 So he didn't have any life-threatening hepatic  
21 disease based on review of the liver slide  
22 performed at autopsy.

Page 56

1 Q Okay. This is new opinion number six,  
2 that he did not have -- was suffering from hepatic  
3 failure at the time of his death. When did you  
4 reach that opinion?  
5 A When I looked at the laboratory values  
6 on Mr. \_\_\_\_\_, and also looked at the slide of his  
7 liver under the microscope.  
8 Q And what date was that, Doctor?  
9 A When I looked at the slide under the  
10 microscope?  
11 Q When you reached that opinion. I need  
12 to know that date that you came to that conclusion.  
13 A Let me say it was within the last six  
14 months. I don't know the exact date. After I  
15 received the slides and the medical records on Mr.  
16 \_\_\_\_\_.  
17 Q You can't tell within 180 days? You  
18 can't get any closer than that, sometime in the  
19 last six months? Was it last week? I mean, was it  
20 six months ago or was it last week? I'm trying to  
21 figure out the best estimate that you can for the  
22 time frame that you came to the opinion that he did

Page 57

1 not die of hepatic failure?  
2 A Sometime after January \_\_\_\_\_th, and more  
3 likely than not before May \_\_\_\_\_th.  
4 Q And did you convey that to Dr. \_\_\_\_\_'s  
5 attorneys from the law firm of \_\_\_\_\_?  
6 A I probably did. I don't recall the  
7 exact conversation, but I said he has fatty liver  
8 disease but does not have hepatitis or  
9 hepatocellular necrosis or death of the liver  
10 tissue.  
11 Q And the hepatic failure was not the  
12 cause of his death; would you agree that you also  
13 conveyed that to Dr. \_\_\_\_\_'s attorneys?  
14 A Yes. The cause of his death was  
15 aspiration of Kayexalate.  
16 Q Now, was the cause of his death due to  
17 the consequences of a left pelvic fracture?  
18 A He had complications from his left  
19 pelvic fracture. I can't say it actually caused  
20 his death. I think aspiration of Kayexalate is  
21 what caused his death, as I've mentioned many times  
22 already.



DEPOSITION OF \_\_\_\_\_, M.D.  
CONDUCTED ON THURSDAY, JUNE 2, 2011

Page 58

1 Q And did you also convey to Dr. \_\_\_\_\_'s  
2 attorneys that you did not believe that the cause  
3 of his death was due to complications from left  
4 pelvic fracture?  
5 A That's a muddled question, and I'm not  
6 sure exactly what complications of left pelvic  
7 fracture means in Dr. \_\_\_\_\_'s context. I'm not  
8 sure what he was trying to convey with that. Mr.  
9 \_\_\_\_\_ did have a pelvic fracture. Did it directly  
10 cause his death? Not really. He died from  
11 aspiration.  
12 Q Was it a proximate cause of his death?  
13 A What do you mean by proximate?  
14 Q Do you know what the definition of  
15 proximate means in the legal community, Doctor?  
16 A Like directly related to; is that fair  
17 enough?  
18 Q I need to know what your understanding  
19 of the definition of proximate is in the legal  
20 community for which you'll be testifying in.  
21 A Well, directly related I would assume,  
22 proximate.

Page 59

1 Q Okay. Is it -- do you understand what  
2 the term more likely than not means and what  
3 preponderance of the evidence means?  
4 A Yes.  
5 Q Okay. Do you think it's more likely  
6 than not that one of the causes of Mr. \_\_\_\_\_'s  
7 death was due to complications from left pelvic  
8 fracture?  
9 MR. \_\_\_\_\_: Objection to form. You  
10 can answer.  
11 A I think it may have led to his  
12 complications, yes, relating to his  
13 hospitalization. But it did not directly cause his  
14 death. His death was caused by aspiration.  
15 Q Okay. And you also conveyed this  
16 opinion to the doctor -- to Dr. \_\_\_\_\_'s lawyers  
17 at the same time you conveyed the other opinions;  
18 would that be accurate?  
19 A Yes.  
20 Q Are these opinions regarding the renal  
21 failure, the hepatic failure, and left pelvic  
22 fracture anywhere written down?

Page 60

1 A Did I write them down?  
2 Q Yes, sir.  
3 A No.  
4 Q And they're not in any e-mail  
5 communication with any attorney?  
6 A Correct. Everything's verbal.  
7 Q Everything's verbal.  
8 Are there any other verbal opinions that  
9 you communicated to Dr. \_\_\_\_\_'s attorney that you  
10 haven't told me about?  
11 MR. \_\_\_\_\_: Well, let me just object  
12 to the form and the broad nature of "verbal  
13 opinions." But if you can understand and  
14 answer it, you can.  
15 A I mean, we discussed many things when we  
16 discussed this very lengthy autopsy, and I can't  
17 recall every single word that I said. But, the  
18 opinions I have given so far are accurate and true  
19 as to what my opinions are.  
20 Q What I'm trying to figure out as we go  
21 through the deposition, I asked for the opinions  
22 that you wanted to give. We talked about the two

Page 61

1 that were in the written documents; we talked about  
2 the additional four; now we've uncovered a fifth  
3 one, sixth, seventh, and eighth opinion.  
4 Instead of me trying to go through and  
5 figure out what all your different opinions are by  
6 going through all the documents, what I'm asking  
7 you for, if you could tell me ahead of time so I  
8 don't have to guess.  
9 A I think we've covered just about  
10 everything I was going to have an opinion on.  
11 Q Okay.  
12 A As far as I can tell. Unless you find  
13 other documents I have to discuss.  
14 Q Well, that's what I'm trying to find  
15 out.  
16 Were you asked to determine whether Mr.  
17 \_\_\_\_\_ suffered from internal bleeding while he  
18 was a patient at the hospital?  
19 A No.  
20 Q Do you have an opinion if he did or did  
21 not?  
22 A Well, he had obviously some hemorrhage

DEPOSITION OF \_\_\_\_\_, M. D.  
CONDUCTED ON THURSDAY, JUNE 2, 2011

<p style="text-align: right;">Page 62</p> <p>1 around his fracture site. So he had hematomas 2 around the fracture site as mentioned in the 3 autopsy report. 4 <b>Q</b> So you would agree that there's evidence 5 in the medical chart -- or strike that. 6 <b>Is there evidence in the autopsy that</b> 7 <b>Mr. _____ suffered from internal bleeding sometime</b> 8 <b>after his fall and before his death?</b> 9 <b>A</b> Well, he has evidence of bleeding; he 10 had some hematomas around his fracture site. 11 <b>Q</b> Is that a yes? 12 <b>A</b> Yes. 13 <b>Q</b> And you're unable to render opinion when 14 the bleeding stopped; would that be accurate? 15 <b>A</b> Correct. I don't think anyone can tell 16 you when it stopped. 17 <b>Q</b> Is there any evidence in the medical 18 chart, in the laboratory tests, that are suggestive 19 of internal bleeding? 20 <b>A</b> His hemoglobin and hematocrit fell from 21 33 -- about 33 to 24.8, I believe. Hemoglobin 8.7. 22 <b>Q</b> Is that evidence of internal bleeding?</p>	<p style="text-align: right;">Page 64</p> <p>1 really not significant in terms of causing health 2 problems. 3 <b>Q</b> So from a percentage of blood loss, did 4 he lose 5 percent, 10 percent, 15 percent, 20 5 percent? 6 <b>MR. _____</b> : I would object to the term 7 "loss" because he's already talked about fluid 8 resuscitation too. 9 But you can answer the question. 10 <b>A</b> Yeah, I mean, you replace blood, and 11 with volume replacing with fluids in addition to 12 blood, if you need blood. In this case, in our 13 hospital, Mr. _____ would not even meet criteria 14 for transfusion. You'd have to go below the levels 15 he was at to get a transfusion at 16 Medical Center. 17 <b>Q</b> Did he meet the criteria for at least 18 one unit of blood? 19 <b>A</b> No, you have to go below -- at 20 you have to go below a hematocrit of 24 and 21 hemoglobin of 8, and he hadn't reached that yet, 22 before blood is administered here at</p>
<p style="text-align: right;">Page 63</p> <p>1 <b>A</b> I guess about one to two units of 2 bleeding. It's not clear because of fluid 3 resuscitation can cause some dilutional change in 4 the bloodstream, and that can falsely lower the 5 blood counts. 6 <b>Q</b> But you do agree that there's evidence 7 of at least one to two pints of blood loss -- 8 <b>A</b> Yes. 9 <b>Q</b> -- during the time he was in the 10 hospital? 11 <b>A</b> Yes. Which is not significant in any 12 adult male. 13 <b>Q</b> And how many pints of blood does Mr. 14 _____ have in his body at the time he was a patient 15 at the hospital before he lost one to two pints of 16 blood? 17 <b>A</b> It would be five times -- you have 18 about -- circulating blood volume is about five to 19 six liters in an adult male. I believe. So he 20 might have lost -- a unit of blood is 450 cc's. He 21 might have lost 900 cc's, based on an estimation I 22 can give you based on his blood counts. Which is</p>	<p style="text-align: right;">Page 65</p> <p>1 I don't know what the criteria are at 2 General Hospital. 3 <b>Q</b> And you're not here to testify on the 4 standard of care with respect to the levels at 5 which a doctor should order a blood transfusion or 6 units of blood, correct? 7 <b>A</b> Right. If it's -- a host of clinical 8 factors that go into blood transfusion, including 9 the condition of the patient. Do they have 10 underlying cardiovascular disease? Do they have 11 underlying pulmonary disease. So it's not just 12 numbers. You have to look at the patient overall. 13 <b>Q</b> Does it matter whether the patient comes 14 in with a lower than normal hematocrit or lower 15 than normal hemoglobin levels when you talk about 16 the bottom line of 24 and 8 that would spark 17 someone to give a patient blood? 18 <b>A</b> Well, actually, in fact people who have 19 low hematocrits and hemoglobins can tolerate lower 20 levels than a normal person with a normal level. 21 We have renal patients walking around on renal 22 dialysis who have hematocrits of 20, 22, and they</p>

