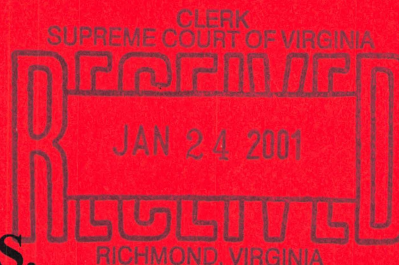


262 Va 119

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# In The Supreme Court of Virginia

RECORD NO. 001712



**SOTIRI PONIRAKIS,**

*Appellant,*

v.

**DAVID CHOI, M.D.,**

*Appellee.*

---

## APPENDIX Volume I of II

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VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

CIVIL DIVISION

98 SEP -8 AM 11:52

JOHN J. KELLY  
CLERK, CIRCUIT COURT  
FAIRFAX, VA

SOTIRI PONIRAKIS  
8052 Powderbrook Lane  
Springfield, VA 22153

Plaintiff,

v.

NORTHERN VIRGINIA CARDIOLOGY  
ASSOCIATES, P.C.  
3301 Woodburn Road  
Suite 107  
Annandale, VA 22003

Serve: Registered Agent  
Carl P. Bon Tempo  
3301 Woodburn Road  
Suite 107  
Annandale, VA 22003

and

JACK D. HORTON, M.D.  
3301 Woodburn Road  
Suite 107  
Annandale, VA 22003

and

EMERGENCY PHYSICIANS OF  
NORTHERN VIRGINIA, LTD.  
3300 Gallows Road  
Falls Church, VA 22042

Serve: Registered Agent  
J. Robert McAllister, III  
1650 Tysons Boulevard  
Suite 700  
McLean, VA 22102

and

L 174553

RANDALL B. CASE, M.D.	)
Emergency Physicians of Northern	)
Virginia, Ltd.	)
3300 Gallows Road	)
Falls Church, VA 22042	)
	)
and	)
	)
DAVID K. CHOI, M.D.	)
6641 Wakefield Drive	)
#108	)
Alexandria, VA 22307	)
	)
Defendants.	)

**MOTION FOR JUDGMENT**

The plaintiff, Sotiri Ponirakis, through counsel, moves for judgment against the defendants, jointly and severally, for medical negligence.

1. This case concerns a serious medical condition known as lupus nephritis. Sotiri Ponirakis was suffering from this condition in late 1996 and early 1997. Due to the combined negligence of the defendants, a delay of six to seven months occurred in detecting and treating this disease. The delay caused the plaintiff to suffer end-stage kidney disease for which he recently had a kidney transplant. Proper treatment would have prevented this outcome.

2. Sotiri Ponirakis was born on October 8, 1976. He lives at 8052 Powderbrook Lane, Springfield, Virginia 22153, with his parents, Manolis and Mina Ponirakis.

3. Northern Virginia Cardiology Associates is a professional corporation of cardiologists who provided care to Mr. Ponirakis between November 1996 and January 1997, primarily through its employee, Jack D. Horton, M.D., a board-certified cardiologist.

4. Fairfax Emergency Medical Associates is a professional corporation that provided



care to Sotiri Ponirakis on December 13, 1996 at the Fairfax Hospital emergency department. The attending physician at that time was Randall B. Case, M.D., an employee of Fairfax Emergency Medical Associates.

5. David K. Choi, M.D. is a family practice physician who was Sotiri Ponirakis' primary care physician between November 1996 and September 1997.

6. Sotiri Ponirakis developed symptoms of chest pain and nausea and vomiting in November 1996. He was seen by Dr. Choi, who referred him to Northern Virginia Cardiology Associates.

7. His cardiac work-up included electrocardiograms, an echocardiogram, blood work, and ultimately a cardiac catheterization on January 10, 1997.

8. In violation of the Virginia standard of care, Jack D. Horton, M.D. failed to follow up on significant abnormalities in his laboratory results, which included:

A. A sedimentation rate of 51 on December 4, 1996 which increased to 115 on January 10, 1997.

B. A creatinine of 1.8 in December, which increased to 2.1 on January 10, 1997.

C. A hematocrit of 37% on January 10, 1997.

D. A PTT of 47 on January 10, 1997.

9. These signs, along with electrocardiographic changes that suggested pericarditis, pointed toward a connective tissue disease that needed to be promptly investigated.

10. Dr. Horton failed to notify the patient of these abnormal findings and failed to see to it that he received appropriate follow up.

11. Mr. Ponirakis was treated at the Fairfax Hospital emergency department on December 13, 1996 for an episode of syncope at home. Blood work at that time revealed a BUN of 23 and creatinine of 1.9. In violation of the Virginia standard of care, Dr. Randall Case and Fairfax Emergency Medical Associates failed to notify the patient of this abnormal finding, failed to notify his primary care physician, Dr. Choi, and failed to conduct other appropriate followup.

12. In violation of the Virginia standard of care, Dr. Choi failed to make appropriate followup for the patient's unexplained signs and symptoms for which he repeatedly presented himself to Dr. Choi in late 1996 and early 1997.

13. On July 1, 1997, Mr. Ponirakis returned to Dr. Choi with blood in his urine, flank pain, nausea and vomiting. His creatinine on that date was 4.5. A repeat creatinine on July 8, 1997 was 5.3. At that point, after a CT scan and urology consult through Dr. Choi, Mr. Ponirakis was admitted to Alexandria Hospital on July 10, 1997, under the care of David Mahoney, M.D., a nephrologist. Dr. Mahoney diagnosed lupus nephritis and began treating Mr. Ponirakis with corticosteroids and cytotoxic drugs.

14. Because of the late diagnosis of Mr. Ponirakis' lupus nephritis, his kidneys could not be saved, and he was required to undergo kidney dialysis, and ultimately on July 23, 1998, a kidney transplant at Georgetown University Hospital, Washington, D.C. His father, Manolis Ponirakis, provided the donor kidney.

15. If the standard of care had been followed by the defendants, the lupus nephritis would have been diagnosed in December 1996 or January 1997, and Mr. Ponirakis would not have progressed to end-stage kidney failure.

16. As a result of the defendants' negligence, Sotiri Ponirakis has incurred and will



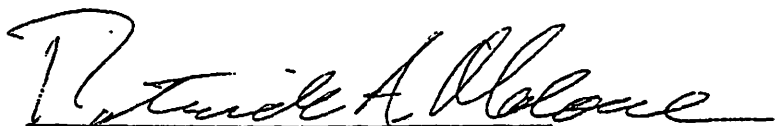
incur pain, suffering and disfigurement, medical expenses, and loss of earning capacity.

WHEREFORE, the plaintiff asks for compensatory damages against the defendants, jointly and severally in the amount of One Million Dollars (\$1,000,000), or whatever higher amount may be allowed by the Virginia Code and/or the Virginia and United States Constitutions, with post-judgment interest and costs.

SOTIRI PONIRAKIS

By Counsel

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Patrick A. Malone".

Patrick A. Malone, Va. Bar No. 025718

STEIN, MITCHELL & MEZINES

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Attorneys for Plaintiff

# COPY

## PARTIAL I

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

- - - - -	x	
SOTIRI PONIRAKIS,	:	
Plaintiff,	:	
vs.	:	At Law No. 174553
	:	
NORTHERN VIRGINIA CARDIOLOGY	:	
ASSOCIATES, P.C., et al.,	:	
	:	
Defendants.	:	
- - - - -	x	

Fairfax, Virginia  
Monday, April 10, 2000

The trial commenced at 10:00 a.m.

BEFORE:

THE HONORABLE STANLEY P. KLEIN.

APPEARANCES:

PATRICK A. MALONE, ESQ., Stein, Mitchell &  
Mezines, 1100 Connecticut Avenue,  
N.W., Suite 1100, Washington, D.C.  
20036, and  
BENJAMIN W. GLASS, ESQ., 3915 Old Lee  
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Virginia 22030, counsel for  
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STEPHEN L. ALTMAN, ESQ., and MARC A.  
BROWN, ESQ., Montedonico, Hamilton &  
Altman, P.C., 10306 Eaton Place,  
Suite 100, Fairfax, Virginia 22030,  
counsel for defendant David Choi, M.D.

## I-N-D-E-X

WITNESS:	DIRECT	CROSS	REDIRECT	RECROSS
David Choi, M.D.	6	91		

## E-X-H-I-B-I-T-S

PLAINTIFF'S EXHIBIT	MARKED:	REC'D.:
No. 5 (Dr. Pappas records)	27	27
No. 7 (Dr. Choi records)	28	28
No. 13 (Fairfax ER records)	44	45
No. 16 (Arlington Hospital)	57	58

\* \* \*

\* \* \*

1 consider amending the statute, but that's the statute  
2 and the motion to allow any of the experts to be in  
3 the courtroom is denied, seeing that there's no  
4 agreement between counsel.

5 Counsel, it is your responsibility to  
6 police your own witnesses to be sure it's in  
7 compliance with the rule.

8 It didn't happen in my courtroom but it  
9 happened with one of my colleagues about a month or  
10 two ago where someone was given overnight a transcript  
11 of the testimony that went on in the courtroom to one  
12 of the other experts. Let me disavow you of any  
13 notion to do that because that would still be a  
14 violation of the rules. Okay?

15 (Jurors entering courtroom.)

16 THE COURT: Good afternoon. Plaintiff's  
17 first witness, Mr. Malone.

18 MR. MALONE: Dr. David Choi.

19 (Witness sworn.)

20 THE COURT: Good afternoon, Dr. Choi.

21 Have a seat and make yourself comfortable, sir. I  
22 would ask that you please speak into the microphone

1 and keep your voice up so the ladies and gentlemen can  
2 hear you. Listen to and answer only the specific  
3 questions that the attorneys may ask you.

4 You may proceed, sir.

5 Whereupon,

6 DAVID CHOI, M.D.,  
7 defendant, was called for examination by counsel for  
8 plaintiff, and, after having been previously duly  
9 sworn, was examined and testified as follows:

10 DIRECT EXAMINATION

11 BY MR. MALONE:

12 Q Go ahead by telling us your full name.

13 A David K. Choi.

14 Q And tell us a little bit about your  
15 medical training.

16 A I was in a pre-medical school in Chunyang,  
17 Korea, and I had medical school in South Korea four  
18 years, and I had one year rotationship to --

19 Q I just want you to give us dates as you go  
20 along. I don't mean to interrupt.

21 A Dates?

22 Q The date of medical school. Sorry. I

1 didn't mean to interrupt.

2 A I was pre-medical school in Chunyang 1948  
3 through 1950 and medical school in Chunyang University  
4 in Korea 1957 through 1961.

5 Q And it's routine practice for doctors  
6 after medical school to go through internship and  
7 residency; true?

8 A Yes.

9 Q Did you do that both in Korea and here in  
10 the United States?

11 A Yes.

12 Q And when did you move to the United  
13 States, by the way?

14 A I came to the United States 1964.

15 Q And did you take an internship and  
16 residency at that point?

17 And I have something your lawyer gave me  
18 that says you were over at Prince George's Hospital in  
19 Cheverly, Maryland?

20 A Yes.

21 Q What kind of internship or residency was  
22 that?



1           A       It was a rotating internship.

2           Q       Which means you go through different  
3 departments?

4           A       Yes.

5           Q       And then did you have a residency after  
6 that?

7           A       Yes, sir.

8           Q       Was that residency program an  
9 officially-accredited program by the American  
10 Association of Medical Colleges?

11          A       Yes, sir.

12          Q       Did you finish that residency program?

13          A       Yes, sir.

14          Q       Did you finish at Prince George's?

15          A       No. I had two years in Prince George's  
16 Hospital and one-half years in the Freedman Hospital  
17 in Washington, D.C.

18          Q       In Washington, D.C.

19                 So at that point you had completed a  
20 four-year internal medicine residency?

21          A       Three-and-a-half years.

22          Q       Isn't it routine practice to take a Board

1 certification examination around the time that you  
2 finish your residency?