DEPOSITION OF M. D.  
CONDUCTED ON THURSDAY, JUNE 2, 2011

Page 66

1 lead normal lives. They have very low blood counts  
2 because their kidneys don't make -- don't make the  
3 factors that cause red cell production. So, people  
4 with chronic anemia can actually tolerate lower  
5 blood counts than people who have no anemia.  
6 **Q Was Mr. [redacted] diagnosed with chronic**  
7 **anemia?**  
8 **A I don't know if he was diagnosed with**  
9 **chronic anemia. He was anemic when he entered the**  
10 **hospital and had, from my reading of the medical**  
11 **records, previous low blood counts in the 30 -- 33**  
12 **to 35 range. So he's had this for a while.**  
13 **Probably for about two years before he died.**  
14 **Q Okay. Now, were there other signs that**  
15 **indicate an internal bleed other than the**  
16 **hematocrit and hemoglobin? Did you see anything**  
17 **with respect to the blood pressure, heart rate,**  
18 **pulse, things of that nature, that are indicative**  
19 **of the blood loss?**  
20 **MR. [redacted] : Objection to form.**  
21 **A You know, I should leave this to**  
22 **clinicians, because I don't really deal with this.**

Page 67

1 But his blood pressure was variable, his pulse rate  
2 was variable. So he had a lot of variation in  
3 both, from my review of the records. But I should  
4 leave it to the clinicians as to whether that meant  
5 bleeding or other medical problems. He was on  
6 blood pressure medication. He got the intravenous  
7 immunoglobulin that can lower your blood pressure.  
8 So, he had a lot of factors that could change his  
9 blood pressure. I'll leave it to a clinician to  
10 study -- talk about that.  
11 **Q Okay. So you don't feel qualified to**  
12 **render an opinion in that area?**  
13 **A Not about his blood pressure, his pulse,**  
14 **or anything like that. That's more of a clinical**  
15 **parameter.**  
16 **Q Okay. Do you know what his pulse ox**  
17 **reading was shortly before he died?**  
18 **A I know what his pO2 was. Not his pulse**  
19 **ox, his blood gas.**  
20 **Q Okay. And what is pO2?**  
21 **A Your oxygen concentration in your blood.**  
22 **Q Okay. What was his oxygen concentration**

Page 68

1 **in his blood right before he died?**  
2 **A I believe it is extremely low, 18,**  
3 **probably from his aspiration. He couldn't move air**  
4 **into his lungs.**  
5 **Q And where did you get the figure of 18?**  
6 **A Under the lab results, in the lab**  
7 **results section.**  
8 **Q Okay.**  
9 **A PO2 was 18, I believe.**  
10 **Q Okay. And that's the oxygen**  
11 **concentration and the hemoglobin; would that be**  
12 **accurate?**  
13 **A That's the oxygen concentration in your**  
14 **bloodstream. That's the blood gas. It's called**  
15 **blood gas.**  
16 **Q Okay. Do you know what the CO2 levels**  
17 **were?**  
18 **A I think it was elevated at 78. He**  
19 **wasn't moving any air because of aspiration. He**  
20 **couldn't breathe.**  
21 **Q Okay. And what was the quantity of**  
22 **Kayexalate that was in his lungs on autopsy?**

Page 69

1 **A I think it was a great deal of**  
2 **Kayexalate was present; it's on every single slide**  
3 **of every lung section in almost all the major**  
4 **airways that I could see under the microscope.**  
5 **Q And can you give an estimate of the**  
6 **quantity from the review of the slides?**  
7 **A I can't tell you the quantitative. I'd**  
8 **say it was extensive, just based on my knowledge of**  
9 **the bronchial tree and looking at the slides and**  
10 **looking at -- that almost every single major**  
11 **bronchus was plugged with Kayexalate crystals and**  
12 **mucus from his gastric contents.**  
13 **Q And, Doctor, the slides that you've**  
14 **brought with us, the photocopy enlargements, those**  
15 **are the ones from Exhibit 5A to 5G, did you pick**  
16 **these slides out to pinpoint the presence of**  
17 **Kayexalate in the tissues?**  
18 **A On some of them.**  
19 **Q Okay. Why don't we go through each one,**  
20 **and you can tell me why you picked that slide out**  
21 **and why you photocopied that slide.**  
22 **A You want to start with all of them?**

Page 70

1 **Q Just with the first exhibit.**  
2 A Well, this is heart muscle.  
3 **Q Okay. Hold on a minute. That's -- see?**  
4 A Oh.  
5 **Q Yes. 5A is heart muscle.**  
6 A 5A is heart muscle, just to show that  
7 his heart muscle didn't show any evidence of  
8 ischemia or myocardial infarct or heart attack.  
9 The heart muscle looked relatively normal. The  
10 muscle fiber's a little bit thickened, which goes  
11 along with the heaviness of his heart.  
12 **Q When a person has myocardial infarct, is**  
13 **it always going to show up on autopsy?**  
14 A Not if it's extremely recent, less than  
15 a few hours old, probably will not show up on  
16 autopsy.  
17 **Q How about a few days?**  
18 A Few days will show up, yes.  
19 **Q To what extent?**  
20 A It depends on the age of infarct.  
21 There's an aging process so, there's different  
22 changes at five to six hours versus 10 days; it

Page 71

1 goes through a sequence of aging, let's say.  
2 **Q Assuming he had an infarct when he fell,**  
3 **which caused him to fall, what would you expect to**  
4 **see on the slide?**  
5 A I would see damage of the muscle fibers,  
6 death of the muscle fibers, if he had an infarct.  
7 You would see inflammatory cells around the muscle  
8 fibers, mainly neutrophils at a three-day interval.  
9 Maybe a few lymphocytes. Depends on the age,  
10 again.  
11 **Q How many heart muscle slides, tissue**  
12 **samples were taken?**  
13 A Two.  
14 **Q Do you know what part of the heart they**  
15 **came from?**  
16 A No. Well, I think one was right  
17 ventricle and one was left ventricle.  
18 **Q Is it possible that there was an MI in a**  
19 **different area of the heart, or different, that you**  
20 **would see changes in the tissue in other areas**  
21 **except for the two areas that were biopsied here?**  
22 MR. \_\_\_\_\_ : Objection to form and to

Page 72

1 the term "possible." You may answer.  
2 A Anything is possible. But this is a  
3 sampling, and the pathologist who looks at the  
4 heart muscle grossly with the naked eye to see if  
5 there are any areas of change, softening,  
6 discoloration also examines the coronary arteries  
7 to make sure there aren't any plugs or thrombi in  
8 the arteries. The way to get a heart attack is to  
9 plug the artery with a thrombus, and this gentleman  
10 had none. So, he's got an extremely remote chance  
11 of having a heart attack.  
12 **Q Is it plausible that there are other**  
13 **areas of his heart that would have shown evidence**  
14 **of a recent MI that, simply because they didn't**  
15 **take it from that area of the heart, we don't have**  
16 **them here?**  
17 MR. \_\_\_\_\_ : Objection to form and the  
18 term "plausible." You can answer.  
19 A I would doubt it. There was no gross  
20 evidence of any changes in the heart muscle.  
21 **Q What about the enlarged heart, does that**  
22 **indicate a recent cardiac event?**

Page 73

1 A No, that's of longstanding; takes many  
2 years for that to happen.  
3 **Q Many years?**  
4 A Yes.  
5 **Q If a person has a normal heart on day**  
6 **one, then has an enlarged heart three days later,**  
7 **what would be the causes of the enlarged heart over**  
8 **that three-day period?**  
9 A You mean weightwise? Do you mean  
10 enlargement or chamber dilatation?  
11 **Q Well --**  
12 A That's two different things.  
13 **Q -- from the definition that's in the**  
14 **autopsy report, there was an enlarged heart. Can**  
15 **you tell from the autopsy report what the prosecutor**  
16 **was talking about? He mentioned two different**  
17 **things. Do you know which one the prosecutor was**  
18 **talking about when he had an enlarged heart?**  
19 A Yes, I think they're referring to the  
20 weight of 690 grams, which is a heavy heart. It's  
21 about 200 some grams heav -- it's 200 grams heavier  
22 than a normal adult male should have.