3 A Yes.

4 Q Did you do that?

5 A. I didn't take the Board examination.

6 Q You did not?

7 A I did not take the Board examination right  
8 after finish residency training.

9 Q From your deposition testimony, I  
10 understood that you didn't take the Board examination  
11 in internal medicine until approximately 1997, around  
12 the time you were seeing my client, Mr. Ponirakis; is  
13 that right?

14 A Yes, sir.

15 Q And did you pass it at that time?

16 A No.

17 Q Tell us a bit about what the examination  
18 consisted of. Was it a written examination?

19 A Yes, that's all a written examination.

20 Q If you pass the written examination, do  
21 you go on and take an oral examination?

22 A No. Internal medicine doesn't have any

1 oral examination.

2 Q It is purely written?

3 A Yes, sir.

4 Q How long does it take? A day? A  
5 half-day?

6 A I think three days.

7 Q Okay. Now, in terms of your --. You were  
8 practicing -- .

9 I'm sorry. I should back up.

10 After you finished the residency, did you  
11 open an internal medicine practice after that?

12 A No, sir.

13 Q What did you do?

14 A I had working about a year in Sibley  
15 Memorial Hospital as a house physician in OB/GYN  
16 department.

17 Q Does that mean you delivered babies?

18 A I helped sometimes.

19 Q Well, have you had specific obstetrics  
20 training? Have you had an obstetrics residency?

21 A I did a rotating internship where you  
22 helped out in OB/GYN cases.

1           Q     You were primarily limited to giving the  
2 medical care for the obstetrics patients as opposed to  
3 being the actual delivering doctor?

4           A     Yes, sir. I just helped.

5           Q     After you spent a year at Sibley, what did  
6 you do?

7           A     I moved to the Chest Clinic in Washington,  
8 D.C., Northwest.

9           Q     What does that mean, Chest Clinic?

10          A.     That's for patient who has respiratory  
11 disease, which is government-treated.

12          Q     You worked in the government?

13          A     For D.C. Government.

14          Q     For about a year or so?

15          A     Yes.

16          Q     And then when did you set up your own  
17 private medical practice?

18          A     I started medical practice 19 -- actually  
19 '73 in part-time D.C., and I started full-time  
20 practice 1974 in Virginia.

21          Q     And you have been a full-time medical  
22 practitioner in Virginia since then?

1           A     Yes, sir.

2           Q     Did you have to take a specific Virginia  
3     licensing test or did Virginia just accept anything  
4     you might have taken previously?

5           A.    I passed examinations in Maryland, which I  
6     obtained Maryland license. Then I had Virginia  
7     license with reciprocity with Maryland license.

8           Q     If I'm hearing you right, you're saying  
9     the State of Virginia licensed you reciprocally  
10    because Maryland had given you a license. You had the  
11    Flex examination?

12          A     Yes.

13          Q     When did you take the Flex examination?

14          A     I cannot remember exactly.

15          Q     Just roughly.

16          A     It could be 1968 or 1996.

17          Q     Now, that's a licensing examination as  
18    opposed to a specialty examination?

19          A     Yes.

20          Q     You haven't taken any other specialty  
21    board examinations other than the one that you  
22    mentioned that you failed to pass in 1997; is that

1 right?

2 A No, sir.

3 Q Now, your practice consisted of, as I  
4 understood it, both family practice and internal  
5 medicine practice; is that right?

6 A Yes.

7 Q Did you say anything to your patients  
8 specifically about not being Board certified in either  
9 one of those specialties?

10 MR. ALTMAN: Objection. Irrelevant, Your  
11 Honor.

12 THE COURT: Any response?

13 MR. MALONE: Not really.

14 THE COURT: I sustain the objection.

15 MR. MALONE: That's fine.

16 BY MR. MALONE:

17 Q Let's talk about Sotiri Ponirakis. Now,  
18 when he came to you, you were his primary care doctor;  
19 is that right?

20 A Yes.

21 Q And you were in charge of his case?

22 A Yes.



1           Q     There's a term called "gatekeeper" that we  
2 hear about from primary care doctors. What does this  
3 mean to you?

4           A.     "The gatekeeper" means I taking care of  
5 the patient and the follow-up and the report. Those  
6 things I carry on.

7           Q     And the referrals that you made, you did a  
8 written authorization for each one of those referrals;  
9 true?

10          A.     Not everybody. Depends on the insurance  
11 policy.

12          Q     I meant for Mr. Ponirakis.

13          A     Yes. He need referral by the primary  
14 physician.

15          Q     You filled out a referral form and signed  
16 it each time you sent him out for any kind of either  
17 testing by a radiologist or something or any time you  
18 sent him to see another specialist?

19          A     Everything we had to fill out the form.  
20 For X-ray report, for X-ray.

21                 THE COURT: Ladies and gentlemen of the  
22 jury, can you all understand? Are you having any

1 difficulty?

2 No comment? Is that good news or bad  
3 news?

4 JUROR: I understand.

5 THE COURT: You understand?

6 MR. MALONE: I'm trying to repeat when I  
7 don't exactly hear.

8 BY MR. MALONE:

9 Q Now, I just want to talk about the way the  
10 referrals went. Let me just give an example at random  
11 here.

12 For example, when you sent the patient to  
13 -- patient referral form -- this is Exhibit 7, page  
14 28. This is when you sent Mr. Ponirakis to see the  
15 orthopedic surgeon in the middle of January 1997, it  
16 was Mark Theiss, and you sent him about a complaint of  
17 pain in the right knee. Do you recall that?

18 A Yes.

19 Q Okay. And you signed the form at the  
20 bottom with the date of January 15, 1997.

21 A Yes.

22 Q And the routine thing that would happen

1 would be you would then hear back from the doctor you  
2 sent him to, in this case Dr. Theiss; true?

3 A Yes.

4 Q You would in every circumstance get a  
5 written report back from the doctor?

6 Do you see it on the monitor, Dr. Choi?

7 A Yes.

8 Q This is page 29 of the records. Do you  
9 see that Dr. Theiss actually saw the patient the same  
10 day that you had signed the referral form; right?

11 A Yes.

12 Q And he sent back a report to you; right?

13 A Yes.

14 Q And what you did when you'd get the report  
15 is you would sign your name in the corner indicating  
16 that you had seen the report.

17 A Yes, I signed, after read all through the  
18 report.

19 Q This down here in the lower-right corner  
20 is your signature signifying that you read the report?

21 A Yes.

22 Q Now, is there any other --.

1 I don't mean to jump ahead here too much  
2 but I want to focus on this general point here.

3 In terms of referrals that you made and  
4 getting reports back from the doctors, is there any --

5 Sorry. Let me interrupt myself.

6 This cardiac catheterization that Dr.  
7 Horton did on January 10th of 1997, you authorized the  
8 cardiac catheterization the prior day: "David Choi,  
9 January 9th." That's page 24 of the record. Is that  
10 right?

11 A Yes.

12 Q Okay. And you had received -- you had  
13 done other authorization with Dr. Horton for the  
14 previous testing that he did; right?

15 A Yes.

16 Q In fact, the very first time the patient  
17 went to see Dr. Horton just for the visit itself, you  
18 authorized that visit in writing?

19 A Yes.

20 Q And he sent you back a report of the  
21 visit; true?

22 A Yes.

1           Q     The patient came back to Dr. Horton a  
2 second time and Dr. Horton wrote you back a letter  
3 about that; true?

4           A     Yes.

5           Q     The patient underwent a stress echo test  
6 that you specifically authorized for Dr. Horton and he  
7 sent you back a report about that?

8           A     Yes.

9           Q     Then the patient finally has the last test  
10 with Dr. Horton, which was this cardiac  
11 catheterization on January 10, 1997, and you never  
12 received that report.

13          A     Yes, sir.

14          Q     Is there any other referral that you made  
15 for Sotiri Ponirakis where you did a written referral  
16 to the doctor or to the laboratory and failed to get  
17 back a written report of the results?

18          A     Yes. There are many doctors send a  
19 report, but some of them never send. Not a hundred  
20 percent doctor send to me report.

21          Q     You're saying that's the personal practice  
22 of the doctor?

1           A     Yes.

2           Q     What about the doctors that you sent this  
3 patient to; did any of them ever fail to send you back  
4 on each and every time you made a referral of Mr.  
5 Ponirakis a report about your referral other than this  
6 one cardiac catheterization?

7           A     Yes. I received three reports previously,  
8 but I have not received catheterization report.

9           Q     I understand you didn't receive the  
10 catheterization report. I'm just wondering if there  
11 are any other examples where you sent the patient out  
12 with a written referral and then the doctor failed to  
13 report back to you his findings. And I'm talking  
14 specifically about Mr. Ponirakis.

15          A     No, sir.

16          Q     So this is the only one?

17          A     Only one.

18          Q     Did it ever occur to you to call Dr.  
19 Horton's office and ask him, Where is the report of  
20 the catheterization?

21          A     I have not called his office.

22          Q     Okay. Now, I kind of jumped ahead of



1 myself a little bit. I wanted to go in chronological  
2 order, and let me go back to that if I could.

3 Now, let's start out with the very first  
4 visit of Sotiri Ponirakis to your office, which was on  
5 November 14, 1997. Is that right?

6 A Yes, sir.

7 Q Now, you asked this young man if he  
8 had --.

9 I'm looking at page 1 of your records in  
10 the chart.

11 You asked this young man if he had any  
12 serious diseases or operations; is that true?

13 A Yes.

14 Q And you asked him if he had any allergies.

15 A Yes.

16 Q And you asked him if he drank or smoked.

17 A Yes.

18 Q You also asked about any history of  
19 substance abuse.

20 A Yes.

21 Q Those were all the questions you asked  
22 this young man about his prior history; is that true?

1           A     Yes.

2           Q     Now, you see on your form there where it  
3 has different parts of the body listed where you have  
4 not checked off "yes" or "no" or anything? This is  
5 part of the standard form that you got from --.

6                     Well, where did you get this form from?

7           A     A supply company.

8           Q     A supply company. Now, the supply company  
9 would send you these forms. Have you heard of the  
10 concept of a review of systems that a doctor would do?

11          A     Yes.

12          Q     What is a review of systems in your mind?

13          A     Review of system mean, besides the  
14 patient's history, one-by-one all the patient's  
15 complaints I ask him, like what is (word), what is the  
16 smell condition, what is the hearing, do you have any  
17 sore throat, coughing, do you have swelling of glands,  
18 do you have any coughing, do you have any chest pains,  
19 did you have any indigestion, how is the bowel  
20 movement. All kind of system complaints I check and  
21 we call system review.

22          Q     "Have you ever had blood in your

1 urine?" -- that would be part of that, wouldn't it?

2 A Yes.

3 Q You didn't ask that specific question of  
4 Mr. Ponirakis?

5 A I didn't ask all of the detail in the  
6 history.

7 Q Well, getting real specific now, you've  
8 got a place on your form here for "renal." Do you see  
9 that? You didn't ask him any questions about any  
10 kidney --.

11 "Renal" means kidney; right?

12 A Yes.

13 Q You didn't ask him any specific questions  
14 about any prior problems with urination or blood in  
15 his urine?

16 A No.

17 Q Okay. And you didn't ask him about who  
18 his prior doctors had been?

19 A No, I didn't ask.

20 Q He did mention to you that he had this  
21 ulcer disease in 1994.

22 A Yes.

1           Q     Okay. Were you relying on Sotiri  
2 Ponirakis to figure out what a serious medical  
3 condition is to know whether or not he should tell you  
4 something?

5           A     That's why I ask serious disease. I think  
6 that he can understand what that means.

7           Q     Now, did you know that he was a high  
8 school graduate at the time?

9           A     Yes.

10          Q     Did you know that he did not have the same  
11 level of education that you might have had about what  
12 a serious disease was?