DEPOSITION OF M. D.  
CONDUCTED ON THURSDAY, JUNE 2, 2011

<p style="text-align: right;">Page 74</p> <p>1 Q Okay.</p> <p>2 A If not 300 grams. So that takes a long</p> <p>3 period of time for that thickening of the heart</p> <p>4 muscle to occur. I'm talking years.</p> <p>5 Q Is there any other response a heart</p> <p>6 event could have occur three days before that would</p> <p>7 not appear on autopsy findings?</p> <p>8 A Well, anything could happen. But --</p> <p>9 Q That's what I mean. Can you tell me</p> <p>10 what the other possibilities are for Mr. to</p> <p>11 have a cardiac event, when he fell, that would not</p> <p>12 show up on autopsy report?</p> <p>13 A Sure. You could have an electrical</p> <p>14 rhythm disturbance; that cannot be observed at</p> <p>15 autopsy. That's an electrocardiographic finding.</p> <p>16 Pathologists cannot see electrical rhythm</p> <p>17 disturbances.</p> <p>18 Q Anything else?</p> <p>19 A That's all I can think of at this point.</p> <p>20 Q Let's talk about the next slide.</p> <p>21 A This is a section of lung, slide</p> <p>22 number 4.</p>	<p style="text-align: right;">Page 76</p> <p>1 Q And the next one?</p> <p>2 A 5E is a picture of Mr. liver as</p> <p>3 seen under the microscope, and it has these little</p> <p>4 circular structures which is fatty replacement of</p> <p>5 the liver by fat. This is called steatosis, I</p> <p>6 believe referred to in the autopsy as steatosis,</p> <p>7 and it shows the fatty change. It also</p> <p>8 demonstrates there's no active hepatitis, there's</p> <p>9 no active necrosis or death of the liver cells.</p> <p>10 So, I don't believe Mr. had hepatic failure,</p> <p>11 based on review of that slide.</p> <p>12 Q Next one?</p> <p>13 A 5F is a picture of Mr. kidney as</p> <p>14 seen under the microscope. It shows evidence of</p> <p>15 chronic inflammatory change, which are these little</p> <p>16 dark dots you can see throughout the picture.</p> <p>17 These are lymphocytes, which mean he's had chronic</p> <p>18 inflammation of the kidney probably from a history</p> <p>19 of kidney stones and probably more likely than not</p> <p>20 previous infection of the kidney, called</p> <p>21 pyelonephritis.</p> <p>22 Q And the next one?</p>
<p style="text-align: right;">Page 75</p> <p>1 Q And the exhibit on the back, Doctor,</p> <p>2 please?</p> <p>3 A This is Exhibit 5B. So this is a</p> <p>4 section of lung taken through my microscope showing</p> <p>5 this center circular area, which is a bronchus, and</p> <p>6 within the bronchus there are little purple dots</p> <p>7 which are Kayexalate particles, surrounded by pink</p> <p>8 material which is mucus. And this means that Mr.</p> <p>9 aspirated Kayexalate into his bronchus.</p> <p>10 Q Next slide, if you can.</p> <p>11 A Exhibit 5C is another section of</p> <p>12 bronchus, different bronchus, showing again the</p> <p>13 circular clear area is the bronchus. In the center</p> <p>14 is these particles of Kayexalate which are the</p> <p>15 purple dots, again showing plugging of the bronchus</p> <p>16 by Kayexalate material and mucus.</p> <p>17 Q And the next one?</p> <p>18 A Exhibit 5D is just a high-power view of</p> <p>19 of a Kayexalate particle, this purple material</p> <p>20 here. Just wanted to show that that's what it</p> <p>21 looks like under the microscope. That's</p> <p>22 characteristic of Kayexalate under the microscope.</p>	<p style="text-align: right;">Page 77</p> <p>1 A A picture of the testicular tissue of</p> <p>2 Mr. Dixon's Exhibit 5G, showing he had extensive</p> <p>3 atrophy and scarring of his testicular tissue,</p> <p>4 which goes along with his history of hypogonadism.</p> <p>5 Q But that last, Exhibit 5G, plays no part</p> <p>6 in your opinions as to his cause of death; would</p> <p>7 that be true?</p> <p>8 A Right. It's just a pathologic finding.</p> <p>9 Q Okay. Are there any other slides that</p> <p>10 we don't have copies of that you find are important</p> <p>11 in order to explain any opinions that you intend to</p> <p>12 give in this case?</p> <p>13 MR. : Object to the form. You</p> <p>14 can answer.</p> <p>15 A Well, the other slides had findings that</p> <p>16 we mentioned earlier, the minor findings of the</p> <p>17 thyroid nodule, the colon diverticulosis. I think</p> <p>18 we had a list.</p> <p>19 Q I don't mean to cut you off, but are the</p> <p>20 other slides that we don't have pictures of, do you</p> <p>21 intend to use them to support any of the opinions</p> <p>22 that you intend to give in the case regarding the</p>

20 (Pages 74 to 77)

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DEPOSITION OF \_\_\_\_\_, M. D.  
CONDUCTED ON THURSDAY, JUNE 2, 2011

Page 78

1 cause of death, the hepatic — the lack of hepatic  
2 failure, talk about renal failure, the other  
3 opinions, or are they simply you just talking about  
4 them because they were mentioned in the autopsy  
5 report?  
6 A No, I'm talking about them because  
7 they're on the autopsy slides, the cause -- the  
8 findings I gave you. They're all represented on  
9 the slides here.  
10 Q Let me go back and ask the question  
11 again. I'll see if I --  
12 A I'm not sure if I understand the  
13 question.  
14 Q I'll see if I can make it more clear.  
15 Right.  
16 For the opinions that you intend to give  
17 in the case, and this has to go with opinion, the  
18 fourth, what I'll call new opinion, minor findings  
19 on autopsy that are not clinically significant  
20 regarding the cause of death. Are those the other  
21 slides that we have here that have not been blown  
22 up?

Page 79

1 A Yes.  
2 Q Okay.  
3 A Yes. I have not taken a picture of  
4 every slide and every minor disease process that  
5 Mr. \_\_\_\_\_ has.  
6 Q Now, assuming that we're not going to be  
7 talking about any of the minor findings in the  
8 autopsy report not clinically significant in the  
9 cause of his death, if we don't talk about those  
10 issues at trial, would you agree that you would  
11 then not be referring to the slides, the additional  
12 slides, that are other than exhibits 5A through 5G?  
13 MR. \_\_\_\_\_ : Well, let me just object,  
14 because I'm going to be certainly asking him  
15 questions at trial about all of the slides,  
16 including the ones that are the 40 ones that  
17 are in Exhibit 7 and Exhibit 6, and as well as  
18 his review of all those covered materials  
19 so --  
20 MR. \_\_\_\_\_ : If that's the case, I have  
21 to go through each and every slide.  
22 Q I didn't necessarily want to do that

Page 80

1 here today if those slides are only important in --  
2 I don't want to put words in your mouth, Doctor.  
3 But if those additional slides, other than what's  
4 been blown up in 5A and G, are only important for  
5 your opinions relative to the minor findings in the  
6 autopsy report not clinically significant to his  
7 death, then I won't be asking you any questions  
8 about that. If you believe that they have some  
9 other value in your opinions for other opinions  
10 that you're going to give, I need to know that now  
11 because then I need to ask you a question on every  
12 single slide. So you have to tell me.  
13 A Well, I mean, there are certain slides  
14 that have major findings that we have discussed  
15 that relate to Mr. \_\_\_\_\_ death.  
16 Q And those would be the slides that were  
17 blown up in exhibits 5A through 5G, correct?  
18 A Right. Well, 5G is not significant to  
19 his death.  
20 Q Right.  
21 A It's just a finding --  
22 Q 5A through 5F?

Page 81

1 A Right.  
2 Q Now, other than 5A through 5F, which are  
3 blowups of five slides here, do you intend to  
4 discuss any of the other slides to explain any of  
5 the other opinions in this case?  
6 MR. \_\_\_\_\_ : I'm going to object. And  
7 certainly he's reviewed all the discovery  
8 materials, and he's not foreclosed from  
9 commenting upon them just because you're  
10 trying to limit him as to what he may or may  
11 not do.  
12 Q Then I'm going to have to ask you a  
13 question about every single slide. I was trying to  
14 avoid that, and I -- and counsel doesn't want to  
15 foreclose that. So I have to ask you to point out  
16 every single slide, we need to talk about every  
17 number, and you need to explain to me what the  
18 significance of that slide is and how that affects  
19 your opinion or how you used that in reaching an  
20 opinion in this case.  
21 MR. \_\_\_\_\_ : Well, let me just state  
22 the reason I'm asking the question is because

21 (Pages 78 to 81)

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DEPOSITION OF \_\_\_\_\_, M.D.  
CONDUCTED ON THURSDAY, JUNE 2, 2011

<p style="text-align: right;">Page 82</p> <p>1 it's a matter of excluding certain things on 2 there, so that's why he was comprehensive in 3 taking a look and examined all the slides. So 4 you can answer. 5 <b>Q We got to go through every single slide,</b> 6 <b>doc. I – it's just, this is what we have to do.</b> 7 <b>Because I don't know what you may testify to</b> 8 <b>regarding every single slide. So let's talk about</b> 9 <b>exhibit – the slides in exhibit number – I'm</b> 10 <b>sorry, will you flip to the front? You go through</b> 11 <b>Exhibit No. 7?</b> 12 <b>A Yes.</b> 13 <b>Q If you can just – I'm sorry to have to</b> 14 <b>put you through this, but I've never seen these</b> 15 <b>before, so we have to do this one by one. If you</b> 16 <b>can identify the slide number by number, and tell</b> 17 <b>me what significance that has and if you intend –</b> 18 <b>did you use that slide in reaching any of your</b> 19 <b>opinions?</b> 20 <b>A All right. These are all labeled</b> 21 <b>autopsy 53259. Maybe we can make that shorter,</b> 22 <b>though. Slide two is right heart muscle; it</b></p>	<p style="text-align: right;">Page 84</p> <p>1 Slides 30 – let's see. 34, 31, 33, 20, 2 32 and 12 I believe are sections of kidney, and 3 they show evidence of underlying kidney disease 4 that we have discussed of chronic inflammation, 5 pyelonephritis. And also demonstrate evidence of 6 what is called acute tubular necrosis, leading to 7 Mr. _____'s renal failure. 8 <b>Q Before we get to the next group, do you</b> 9 <b>have any opinion on what caused the acute tubular</b> 10 <b>necrosis that led to his renal failure?</b> 11 <b>A I really don't know what causes acute</b> 12 <b>tubular necrosis. I can't tell you pathologically</b> 13 <b>what caused it. Some clinical problem, but we'll</b> 14 <b>leave that to the clinicians.</b> 15 <b>Q Okay, Doctor, you can continue.</b> 16 <b>A Slides 38 – let me put my glasses on.</b> 17 <b>Excuse me. Reading glasses. Slides 38, 35, 37 –</b> 18 <b>Q Let's stick with the group in Exhibit</b> 19 <b>No. 7 –</b> 20 <b>A Okay.</b> 21 <b>Q – first, Doctor.</b> 22 <b>A All right. Slides 38, 35 and 37 are</b></p>
<p style="text-align: right;">Page 83</p> <p>1 changes no opinion I have. 2 <b>Q Okay.</b> 3 <b>A Slight one is left heart muscle, which</b> 4 <b>shows that Mr. _____ didn't have any underlying</b> 5 <b>cardiac disease other than a heavy heart. No</b> 6 <b>infarction.</b> 7 <b>Slides four, seven, five, three, six,</b> 8 <b>and 11 are all sections of lung, and they all</b> 9 <b>demonstrate extensive aspiration of Kayexalate</b> 10 <b>particules, which plugs all the major airways. And</b> 11 <b>even extends out into the minor air sacs. It's</b> 12 <b>extensive, extensive aspiration.</b> 13 <b>Q Okay. Go ahead, Doctor.</b> 14 <b>A Slide 10 is a slide of liver, and I've</b> 15 <b>already discussed the fatty liver disease that Mr.</b> 16 <b>_____ has, and no evidence of hepatic necrosis.</b> 17 <b>Slide 19 I believe is a section of</b> 18 <b>spleen, and that has no significant – oh, I'm</b> 19 <b>sorry. Slide 19 is a section of liver showing a</b> 20 <b>benign hemangioma. No clinical significance.</b> 21 <b>Slide 15 is a section of spleen and two</b> 22 <b>small-lymph nodes. No clinical findings there.</b></p>	<p style="text-align: right;">Page 85</p> <p>1 testicular sections showing testicular atrophy that 2 we already mentioned. 3 <b>Q Okay. Have we covered all the slides</b> 4 <b>that are in Exhibit No. 7, Doctor?</b> 5 <b>A Yes.</b> 6 <b>Q Let's move to slides in Exhibit No. 6,</b> 7 <b>please.</b> 8 <b>A Slide 36 and 13 I believe are testicular</b> 9 <b>sections, again showing atrophy.</b> 10 <b>Slide 14 I believe is pituitary gland.</b> 11 <b>I'm sorry. It's not. I believe it's pancreas.</b> 12 <b>And thyroid. I'm sorry, slide 14 is thyroid. Just</b> 13 <b>shows a benign thyroid nodule.</b> 14 <b>Slides 40, 39, nine and eight are</b> 15 <b>sections of the gastrointestinal tract that show no</b> 16 <b>significant findings other than diverticulosis of</b> 17 <b>the colon.</b> 18 <b>Slides 18 and 16 I believe are sections</b> 19 <b>of skeletal muscle and a section of skin. The</b> 20 <b>skeletal muscle tissue section shows some evidence</b> 21 <b>of myopathy of undetermined type, which may go</b> 22 <b>along with his clinical history of a chronic</b></p>

22 (Pages 82 to 85)

DEPOSITION OF \_\_\_\_\_, M.D.  
CONDUCTED ON THURSDAY, JUNE 2, 2011

Page 86

1 neuropathy and myopathy.  
2 I believe slide 17 is a slide of  
3 pancreas, and that only shows postmortem  
4 degeneration change.  
5 Slide 30 is a section of pituitary  
6 glands, and I don't believe it has any significant  
7 change.  
8 Q You -- what I mean is, it's not  
9 significant in any opinions that you intend to  
10 give; is that correct?  
11 A Correct.  
12 Q Okay. Thank you.  
13 A And slides 21, 24, 25, 23, 22, 26, 28,  
14 27 and 29 are sections of various sections --  
15 various areas of the brain of Mr. \_\_\_\_\_. And I  
16 don't believe they showed any significant  
17 pathologic finding.  
18 Q Okay. Have we covered all the slides in  
19 Exhibit No. 6?  
20 A Yes.  
21 Q Thank you. Do you intend to give any  
22 opinion as to what caused Mr. \_\_\_\_\_ to aspirate the

Page 87

1 Kayexalate?  
2 A I just noticed in his history and also  
3 depositions of his wife that he had persistent  
4 nausea and vomiting, and he must have had an abrupt  
5 episode of vomiting that caused him to aspirate a  
6 tremendous amount of Kayexalate.  
7 Q Is that a history of vomiting while at  
8 the hospital?  
9 A I believe so.  
10 Q Is that what you're referring to?  
11 A Yes. In the nurses' notes, and I think  
12 his family said he had very great difficulty  
13 drinking the Kayexalate; he had a hard time getting  
14 it down; was persistently nauseous, so I think he  
15 just had an unfortunate episode of severe vomiting  
16 that led to massive aspiration.  
17 Q Do you know whether the convulsions came  
18 first, or the vomiting?  
19 A I can't tell you. He may have had a  
20 convulsion from hypoxia from the aspiration. That  
21 is, he wasn't getting any oxygen to his brain  
22 because he aspirated.

Page 88

1 Q Well, the convulsions, according to the  
2 records, occurred first, before the vomiting; would  
3 you agree with that?  
4 MR. \_\_\_\_\_: Objection to form.  
5 A That's what the records show, but it  
6 doesn't mean he hasn't been -- hadn't been  
7 aspirating before he had his convulsion.  
8 Q What I need to know now is what facts in  
9 the records can you point to that show that he  
10 aspirated before he had a convulsion. Are there  
11 any in there?  
12 A His family said he had a great deal of  
13 difficulty swallowing that material. And he more  
14 likely than not was aspirating at some point in  
15 time in that episodes that he was having difficulty  
16 getting that stuff down.  
17 Q Why would you say that, when the family  
18 was watching him the entire time and didn't witness  
19 any aspiration?  
20 A Well, do they know what aspiration is  
21 and what happens, and what the symptoms and signs  
22 are?

Page 89

1 Q Well, if you said he did, what would the  
2 symptoms and signs be for the aspiration that  
3 occurred before he went into a convulsion?  
4 A You can have a choking sensation. I  
5 think he had some choking problems getting that  
6 stuff down.  
7 Q You think he choked?  
8 A Well, I think that his family said he  
9 had a great deal of difficulty swallowing that  
10 material.  
11 Q I guess my question is, do you intend to  
12 give an opinion one way or the other whether the  
13 convulsions came first or the aspiration came  
14 first?  
15 MR. \_\_\_\_\_: Objection to form.  
16 A I would think that the aspiration came  
17 first.  
18 Q Is that an opinion that you intend to  
19 give in this case?  
20 A Sure.  
21 Q Within a reasonable degree of medical  
22 certainty?

23 (Pages 86 to 89)

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DEPOSITION OF \_\_\_\_\_, M.D.  
CONDUCTED ON THURSDAY, JUNE 2, 2011

Page 90

1 A Yes.  
2 Q Okay. When did you develop that  
3 opinion?  
4 A Based on looking at the record that I  
5 saw.  
6 Q And when was that that the aspiration  
7 came -- aspiration preceded the convulsions, when  
8 did you reach that opinion?  
9 A Reading the record.  
10 Q And that --  
11 A That he was having trouble, and his  
12 family members saying he has trouble swallowing  
13 that material.  
14 Q And again, when did you read the record?  
15 You said when you read the record. I need to get a  
16 date?  
17 A I think it was 5/17/  
18 Q No, I'm sorry, Doctor. The date that  
19 you reached that opinion.  
20 A I don't know. It was when I reviewed  
21 the case, reviewed the slides, reviewed the autopsy  
22 report.

Page 91

1 Q I need to get an approximate time  
2 because it's very important.  
3 A I'd say within the last 120 days. After  
4 I received the slides and records.  
5 Q Well, within the last month? Could it  
6 have been within the last month?  
7 A Could have been.  
8 Q Okay.  
9 A More likely than not it was. That's  
10 after I received the records from \_\_\_\_\_. In  
11 reading the family's depositions that he was -- had  
12 a great deal of difficulty swallowing the  
13 Kayexalate.  
14 Q Is there anything in the medical  
15 records -- the signs of aspiration are choking; is  
16 that correct?  
17 A Well, it can be silent. Aspiration can  
18 be silent. Many people aspirate and don't know  
19 they've aspirated. And they also can also lead to  
20 symptoms, such as choking, gagging, coughing. So  
21 it can either be silent or it can be clinically  
22 apparent.