13          A     I trust he may understand what was serious  
14 disease.

15          Q     You're saying you left it up to him to  
16 know whether or not what was a significant disease?

17          A.     Otherwise this man should ask me, What  
18 does it mean, "serious disease"?

19                 He didn't ask me, so I thought that he  
20 understood what that means.

21          Q     I see. Okay. Now, he did give you other  
22 items of detailed history when you asked him. For

1 example, he was able to give you a complete history of  
2 all of his vaccinations.

3 A I cannot remember right now how I have  
4 written down his vaccinations. Possibly he brought  
5 some previous vaccination records. That's why it's  
6 written down.

7 Q But he got the DPT shot, the DP shot, the  
8 polio vaccine, the measles, mumps and rubella. That's  
9 what all of these things are, are vaccinations; true?

10 A Yes.

11 Q And those were helpful to you. They were  
12 from his prior medical records and it's helpful to  
13 know the patient's history like that; true?

14 A Yes, sir.

15 Q Wouldn't it have been helpful for you to  
16 also get any other prior medical records that had been  
17 available for him?

18 Did you understand my question?

19 A. Would you repeat it, please?

20 Q Don't you think it would have also been  
21 helpful for you to obtain his other previous medical  
22 records?

1           A       Honestly, we are a private practice so we  
2 cannot take up all history like medical school. So  
3 sometimes we ask the brief systems review, but not all  
4 of the patients we take a systems review.

5           Q       You're saying that --.

6                   Well, I think you're answering a different  
7 question, which is why didn't you do a review of  
8 systems on this patient, and you're saying it would  
9 have taken 20 or 30 minutes and you didn't have time  
10 for it? Is that what you're saying?

11          A       Yes, sir.

12          Q       Well, what I'm getting at is, isn't that  
13 all the more reason to go ahead and ask the patient to  
14 sign an authorization form so that you can get his  
15 prior medical records? Fair enough?

16          A       Yes. Some patients we request prior  
17 medical history, but not all of them.

18          Q       My point is, it's easily done, isn't it?

19          A       Yes.

20          Q       What you do is you've got a little form  
21 that you've already got ready to go in your office and  
22 all the patient has to do is give you the previous



1 doctor's name and address and the patient signs the  
2 form and you can just fax it over to the other \*  
3 doctor's office; right?

4 A Yes.

5 Q And you had a fax machine in your office  
6 back in 1996?

7 A Yes.

8 Q And you could have gotten his old records  
9 faxed back to you or mailed back to you?

10 MR. ALTMAN: That calls for speculation.  
11 We don't know what doctors and whether they have the  
12 equipment.

13 MR. MALONE: Well, I'll ask him that.

14 BY MR. MALONE:

15 Q Faxed or mailed to you. You could have  
16 gotten them one way or the other.

17 THE COURT: I overrule the objection.  
18 Your understanding about whether you could or could  
19 not have received them back.

20 MR. ALTMAN: I'm not sure he understands  
21 without a clarification.

22 BY MR. MALONE:

1           Q     Let me back up and lay a little bit of  
2     groundwork if I can.

3                     The previous doctors that Sotiri Ponirakis  
4     had been to -- and we'll offer these records into  
5     evidence as Plaintiff's Exhibit 5.

6                     THE COURT:   Are you offering them now,  
7     sir?

8                     MR. MALONE:   If it's appropriate.   This is  
9     Dr. Pappas' records.

10                    THE COURT:   Hold on for one second.

11                    MR. ALTMAN:   We have a very large number  
12     of them, Your Honor.   I'm going to have to see.

13                    MR. MALONE:   Fine.

14                    MR. ALTMAN:   No objection.

15                    THE COURT:   Plaintiff's 5 is received in  
16     evidence.

17                             (Dr. Pappas' records, previously  
18                             marked as Plaintiff's Exhibi 5,  
19                             for identification, was received  
20                             in evidence.)

21                    THE COURT:   Excuse me.   Where are the  
22     original exhibits that you're going to seek to

1 introduce?

2 MR. MALONE: They're right here and I was  
3 just pulling them out of the notebook. Is that all  
4 right, or should I --

5 THE COURT: I'd like to have Ms. Ralph  
6 mark it. Especially if something is coming in, I  
7 would like to have Ms. Ralph mark it and then we know  
8 it's been all taken care of.

9 MR. MALONE: All right. If I may, this is  
10 Plaintiff's Exhibit 5.

11 While I'm at it, I should introduce Dr.  
12 Choi's records, which is Plaintiff's 7.

13 THE COURT: Any objection to Plaintiff's  
14 7?

15 MR. ALTMAN: No, sir.

16 THE COURT: It's received in evidence  
17 also.

18 (Dr. Choi's records, previously  
19 marked as Plaintiff's Exhibit No. 7  
20 for identification, was received in  
21 evidence.)

22 THE COURT: You may approach the clerk.

1 MR. MALONE: Thank you.

2 BY MR. MALONE:

3 Q Take a look at Exhibit 5, if you would,  
4 Dr. Choi. I want to focus you on a specific page, Dr.  
5 Choi, but in the meantime, just tell me if you have  
6 ever seen these records before. This is Dr. Pappas,  
7 the immediately-prior internal medicine doctor who saw  
8 Sotiri during 1995.

9 A I never seen it.

10 Q Okay. You have no doubt, do you, that if  
11 you'd asked Sotiri who his prior doctors were, he  
12 would have been able to tell you who the  
13 immediately-prior doctor was?

14 MR. ALTMAN: Objection. Calls for him to  
15 speculate, Your Honor.

16 BY MR. MALONE:

17 Q You didn't have any communication  
18 difficulties --

19 THE COURT: Sustain the objection to the  
20 last question. You can ask your next question.

21 BY MR. MALONE:

22 Q You didn't have any communication

1 difficulties with Mr. Ponirakis?

2 A No.

3 Q Now, if I may just get that exhibit from  
4 you, I want to point out something to you in this  
5 exhibit, Exhibit 5.