Page 92

1 Q And have you ever diagnosed someone with  
2 choking, gagging, silent aspiration?  
3 A No, I haven't diagnosed anyone with  
4 that. I don't see patients clinically in that  
5 regard.  
6 Q Okay. What I'm trying to figure out is  
7 what education in the medical field do you  
8 believe -- if you intend to give this opinion, I  
9 need to know what is the education in the medical  
10 field, because you've never treated or diagnosed  
11 someone with gagging, silent aspiration, that gives  
12 you the medical knowledge to be able to render that  
13 diagnosis of a patient in this case?  
14 A Well, I get a lot of lung biopsies where  
15 patients have aspirated material into their lungs  
16 and it's clinically inapparent they didn't know  
17 they had aspirated anything. I get a lung biopsy  
18 and it shows aspirated material, aspirated debris,  
19 aspirated medication material. Patient's totally  
20 unaware they've even aspirated anything. So I see  
21 that in my practice. That's silent aspiration.  
22 Q But you've never diagnosed a patient

Page 93

1 with silent aspiration?  
2 A No. I've diagnosed them with aspiration  
3 of foreign material into their lung biopsies. In  
4 their lung biopsies I see it in my clinical  
5 practice under the microscope, just like in this  
6 case.  
7 Q Okay. What quantity did Mr.  
8 silently aspirate before he had the convulsion?  
9 What quantity of Kayexalate did he silently  
10 aspirate before he had the convulsion?  
11 A I can't quantify it. I have no idea.  
12 Q And if you can't quantify it, then would  
13 it be fair to say that you can't render an opinion  
14 whether or not that amount of aspiration caused  
15 hypoxia, because you don't know how much is in his  
16 lungs?  
17 MR. \_\_\_\_\_: Objection. He's already  
18 told you how much is in his lungs. I'll  
19 object to the form and foundation of the  
20 question.  
21 A Well, yeah, he's got a massive amount of  
22 Kayexalate in his lungs. The time sequence I can't

24 (Pages 90 to 93)

DEPOSITION OF \_\_\_\_\_, M.D.  
CONDUCTED ON THURSDAY, JUNE 2, 2011

Page 94

1 tell you precisely. I just know it's there. I can  
2 tell you he aspirated.  
3 **Q But you can't tell me what quantity over**  
4 **what period of time; would that be fair?**  
5 **A Well, the period of time started when he**  
6 **was ingesting the Kayexalate, that would be the**  
7 **starting point. How long it took him to aspirate**  
8 **and how much and how fast, I can't give you an**  
9 **idea.**  
10 **Q There's no way to know?**  
11 **A No, nobody can tell.**  
12 **Q Okay. Well if there's no way to know**  
13 **the quantity over the time period because he had a**  
14 **convulsion around the same time, there's really no**  
15 **way to know how much of the Kayexalate was**  
16 **aspirated before the convulsion other after the**  
17 **convulsion; would that be a fair statement?**  
18 **A Yeah, I'd say that's fair.**  
19 **Q Okay. And similarly speaking, there's**  
20 **know way to determine at what point in time the**  
21 **hypoxia level was so high -- let me ask you a**  
22 **question. Do you know whether the convulsions were**

Page 95

1 **caused by hypoxia, or some other event that was**  
2 **going on?**  
3 **A Well, the autopsy didn't reveal any**  
4 **underlying brain disease that we know caused a**  
5 **convulsion. So based on the aspiration and his**  
6 **hypoxia, I would say the hypoxia may have led to**  
7 **his convulsion.**  
8 **Q Is that more likely than not, or you**  
9 **just don't know?**  
10 **A I don't think we can say precisely.**  
11 **Q Which means you can't say more likely**  
12 **than not.**  
13 **MR. \_\_\_\_\_: Objection to form.**  
14 **A Not at this point, no.**  
15 **Q Does lack of oxygen to organs and**  
16 **tissues result in a person having convulsions?**  
17 **A Well, it would have to be lack of oxygen**  
18 **to the brain, not just all organs and tissues.**  
19 **Q Okay.**  
20 **A It's precisely the brain.**  
21 **Q So lack of oxygen to a tissue would not**  
22 **cause a spasm?**

Page 96

1 **A Well, you could have a lack of oxygen to**  
2 **your muscle fibers and that could cause a muscle**  
3 **spasm. Sure. People get cramps all the time from**  
4 **a lack of blood flow and lack of oxygen.**  
5 **Q Was there evidence in the chart that Mr.**  
6 **was not receiving an adequate flow of oxygen**  
7 **to his vital organs, his kidney and his liver?**  
8 **A Not that I know of.**  
9 **Q Okay.**  
10 **A His liver shows no evidence of lack of**  
11 **flow. As I mentioned, pathologically there's no**  
12 **hepatic necrosis.**  
13 **Q Would you have to see an hepatic -- in**  
14 **your opinion, would you have to see hepatic**  
15 **necrosis before you could render an opinion that**  
16 **the liver was not receiving a full, adequate supply**  
17 **of oxygen?**  
18 **A Yes, I would. I would have to see it.**  
19 **Under evidence of hepatic damage.**  
20 **Q Okay. And how short or long of a period**  
21 **would the hepatic damage have occurred in or over?**  
22 **I mean, is there a time period when it takes 24**

Page 97

1 **hours to have hepatic damage, 48 hours, 72, a week,**  
2 **two weeks, three months, a year?**  
3 **A The lack of oxygen? It would take a**  
4 **couple hours.**  
5 **Q A couple hours?**  
6 **A Before you could see -- before you could**  
7 **see any damage.**  
8 **Q Okay. And you would mean a complete**  
9 **lack of oxygen or just a decreased lack of oxygen?**  
10 **A Depends on the amount of decrease. It's**  
11 **variable.**  
12 **Q And the same would be the varying**  
13 **degrees of necrosis in the liver, correct?**  
14 **A I'm not sure if they follow through like**  
15 **that.**  
16 **Q Well --**  
17 **A I'm not sure if I understand your**  
18 **question.**  
19 **Q Okay. Let's try it again. You have an**  
20 **opinion that he did not suffer from hepatic**  
21 **failure, liver failure, correct?**  
22 **A Correct.**

DEPOSITION OF \_\_\_\_\_, M.D.  
CONDUCTED ON THURSDAY, JUNE 2, 2011

<p style="text-align: right;">Page 98</p> <p>1 Q And that's based upon the fact that the 2 microscopic slides that you looked at did not show 3 evidence of necrosis, correct? 4 A Correct. And also that his bilirubin 5 level remained stable at 0.5. You have to have an 6 elevated bilirubin level to diagnose hepatic 7 failure. 8 Q How about an increase in any of the 9 liver enzymes? 10 A Well, the enzymes that are increased are 11 found not only in liver but other parts of the 12 body, including muscle fibers. And because his 13 bilirubin didn't go up, it's possible that the 14 enzyme elevation came from a source other than his 15 liver. 16 Q Do you believe that the enzyme 17 elevation, the liver enzymes, came from a source 18 other than his liver? The increase in those 19 enzymes came from a source other than his liver? 20 A It's more likely than not it could have 21 come from his skeletal muscle. He had elevated 22 CPK, which is a marker for muscle damage. He also</p>	<p style="text-align: right;">Page 100</p> <p>1 about what could be. It has to be more likely than 2 not. Is it your opinion, more likely than not, 3 that the elevated liver enzymes were caused by 4 something else other than the liver? 5 A You're calling them liver enzymes. 6 They're not specific to liver tissue. They are 7 found in many other organs, those enzymes. So 8 elevation of enzyme levels doesn't mean that it 9 came from the liver. 10 Q Okay. And the enzyme levels that we're 11 talking about -- so we're talking about the same 12 thing -- ALT and AST, are those the two enzymes 13 that we're talking about, Doctor? 14 A Yes. Alanine aminotransferase and 15 aspartate aminotransferase. Those are the 16 initials. 17 Q And my question again, do you have an 18 opinion within a reasonable degree of medical 19 probability whether those elevated enzymes were 20 caused by damage to the liver or damage to some 21 other part of the body that was causing those 22 enzymes to increase?</p>
<p style="text-align: right;">Page 99</p> <p>1 had elevated AST and ALT, which can also result 2 from muscle damage. And because his bilirubin 3 remained stable, he was not in hepatic failure. 4 Q Okay. And the enzymes, elevated enzymes 5 from muscle damage, what muscle damage are you 6 talking about in this case? 7 A Well, he had a -- he had underlying 8 myopathy, number one. Number two, the trauma from 9 his pelvic fracture can also cause some muscle 10 damage around the pelvic fracture. 11 Q Did you compare the -- where the liver 12 enzyme was taken when he first went into the 13 hospital after his fall as compared to later on? 14 A Yes. 15 Q And was there an increase? 16 A Yes, there was an increase. 17 Q And have you made a determination as to 18 what was the cause of that increase? 19 A As I say, it could be skeletal muscle 20 damage rather than hepatic enzyme -- hepatic 21 failure. 22 Q In a court of law, we're not talking</p>	<p style="text-align: right;">Page 101</p> <p>1 A I would have to say damage to some other 2 organ, tissue, such as muscle. And the liver, 3 because the liver doesn't show any evidence of 4 necrosis that would cause elevation of enzymes. 5 And as I mentioned, the bilirubin level, which is a 6 key element in hepatic failure, never changed. It 7 stayed at 0.5. 8 Q Okay. Have you ever diagnosed a patient 9 with hepatic failure? 10 A I've diagnosed them with liver necrosis. 11 Hepatic failure is a clinical diagnosis. 12 Q But only after seeing slides, pathology 13 slides, correct? 14 A Yes, hepatic necrosis. 15 Q And when did you reach that last opinion 16 that you just told me about? 17 A After I reviewed the medical records and 18 looked at the autopsy slides of the liver. 19 Q Could have been within the last 30 days? 20 A Yes. 21 Q Do you have any reason to disbelieve 22 's testimony regarding what happened in</p>

DEPOSITION OF \_\_\_\_\_, M.D.  
CONDUCTED ON THURSDAY, JUNE 2, 2011

Page 102

1 the last hour of her husband's life?  
2 MR. \_\_\_\_\_: I'm going to object to the  
3 broad nature of the question, and it makes no  
4 reference as to what you're referring to. But  
5 I mean, you can answer the question if you  
6 understand it.  
7 A I have not memorized Miss \_\_\_\_\_'s  
8 deposition, so I don't know exactly what you're  
9 referring to.  
10 Q Well, you said that you relied upon some  
11 portions of the depositions in rendering opinions  
12 in this case. You just testified that, from  
13 perhaps the depositions, that Mr. \_\_\_\_\_ was having  
14 trouble getting down the Kayexalate. Would that  
15 come from the family assisting him with drinking  
16 the Kayexalate, from the deposition testimony that  
17 you read? Is that where you're getting that  
18 information from?  
19 A Yes, that's an impression I got from  
20 reading the deposition of Miss \_\_\_\_\_.  
21 Q Do you have any reason to disbelieve  
22 that testimony from Ms. \_\_\_\_\_ or her family members

Page 103

1 as to what happened in the last hour of her  
2 husband's life.  
3 MR. \_\_\_\_\_: Objection to form.  
4 A If you could refer to me to a specific  
5 statement or saying what Miss \_\_\_\_\_ said. I have  
6 not memorized her deposition.  
7 Q I didn't ask you to memorize --  
8 A I got a general impression that Mr. \_\_\_\_\_  
9 was having trouble taking down the  
10 Kayexalate.  
11 Q Okay. And that came from her testimony,  
12 correct, Doctor?  
13 A Correct.  
14 Q Okay. So you're relying upon her  
15 testimony as being accurate in rendering your  
16 opinions regarding, at least, the Kayexalate  
17 consumption; would that be fair?  
18 A Yes. And I'm not sure if the nurses'  
19 notes mentioned anything about it or not, and I  
20 don't recall. So I'd have to review that again.  
21 Q Okay. Can Kayexalate be administered  
22 rectally?