6 You have learned in this case, haven't  
7 you, that Mr. Ponirakis saw another family  
8 practitioner before Dr. Pappas in '94 and his name was  
9 Salbert?

10 A I didn't know it.

11 MR. MALONE: I think we can stipulate  
12 that, that he saw Dr. Salbert in '94 before he saw Dr.  
13 Pappas.

14 MR. ALTMAN: I have no problem stipulating  
15 that point. I don't know what the question is.

16 THE COURT: Do you accept that  
17 stipulation?

18 MR. ALTMAN: Yes, sir.

19 THE COURT: Ladies and gentlemen, during  
20 the course of the trial there are obviously going to  
21 be a number of things that are going to be contested  
22 between the parties. When something is said to be

1 stipulated to, that means that the parties agree on  
2 that and that they're not going to have to put on any  
3 specific evidence relating to it and you are to accept  
4 it for all purposes in this case.

5 That's stipulated to.

6 Okay. You may continue, sir.

7 MR. MALONE: Okay.

8 BY MR. MALONE:

9 Q Here's my point, Dr. Choi. Inside Dr.  
10 Pappas' records are not only his testing on the  
11 patient but he has copies of Dr. Salbert's urine  
12 testing on this gentleman back in 1994 where blood was  
13 found in the gentleman's urine.

14 Let me just show you as an example:  
15 October 18, 1994, Virginia Family Health, urinalysis,  
16 blood 4+.

17 Do you see that?

18 A Yes.

19 Q And it also says protein -- that he has  
20 protein in the urine. Do you see that?

21 A Yes.

22 Q That would have been useful information

1 for you to have this specific information when you saw  
2 the patient two years later; true?

3 MR. ALTMAN: Let me object, Your Honor. I  
4 don't understand the predicate.

5 MR. MALONE: The predicate is that he's  
6 blaming the patient for not telling him about blood in  
7 the urine, so I'm suggesting that he could have gotten  
8 these old records and gotten the same information.

9 MR. ALTMAN: I don't understand how Dr.  
10 Salbert's records included in Dr. Pappas' leads to  
11 this question, and that's my objection.

12 THE COURT: Well, the question to Dr. Choi  
13 was whether this would have been useful information to  
14 him at the time he saw the plaintiff, and I overrule  
15 the objection to that question. You can answer that  
16 question, Dr. Choi.

17 A Yes, this is useful information if I know  
18 that.

19 BY MR. MALONE:

20 Q And my next question is, you could have  
21 gotten this information very easily by simply faxing  
22 over a letter to Dr. Pappas saying "Please send the

1 old records on this patient."

2 MR. ALTMAN: Objection. Calls for  
3 speculation.

4 THE COURT: Any response?

5 BY MR. MALONE:

6 Q Have you ever --

7 THE COURT: I sustain the objection to the  
8 last question. You can ask your next question.

9 BY MR. MALONE:

10 Q Have you ever sent a record request to  
11 another doctor for prior records on a patient that you  
12 are currently treating and the doctor blew you off and  
13 failed to give you those records?

14 MR. ALTMAN: Objection. Relevance, Your  
15 Honor.

16 THE COURT: Overruled, in light of your  
17 previous objection.

18 If I overrule an objection, Dr. Choi, you  
19 can answer the question.

20 A. Would you please repeat the question?

21 BY MR. MALONE:

22 Q You told us before that you have asked for



1 prior records sometimes on your current patients, that  
2 you ask to get records from other doctors.

3 A Yes. If I know that he had a previous  
4 examination.

5 Q Okay. The question is, have you ever had  
6 a situation where you sent a letter to a doctor right  
7 in Fairfax County, you asked him for old records on a  
8 patient, and the doctor just blew you off and refused  
9 to send the records?

10 A If necessary, I request. But this is  
11 young man come to me chest pain. There's no reason to  
12 mention about -- I cannot fax to see doctor to  
13 releasing from it.

14 Q I'm not sure you're answering my  
15 question. My question is, if you ask for the old  
16 records, have you ever had any problem getting them,  
17 if you ask?

18 A Yes, sometimes I had a problem.

19 Q Once you would telephone the doctor or  
20 follow up on it, have you ever had any persistent  
21 problems where a doctor absolutely refused to send you  
22 the old records?

1           A       They don't refuse to send the records but  
2 it takes a long -- or sometimes it takes them a year  
3 or sometimes they don't send.

4           Q       It takes what?

5           A       It takes a year before the send the  
6 records. Sometimes they don't send or it takes a  
7 long --

8           Q       But you have an office assistant to follow  
9 up on things like that, don't you? Or you had at the  
10 time?

11          A       It is custom of tracking those records  
12 that gone out.

13          Q       Isn't it a routine something for you to do  
14 that you'll delegate to your assistant or your  
15 secretary that if you want records on old patients to  
16 send over the request and then you leave it for your  
17 assistant to follow up? Isn't that routine practice?

18          A       We don't do routinely. If the doctor need  
19 send it, I request the patient to go back to the  
20 previous doctor and get the records. That's the more  
21 quick way.

22          Q       Well, have you ever had a problem with

1 that? If you asked -- for example, if you asked this  
2 young man, Mr. Ponirakis, to go back to Dr. Pappas and  
3 get the records for you, was there anything in your  
4 interactions with him that suggested that he would  
5 have had trouble getting those old records?

6 A. But the only thing is, I didn't know that  
7 this patient went to the other doctor. I didn't know.

8 Q But you didn't ask, sir, did you?

9 My question is, did you ever ask him if he  
10 had other doctors?

11 A No, I didn't ask him.

12 Q If you did know about prior doctors, you  
13 could have easily asked the patient to go get the old  
14 records and there would have been no problem getting  
15 them; true?

16 A Yes. But the one thing is this, sir.

17 Q Go ahead, if you want to say anything  
18 else.

19 A Yes. Every patient come to the doctor's  
20 office, my office, I cannot ask who was your doctor  
21 before, then we try to get the previous records, the  
22 patient would sign and release information. That's a

1 very difficult thing.