Page 104

1 A I don't know. I don't give Kayexalate.  
2 Q Do you know what it does?  
3 A Yes.  
4 Q What does it do?  
5 A It's absorbs potassium from the  
6 gastrointestinal tract. It's used to lower your  
7 blood potassium level. So I know that. I don't  
8 know the methods of administration.  
9 Q Okay. What is cardiomegaly?  
10 A Enlarged heart.  
11 Q And ischemia?  
12 A A lack of blood flow; the oxygen  
13 deprivation.  
14 Q Would ischemia cause a cardiac event?  
15 Can ischemia cause a cardiac event?  
16 A Sure. It's the most common cause of  
17 sudden death in the United States.  
18 Q And if there was an ischemic event of a  
19 minor nature, would that show up in the pathology  
20 slides?  
21 MR. \_\_\_\_\_: Objection to the form and  
22 the term "minor nature." You can answer.

Page 105

1 A What do you mean by minor?  
2 Q Can you have an ischemic event resulting  
3 in a cardiac event three days before a man passes  
4 away and have no evidence of that event show up in  
5 the slides taken of the heart?  
6 MR. \_\_\_\_\_: Objection to form.  
7 A I'm not sure what you mean by an  
8 ischemic events. A lot of people have angina.  
9 They have constriction of the coronary arteries.  
10 There's no pathologic findings that can lead to a  
11 cardiac arrhythmia; it won't leave any significant  
12 muscle damage. But electrically the muscle is not  
13 functioning properly. So you may not find anything  
14 pathologically on a slide. So it depends on what  
15 you're -- what event you're regarding -- referring  
16 to.  
17 Q Okay. Your opinion in the written  
18 documents indicate that Mr. \_\_\_\_\_ -- the pathology  
19 doesn't support the proposition that Mr. \_\_\_\_\_ had  
20 any preexisting cardiac processes, problems or  
21 injuries.  
22 There can be a preexisting cardiac

DEPOSITION OF \_\_\_\_\_, M.D.  
CONDUCTED ON THURSDAY, JUNE 2, 2011

<p style="text-align: right;">Page 106</p> <p>1 process that Mr. _____ may have went through that 2 precipitated his fall that would not show up in the 3 pathology slides; would you agree with that? 4 MR. _____ : I'm going to object to the 5 form, to the term "cardiac process," but you 6 can go ahead and answer. 7 A Do you mean an arrhythmia or -- 8 Q Well, Doctor -- 9 A -- what are we talking about? 10 Q -- this is -- this is a statement that 11 the lawyers who first hired you said that you were 12 going to give, and I'm just reading from that 13 statement. They used the term that you were going 14 to say the pathology does not support the 15 proposition Mr. _____ had any preexisting cardiac 16 processes. I presume that you informed the 17 attorneys that you were going to testify to that as 18 of February _____, _____ ? This is when they promulgated 19 this report. Is that correct? 20 A Yes. He did not have any evidence of 21 any ischemic cardiovascular disease. And I stand 22 by that statement, still. Based on the autopsy.</p>	<p style="text-align: right;">Page 108</p> <p>1 transcript. That's what he said. 2 A I have a qualified expert opinion; is 3 that what you're referring to? Or his deposition? 4 Q Well, I want to know if you're aware of 5 any opinions that Dr. _____ intends to give in 6 this case, through any method whatsoever, that you 7 disagree with. And I need to know what they are 8 and why you disagree with his opinions. 9 MR. _____ : I'll object to the form of 10 the question. 11 A I mean, you'll have to ask Dr. 12 what his opinions are. I mean, I could object 13 to -- you know, he could say something tomorrow and 14 I could object to it. So, I don't have full 15 knowledge of what Dr. _____ has said or is going 16 to say. 17 Q Well, Doctor, you have in front of you a 18 certificate of qualified expert that was prepared 19 by Dr. _____, along with his -- is it a six-page 20 detailed narrative that contains his opinions that 21 are signed by him? 22 A Yes. And I think I see one thing right</p>
<p style="text-align: right;">Page 107</p> <p>1 Q Okay. Are there other cardiac processes 2 that he could have had that caused him to fall and 3 pass out that wouldn't necessarily be found in the 4 slides of his heart? 5 A Sure. As I mentioned, you can have an 6 electrical disturbance, an arrhythmia, that will 7 not show up on a autopsy. 8 Q Have you read or are you aware of the 9 opinions that Dr. _____ intends to give in the 10 case? 11 A I don't think I've seen his deposition. 12 I may have had a letter. I don't recall it. I 13 mean -- 14 Q Okay. So -- 15 A I would have to look at it again, if I 16 have it. 17 Q So you don't -- so because you don't 18 know about his opinions, then it would be fair to 19 say that you're unable to comment on his opinions 20 today? 21 MR. _____ : No. I'm going to object. 22 He said he didn't have his deposition</p>	<p style="text-align: right;">Page 109</p> <p>1 here -- 2 Q Okay. 3 A -- that I object to. 4 Q Okay. 5 A Or disagree with. That Mr. 6 _____ died of shock while in the hospital. He did 7 not die of shock. He died of aspiration of 8 Kayexalate. 9 Q When did you reach the opinion that he 10 did not die of shock? 11 A When I determined that he died of 12 Kayexalate aspiration. 13 Q Okay. And this is nowhere written down, 14 though, correct? 15 A Right. 16 Q And did you actually say that to any 17 attorney, that he did not die -- that you do not 18 believe that he died of shock? 19 A That wasn't even brought up. I said he 20 died of Kayexalate aspiration. 21 Q So it's fair to say that you never told 22 any attorney in this case that you did not believe</p>

28 (Pages 106 to 109)

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DEPOSITION OF \_\_\_\_\_, M.D.  
CONDUCTED ON THURSDAY, JUNE 2, 2011

Page 110

1 that doctor -- that Mr. \_\_\_\_\_ died of shock; is  
2 that correct?  
3 A Correct.  
4 Q Okay. Any other opinions that you  
5 disagree with?  
6 A I mean, I'm --  
7 MR. \_\_\_\_\_ : Objection to form.  
8 A If you want to spend a couple of hours  
9 here, we can go over this line by line.  
10 Q Well --  
11 A I mean, would you like to do that?  
12 Q -- do you intend -- here's what I need  
13 to know. This is the only opportunity that I have  
14 to develop all the opinions that you intend to give  
15 in this case.  
16 A Okay.  
17 (Cellphone call.)  
18 Q If I don't ask you -- you can take a  
19 break, Doctor, if you want. We've been here for  
20 two hours. If you need five minutes to take that.  
21 THE WITNESS: No, that's okay.  
22 MR. GASTON: Go ahead.

Page 111

1 (Brief pause.)  
2 BY MR. GASTON:  
3 Q We're back on the record. And the  
4 reason I'm asking you all of your opinions, Doctor,  
5 is because this is the only time that I have to  
6 glean your opinions, and the opinions that I've  
7 been provided to date were the only two that were  
8 contained in the preliminary designation of expert  
9 witnesses that were filed February of \_\_\_\_\_. And if  
10 your attorney intends to ask you if you have any  
11 other opinions or intend to comment on any of the  
12 opinions rendered by Dr. \_\_\_\_\_ or Dr. \_\_\_\_\_, I  
13 need to know what they are today because this is  
14 the only time that I have to ask you those  
15 questions. Then I'll ask you again when did you  
16 reach those opinions, the date, and who you related  
17 those opinions to.  
18 A It says that Mr. \_\_\_\_\_ had an acute  
19 cardiac event. There's no pathologic evidence of  
20 an acute cardiac event, based on pathology.  
21 Q Is there any clinical evidence of an  
22 acute pathologic event?

Page 112

1 A Acute pathologic event? Pathologic  
2 event?  
3 Q An acute -- sorry. Acute cardiac.  
4 Excuse me. Off the record.  
5 (Discussion held off the record.)  
6 Q Is there any evidence that -- any  
7 clinical evidence that he had an acute cardiac  
8 event?  
9 A Not that I know of. His troponin level  
10 was normal. He had elevated CK-MB, but that came  
11 from the skeletal muscle just like his CPK, and his  
12 AST and ALT, as I mentioned earlier.  
13 Q And what about the AST and ALT?  
14 A As I said, they probably did not come  
15 from his liver, did not come from his heart. So I  
16 don't think he had an acute cardiac event while in  
17 the hospital.  
18 Q Have you ever diagnosed a living patient  
19 with an acute cardiac event?  
20 A Have I?  
21 Q Yes, sir.  
22 A No, I don't practice clinical medicine.