2 Q What's so hard about it?

3 A There are so many new patients coming,  
4 everybody you cannot send around copies and then  
5 obtain records, unless necessary.

6 Q Isn't it important to get a good baseline  
7 information on a patient?

8 A I get a baseline information.

9 Q Okay. Now, you had a second reason to get  
10 Dr. Pappas' records because you knew on the first  
11 visit that he had gastric ulcer disease in 1994;  
12 right?

13 A Yes.

14 Q Now, this is something that a patient is  
15 not going to figure out on their own unless they have  
16 been to a doctor; right?

17 A Right.

18 Q So you must have known that he had been to  
19 some kind of doctor before to get this ulcer  
20 diagnosed.

21 A Yes.

22 Q And you remember in your attorney's

1 opening statement he mentioned that you thought in  
2 January of '97 --

3 MR. ALTMAN: Well --

4 THE COURT: Let him finish the question,  
5 and if there's an objection, I'll hear you. Go ahead.

6 BY MR. MALONE:

7 Q You thought in January of 1997 that his  
8 ulcer was reactivating itself.

9 MR. ALTMAN: Objection. It's improper to  
10 refer to my opening. It's not in evidence, Your  
11 Honor.

12 MR. MALONE: I'm just trying to remind him  
13 of where we're at.

14 THE COURT: For that limited purpose, I  
15 overrule the objection.

16 A Yes.

17 BY MR. MALONE:

18 Q You thought in January '97 that his ulcer  
19 was reactivating.

20 A Yes.

21 Q Wouldn't it have made good common sense to  
22 at least at that point to say, Let's get your old

1 ulcer treatment records so we can see where you're at  
2 now compared to where you were at back then?

3 MR. ALTMAN: Objection as to form and to  
4 relevancy as it was phrased, Your Honor.

5 BY MR. MALONE:

6 Q Well, you had the man undergo an upper  
7 GI --

8 THE COURT: The question is withdrawn. Go  
9 ahead.

10 BY MR. MALONE:

11 Q You had the man undergo an upper GI series  
12 in January 1997.

13 A Yes.

14 Q That's the standard way that you find out  
15 about ulcers; true?

16 A Primary purpose, yes, sir.

17 Q Wouldn't it have been relevant to get the  
18 report of any prior upper GI series done on the same  
19 patient to compare if there had been any changes in  
20 the interim?

21 A But the upper GI series was normal at that  
22 time.

1           Q     I'm saying even before you got the upper  
2 GI series being normal, wouldn't you have wanted to  
3 get a baseline to figure out what was the ulcer  
4 problem before?

5           A     That's a very difficult thing to do. The  
6 patient come to the office, stomach complaint. He has  
7 a previous history of ulcer disease. I can ask for  
8 the previous doctor, Would you please send a copy of  
9 this and release the patient. Ineffective.

10          Q     Now, do you have any doubts that if you  
11 had known about the --.

12                     Well, let me rephrase that.

13                    If you had known about the blood in this  
14 man's urine when he came in in November 1996 or  
15 shortly thereafter, you would have done a follow-up  
16 blood and urine test; true?

17          A     Yes, sir.

18          Q     And are you saying to the ladies and  
19 gentlemen of the jury that it is entirely Mr.  
20 Ponirakis' fault for you not getting that information?

21          A     Yes. I didn't get that information about  
22 urine contain in the blood in the past.

1           Q     Now, often when a patient goes to a doctor  
2 for the first time, the doctor will have the patient  
3 fill out a health questionnaire, which will ask all  
4 kinds of detailed questions. Do you ever do that?

5           A     No.

6           Q     Have you heard of other doctors doing  
7 that?

8                     MR. ALTMAN: Objection as to relevance,  
9 Your Honor.

10                    MR. MALONE: I'm going into this with our  
11 expert witness, Your Honor.

12                    THE COURT: On that proffer, I overrule  
13 the objection.

14                    BY MR. MALONE:

15           Q     Have you heard of other doctors giving  
16 patients a questionnaire where they ask all kinds of  
17 questions: Have you ever had chest pain? Have you  
18 ever had tarry stools? Have you ever had blood in  
19 your urine? Have you ever had this, that, a million  
20 other things?

21           A     Yes. Some doctors does.

22           Q     And that doesn't take any of the doctor's



1 time to fill out that questionnaire.

2 A But most of the patients, especially 98  
3 percent people, they don't understand what that means  
4 most of them; "tarry stool," what that means.

5 Q Well, blood in the urine, if someone had  
6 had blood in the urine that they had reported, you  
7 would expect that they would check "yes" on that spot;  
8 right?

9 A Yes.

10 Q But you didn't have any kind of  
11 questionnaire like that?

12 A No.

13 Q You have already told us you didn't do a  
14 review of systems with Mr. Ponirakis, right, because  
15 it would take too long? Is that what you're saying?

16 A Yes, I didn't do.

17 Q And you're saying it would have been too  
18 complicated for you to get the prior records that  
19 showed blood in his urine.

20 A Yes.

21 Q And so here's my question, and I'm trying  
22 to be pretty pointed on it, are you saying it's

1 entirely his fault for you not finding out about the  
2 history of blood in his urine in November 1996?

3 MR. ALTMAN: Objection. Asked and  
4 answered, Your Honor.

5 THE COURT: Overruled. I don't believe he  
6 answered the question.

7 A Would you repeat again, sir?

8 BY MR. MALONE:

9 Q Are you saying it was entirely my client's  
10 fault that you didn't find out about the fact that he  
11 had blood in his urine in 1994?

12 A. Yes.

13 Q Now, let's assume for a second that you  
14 had gotten the records from Dr. Pappas. What would  
15 you have done differently if you did find out about  
16 the blood and protein in the urine which the patient  
17 had in 1994?

18 A I would have repeated testing.

19 Q You would have repeated the blood and  
20 urine tests?

21 A Yes.

22 Q And we know from the other evidence in the

1 case that the blood test likely would have been  
2 abnormal; true?