Page 113

1 I'm basing this on pathology. I have no evidence  
2 of any acute cardiac event based on pathology,  
3 other than what I can see pathologically, as we  
4 already have discussed.  
5 I think I already mentioned that Mr.  
6 \_\_\_\_\_ did not meet criteria for transfusion at  
7 \_\_\_\_\_ Medical Center, based on his blood counts.  
8 And I don't believe there was anything mentioned in  
9 the medical record that Mr. \_\_\_\_\_ was in shock.  
10 There are no doctors' notes, nurses' notes saying  
11 that Mr. \_\_\_\_\_ was in shock. And Dr. \_\_\_\_\_ is  
12 stating that Mr. \_\_\_\_\_ was in shock.  
13 Q That would be a clinical diagnosis?  
14 A Yeah. It's not mentioned anywhere in  
15 the medical record that Mr. \_\_\_\_\_ is in shock.  
16 Q And do you intend to render an opinion  
17 on the clinical diagnosis regarding that, and that  
18 there is no evidence in the clinical record that he  
19 had any signs or symptoms of shock?  
20 A That's a clinical diagnosis. I'll leave  
21 that to clinicians. But I don't see any mention in  
22 the nurses' notes or in the doctors' notes that Mr. \_\_\_\_\_

DEPOSITION OF \_\_\_\_\_, M.D.  
CONDUCTED ON THURSDAY, JUNE 2, 2011

Page 114

1 was in shock.  
2 Q Okay.  
3 A So I see no evidence that Mr. \_\_\_\_\_ was  
4 in shock, based on the medical record.  
5 Q But you're going to leave the opinion as  
6 to whether or not he was in shock to other doctors  
7 whom you do not intend to comment or give an  
8 opinion as to whether he was in shock; is that  
9 correct?  
10 MR. \_\_\_\_\_ : No, I'm going object. He  
11 said there's no evidence in the record of it.  
12 Q I just didn't know if you intend to give  
13 an opinion, in your opinion, that Mr. \_\_\_\_\_ did not  
14 have signs and symptoms of shock, clinical signs  
15 and symptoms of shock. Do you intend to give that  
16 opinion, or do you intend to leave that to the  
17 clinicians, the other doctors who were treating  
18 him?  
19 MR. \_\_\_\_\_ : I'll object to the form of  
20 the question. He's already expressed that  
21 opinion. But you can answer.  
22 A Yeah, I'll leave it to the clinicians to

Page 115

1 say whether he had shock. It's just not mentioned  
2 in the medical record anywhere that Mr. \_\_\_\_\_ ever  
3 had shock.  
4 Q Okay.  
5 A And most nurses are pretty attuned to  
6 that and most doctors are pretty attuned to whether  
7 somebody's got shock. So it's not mentioned in the  
8 nurses' notes or in the doctors' notes.  
9 Q What are the classic signs and symptoms  
10 of shock?  
11 A I'll leave it to the clinicians.  
12 Q Hold on. Now, you -- well, if you --  
13 A I'm just saying it's not written in the  
14 medical record that Mr. \_\_\_\_\_ had shock.  
15 Q Okay. But --  
16 A Anywhere.  
17 Q But see, you can't do that and then say  
18 you'll leave it to the -- either you're not going  
19 to comment on shock, or you are. If you are going  
20 to comment, then I need to go down another road  
21 with you.  
22 A Okay, I'm not going to comment on it.

Page 116

1 I'm just saying it's not anywhere in the medical  
2 record that he was in shock.  
3 Q Well, I need to ask you another  
4 question.  
5 A -- to that definitive statement.  
6 Q I need to ask you another question.  
7 What are the classic symptoms and signs of shock?  
8 A I'll leave that to the clinicians to  
9 explain.  
10 Q Do you know what they are, or not?  
11 A I have seen medical records of people in  
12 shock, and where people have been described as  
13 having shock.  
14 Q But you're unable to describe the  
15 classic symptoms and signs of shock from the  
16 medical standpoint as we sit here today. You do  
17 not feel you're qualified to talk about that issue;  
18 is that correct?  
19 A I'll leave it to the clinicians.  
20 Q Does that mean you're not able to talk  
21 about that today?  
22 MR. \_\_\_\_\_ : Objection. He answered

Page 117

1 the question.  
2 A Yes, I'm not going to talk about it  
3 today.  
4 Q And you're not going to talk about it at  
5 trial?  
6 A Right. I'll leave that to other people.  
7 Q All right. Thank you. Okay.  
8 Do you know over what period of time or  
9 how many minutes -- I'm sorry, do you know what the  
10 pO2 level was before Mr. \_\_\_\_\_ started to go into  
11 convulsions? Do you have any idea?  
12 A I have no idea.  
13 Q Do you know how long it took for the PO  
14 level to drop to 18?  
15 A I have no idea.  
16 Q Talked about acute tubular necrosis, and  
17 I don't know whether I asked you that question.  
18 Was there evidence of acute tubular necrosis in Mr.  
19 \_\_\_\_\_'s kidneys?  
20 A Yes, there was.  
21 Q And you correct me if I'm wrong, Doctor.  
22 Did I already ask you whether or not you knew what

30 (Pages 114 to 117)

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DEPOSITION OF \_\_\_\_\_, M.D.  
CONDUCTED ON THURSDAY, JUNE 2, 2011

Page 118

1 the cause of that was and did you say you didn't  
2 know?  
3 A I think you did ask that and I said I  
4 didn't know.  
5 Q Thank you very much.  
6 Do you intend to give any other opinions  
7 other than what we've already discussed here today?  
8 MR. \_\_\_\_\_: I'll just object to the  
9 form of the question.  
10 A That's a broad question. Unless I find  
11 further information, I think I've expressed my  
12 opinions at this point in time.  
13 Q Okay. Do you intend to give any other  
14 explanations to the jury of the opinions that you  
15 intend to give at trial, other than what you  
16 haven't discussed here today?  
17 MR. \_\_\_\_\_: I'll object to the form of  
18 the question, and to the term, quote,  
19 explanations unquote.  
20 A You know, again, I'll say that I reserve  
21 the right to, you know, explain things if I get  
22 more information, find more facts. At this point

Page 119

1 in time, I think I've given you my opinions.  
2 Q And have you given me the explanations  
3 for your opinions that you intend to provide to the  
4 jury at the time of trial?  
5 MR. \_\_\_\_\_: Objection to form.  
6 Q So far as of today?  
7 A Yes.  
8 Q Okay.  
9 MR. GASTON: All right. I just need a  
10 couple minutes. I think that's all the  
11 questions I have.  
12 THE WITNESS: Okay.  
13 (Brief pause.)  
14 BY MR. GASTON:  
15 Q Doctor, you could correct me if I'm  
16 wrong, but did I understand your testimony that,  
17 for all the opinions that you reached in this case,  
18 you never prepared one single note of those  
19 opinions, written note; is that correct?  
20 A Correct. That's how I usually do it.  
21 Q And you never have one single note of  
22 any explanations of why you reached those opinions

Page 120

1 written down anywhere?  
2 A For this case and every other case I've  
3 ever done I've never taken notes.  
4 Q Okay. And would the same thing say that  
5 if you never take any notes, then there's no e-mail  
6 communication between any attorneys that conveyed  
7 your opinions or any explanation for your opinions  
8 either?  
9 A Correct.  
10 Q Okay.  
11 A I think the only e-mails were ever  
12 appointments and dates and things like that.  
13 Q On the death certificate, we talked  
14 about renal failure, hepatic failure, and left  
15 pelvic fracture? We didn't talk about exacerbation  
16 of autoimmune disease. Do you feel qualified to  
17 give an opinion whether or not Mr. \_\_\_\_\_ died, one  
18 of the causes of his death were exacerbation of  
19 autoimmune disease?  
20 MR. \_\_\_\_\_: Well, let me just object  
21 in terms of the use of "give an opinion." Was  
22 he able to exclude it or whether it was the

Page 121

1 cause of it; is that your question?  
2 MR. GASTON: No. And I'd appreciate, if  
3 you're going to say a speaking objection, we  
4 need to leave.  
5 Q The question is this: do you feel  
6 qualified as an expert to talk about or give an  
7 opinion as to whether or not one of the causes of  
8 Mr. \_\_\_\_\_'s death was an exacerbation of autoimmune  
9 disease?  
10 MR. \_\_\_\_\_: Objection; form and  
11 foundation. You can answer.  
12 A I can tell you that the slides at  
13 autopsy showed no pathologic evidence of any  
14 autoimmune disease. So I can say, based on  
15 pathology, I find no evidence of autoimmune  
16 disease. I think the pathologist who did the  
17 autopsy noted the same thing, that there was no  
18 definitive evidence of autoimmune disease based on  
19 pathology.  
20 Q And from the death certificate, would  
21 you agree that the death certificate was also  
22 signed by the office of the medical examiner?



DEPOSITION OF \_\_\_\_\_, M.D.  
CONDUCTED ON THURSDAY, JUNE 2, 2011

Page 122

1 A I'm not sure. Where?  
2 Q If I may point out to you, Doctor, OCM  
3 and the signature there?  
4 MR. \_\_\_\_\_: Objection.  
5 A I'm not sure whose signature that is.  
6 And I'm not sure why they signed this death  
7 certificate.  
8 Q Okay. Do you agree that the cause of  
9 death was accidental?  
10 MR. \_\_\_\_\_: Objection to form.  
11 A Yes. He aspirated Kayexalate. I guess  
12 if you want to call that an accident.  
13 Q But not the accident of the left pelvic  
14 fracture leading up to his death?  
15 MR. \_\_\_\_\_: Objection to form.  
16 A Well, obviously, there's -- he had a  
17 fall and I guess you can call that an accident.  
18 But his true cause of death was aspiration of  
19 Kayexalate.  
20 Q And again from your opinion there is no  
21 definitive reason why he aspirated the Kayexalate;  
22 would that be correct?

Page 123

1 MR. \_\_\_\_\_: I'll object to the form  
2 and foundation of the question. He's  
3 testified --  
4 MR. GASTON: That's fine. Please don't  
5 do a speaking objection.  
6 A It says throughout the records that Mr.  
7 \_\_\_\_\_ had nausea and vomiting, had episodes of  
8 nausea and vomiting before he even got the  
9 Kayexalate. So I assume that we can assume that he  
10 still had nausea and vomiting when he got the  
11 Kayexalate, and he aspirated the Kayexalate from  
12 his vomiting.  
13 Q But what caused the vomiting?  
14 A Well, he had persistent nausea and  
15 vomiting throughout his hospitalization. And I  
16 don't know what caused it.  
17 Q That's my question. Okay. Thank you.  
18 A There's no pathologic cause for it that  
19 I can find. He didn't have evidence of gastritis,  
20 esophagitis, or anything significant in his  
21 gastrointestinal tract that would cause vomiting.  
22 Q And no other cause that you can find out

Page 124

1 from the record that would have produced that  
2 vomiting at that time, in your opinion?  
3 A I think in his records he had persistent  
4 nausea for actually quite a long period of time in  
5 his medical records, even before his  
6 hospitalization he had episodes of nausea. So I'm  
7 not sure what caused it. There's no pathologic  
8 basis for it that I can find.  
9 Q Okay. All right.  
10 MR. GASTON: That's all the questions I  
11 have.  
12 THE WITNESS: Thank you.  
13 MR. \_\_\_\_\_: I just have a couple.  
14 THE WITNESS: Sure.  
15 EXAMINATION  
16 BY MR. \_\_\_\_\_:  
17 Q In your review of this case, did you see  
18 any evidence of pulmonary inflammation?  
19 A No. No pneumonitis, no evidence of  
20 pulmonary inflammation.  
21 Q Can you explain from a pathological  
22 standpoint what happened when the Kayexalate

Page 125

1 aspirated in terms of his inability to deliver  
2 oxygen to his circulatory system?  
3 A Sure. The gastric contents basically  
4 plugged all his airways and even went out into the  
5 air sacs, small air sacs, which meant that he could  
6 not breathe in adequate amount of air to oxygenate  
7 it -- to oxygenate his blood.  
8 Q And how were you able to exclude any  
9 bleeding as the cause of his demise?  
10 A Based on the description in the autopsy,  
11 the -- it was --  
12 (Cellphone call.)  
13 THE WITNESS: Wait a second. It'll  
14 stop. I'll let that go.  
15 MR. \_\_\_\_\_: Just for the record, we  
16 had an interruption of a phone call during his  
17 answer.  
18 A Good. Could you repeat that question,  
19 please.  
20 Q Sure. Could you tell me how were you  
21 able to exclude bleeding as the cause of his  
22 demise?

32 (Pages 122 to 125)

DEPOSITION OF \_\_\_\_\_, M.D.  
CONDUCTED ON THURSDAY, JUNE 2, 2011

Page 126

1 A The one thing that based on the  
2 autopsy report, they didn't even put hemorrhage or  
3 bleeding at the top of their list of their anatomic  
4 diagnoses. The number one cause of death, based on  
5 A/D, A slash D, is aspiration with Kayexalate  
6 crystals. If you look at the autopsy report, it  
7 says soft tissue hematomas; it's all the way down  
8 the page in terms of the anatomic diagnoses. So I  
9 don't think his bleeding was significant enough for  
10 to regard him as having him bled to death.  
11 I don't know if that explains the  
12 question, but based on what the pathologist at  
13 says in their report.  
14 MR. \_\_\_\_\_: I have no other questions.  
15 Thank you.  
16 FURTHER EXAMINATION  
17 BY MR. GASTON:  
18 Q Doctor, when did you inform any  
19 attorneys that you excluded bleeding as the cause  
20 of death, other than two minutes ago?  
21 A Based on the \_\_\_\_\_ reports saying  
22 that, and also on my review of the slides, that he

Page 127

1 died of Kayexalate aspiration. It's specifically  
2 stated in the report --  
3 (Cellphone call.)  
4 MR. \_\_\_\_\_: Can I take this?  
5 (Brief pause.)  
6 BY MR. GASTON:  
7 Q I do have another question for the  
8 record. Doctor, your last answer didn't really  
9 answer my question, and I'll ask it again. When is  
10 the first time that you told an attorney that you  
11 excluded bleeding as one of the proximate causes of  
12 Mr. \_\_\_\_\_'s death?  
13 A Within the last month, when I had a  
14 discussion with \_\_\_\_\_ actually, before that. First,  
15 it was after I got the slides and the reports and  
16 discussed it with Mr. \_\_\_\_\_, and then I  
17 discussed it with another attorney, Miss \_\_\_\_\_,  
18 I believe.  
19 Q Right. When did you speak to Miss \_\_\_\_\_  
20 ? That's the question.  
21 A Within the last month.  
22 Q Last 30 days? Okay.

Page 128

1 A And I said I didn't think the bleeding  
2 led to Mr. \_\_\_\_\_'s death.  
3 Q And that was because there was simply --  
4 the amount of blood wasn't quantified in the  
5 autopsy report; would that be correct?  
6 MR. \_\_\_\_\_: Objection to form.  
7 A That was not quantified, and also his  
8 blood counts did not drop to a significantly low  
9 level to cause his death. A hemoglobin of 8.7,  
10 hematocrit of 24.8 is not the type of hemoglobin  
11 and hematocrit that will cause somebody's death.  
12 That's well tolerated. We get ladies with  
13 C-sections that go down to 18, you know, 17  
14 hematocrits. We get postop patients who go lower  
15 than Mr. \_\_\_\_\_, and they don't die.  
16 Q But we're not talking about other  
17 people, with respect, we're talking about Mr. \_\_\_\_\_.  
18 So I need to know what are the other facts  
19 that you intend to tell the jury to explain your  
20 opinion that his bleeding was not a proximate cause  
21 of his death for this man in this case?  
22 MR. \_\_\_\_\_: In addition to what he's

Page 129

1 already testified?  
2 MR. GASTON: No, I need --  
3 Q You said -- no. I just -- that's my  
4 question.  
5 A Okay. As I just mentioned, his  
6 hemoglobin and hematocrit levels are not the type  
7 of level that would cause somebody to die. You  
8 have to be significantly lower than that to die. I  
9 see this level in patients in the hospital every  
10 day, postoperatively, and they don't die. And from  
11 my experience, that level is not that low. It  
12 doesn't even qualify for transfusion here at  
13 \_\_\_\_\_ Medical Center.  
14 In addition, the hematomas are not  
15 quantified, but they're not given a significant  
16 place, let me say, in the autopsy report, and  
17 they're not mentioned as a cause of death in the  
18 autopsy report. If the prosecutor and the attending  
19 at \_\_\_\_\_ thought that this gentleman had bled to  
20 death, they would have more likely than not put it  
21 into the autopsy report. And it's not even  
22 mentioned.

DEPOSITION OF \_\_\_\_\_, M.D.  
CONDUCTED ON THURSDAY, JUNE 2, 2011

Page 130

1 Q Can loss of blood lead to shock that can  
2 lead to death?  
3 A Sure.  
4 MR. GASTON: Thank you very much.  
5 THE WITNESS: You're welcome.  
6 MR. \_\_\_\_\_: We won't waive. You can  
7 send it to him -- to me, and I'll send it to  
8 the doctor.  
9 (Discussion held off the record.)  
10 MR. \_\_\_\_\_: We've reached an  
11 agreement. There were actually eight exhibits  
12 altogether in this case. Exhibit No. 8 is the  
13 set of medical records that the doctor was  
14 going to actually retain and keep.  
15 Exhibits 1 through 5 are documents that  
16 will be kept by Mr. Gaston, and he's going to  
17 make copies and then return them to me.  
18 And with reference to Exhibits 6 or 7,  
19 which are the pathology slides, Mr. Gaston  
20 will retain and keep custody of Exhibits 6 and  
21 7, have them reviewed by his experts, and then  
22 he will return Exhibits 6 and 7 back to me so

Page 131

1 we can use them at trial.  
2 MR. GASTON: That's accurate.  
3 (Signature having not been waived, the  
4 deposition of \_\_\_\_\_, M.D.  
5 concluded at 6:33 p.m.)  
6  
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Page 132

1 REPORTER'S CERTIFICATE  
2 I, \_\_\_\_\_, Certified Shorthand  
3 Reporter and Notary Public, do hereby certify that  
4 the foregoing is a true and accurate transcript of  
5 my stenographic notes of the deposition of  
6 \_\_\_\_\_, who first duly declared and/or  
7 affirmed, taken at the place and on the date  
8 hereinbefore set forth.  
9 I further certify that I am neither attorney  
10 nor counsel for, nor related to or employed by any  
11 of the parties to the action in which this  
12 deposition was taken, nor financially interested in  
13 this action.  
14 THE FOREGOING CERTIFICATION OF THIS TRANSCRIPT  
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