3 A Yes.

4 Q And you would have sent him to a kidney  
5 doctor.

6 A Yes.

7 Q Because as soon as you saw an abnormal  
8 creatinine in this patient, you were obligated to send  
9 him to a kidney doctor; true?

10 A Yes.

11 Q Now, Fairfax Emergency Room, let's talk  
12 about that for a few minutes. That's on December 13,  
13 1996.

14 MR. MALONE: Just one second. Let me  
15 offer Exhibit 13 into evidence.

16 THE COURT: Any objection?

17 MR. ALTMAN: No objection.

18 THE COURT: What I'd like you to do, if  
19 you're using the exhibit, take it with you.

20 Otherwise, if you leave it up here with Ms. Ralph, she  
21 will have it ready for you any time you need it. I  
22 think you still have the other one.

1 MR. MALONE: Right.

2 THE COURT: If you'll just leave it in  
3 front of Ms. Ralph, she'll have them here any time you  
4 need them.

5 MR. MALONE: Right. And I'm sorry  
6 throwing that.

7 THE COURT: That's okay.

8 (The Fairfax Emergency Room record  
9 was marked as Exhibit No. 13 for  
10 identification and received in  
11 evidence.)

12 BY MR. MALONE:

13 Q Dr. Choi, let me ask you a few questions  
14 about the emergency room visit that my client, Sotiri  
15 Ponirakis, had on December 13, 1996.

16 Now, he was still under your care during  
17 the month of December '96; true?

18 A Yes.

19 Q You had first seen him on November 14, '96  
20 for chest pain; true?

21 A Yes.

22 Q He came back to you on November 23rd, I

1 believe it was, 1996; right?

2 A Yes.

3 Q I'm just trying to lead up to the  
4 chronology here. On December 4th you had sent him  
5 over to Dr. Horton, a cardiologist.

6 A Yes.

7 Q He saw Dr. Horton the next day and Dr.  
8 Horton sent you a report about both visits, a separate  
9 report?

10 A Yes.

11 Q Then a week later Sotiri was in the  
12 emergency room at Fairfax Hospital, 12/13/96.

13 A Yes.

14 Q Let me show you page 2 of the hospital  
15 records. Do you see at the bottom with it says: "Case  
16 discussed with Dr. Choi"?

17 Do you see that? Do you see where I'm  
18 pointing?

19 "Case discussed with" and then your name  
20 is filled in?

21 A Yes.

22 Q Okay. You see that. And then I'll show

1 you one more reference on the next page. It's  
2 recorded at 1520 hours, 3:20 in the afternoon, "Case  
3 dw" -- discussed with -- "Dr. Choi. May discharge,"  
4 etc.

5 THE COURT: So the record is clear, what  
6 exhibit are you referring to now, please?

7 MR. MALONE: I'm sorry. This is page 3 of  
8 Exhibit 13.

9 THE COURT: Thank you.

10 BY MR. MALONE:

11 Q You see that; correct?

12 A Yes.

13 Q Now, you don't deny that the emergency  
14 room doctor called you on that day, do you?

15 A I cannot recall.

16 Q Isn't it routine that when a patient of  
17 yours is at an emergency room and abnormalities are  
18 found, it's your experience that the emergency room  
19 doctor will put in a call to you to tell you about it?

20 A Yes.

21 Q And don't they normally tell you about  
22 whatever abnormalities they found with your patient?

1           A     Yes.

2           Q     And with this patient the only abnormality  
3 they found, page 4 of the records, is that the  
4 creatinine was high and his BUN was high. Do you see  
5 that?

6           A     Yes.

7           Q     Do you contend today that you never saw --  
8 that you never heard back in December '96 that Sotiri  
9 Ponirakis had an abnormally-high creatinine when he  
10 was at the Fairfax Emergency Room?

11          A     I didn't know.

12          Q     Isn't it possible that they told you about  
13 it and you simply forgot it and forgot to write it  
14 down?

15                   MR. ALTMAN: Objection as to form, Your  
16 Honor.

17                   THE COURT: Sustained.

18                   BY MR. MALONE:

19          Q     Did you write down any notes about the  
20 conversation with the doctors?

21          A     I usually write down an abnormal result  
22 which I need follow up.

1           Q     Was there anything else in this emergency  
2 room visit that was abnormal that you know of?

3           MR. ALTMAN:  Objection, Your Honor.  The  
4 question is confusing.  There was a presentation.

5           BY MR. MALONE:

6           Q     Was there any other abnormalities found by  
7 the doctors --

8           THE COURT:  I think he has already told us  
9 that other than the BUN and creatinine --

10          MR. MALONE:  -- there were no other  
11 abnormalities.

12          THE COURT:  He's already told us that.  
13 Move on, please.

14          MR. MALONE:  All right.

15          BY MR. MALONE:

16          Q     Now, they found at the hospital, they  
17 believed, that his problems were a syncopal episode.  
18 And that means basically "fainting" in layman's  
19 terms --

20          A     Yes.

21          Q     -- "syncopy"?

22          A     Yes.



1 Q And they say "secondary to" -- that means  
2 "caused by"; right?

3 A Yes.

4 Q "dehydration." True?

5 A Yes.

6 Q So at least they would have told you what  
7 their very first diagnosis was.

8 A Yes.

9 Q And, in fact, when the patient came back  
10 to you on January 2, 1997, a couple of weeks later,  
11 you again were told about this visit that he had on  
12 December 13, '96.

13 A Yes.

14 Q Didn't it occur to you at that time that  
15 it would have been appropriate for you to check to see  
16 if there were any abnormal lab findings?

17 MR. ALTMAN: Objection as to form, Your  
18 Honor.

19 THE COURT: I'm not sure I understand your  
20 objection.

21 MR. ALTMAN: To a reasonable degree of  
22 medical probability. He's asking a standard of care

1 question.

2 MR. MALONE: No. I'm asking, didn't it  
3 occur to you that it was--

4 THE COURT: I overrule the objection.

5 BY MR. MALONE:

6 Q Let me try this one more time.

7 Well, first off, let me ask some  
8 preliminary questions on that.

9 Certainly when a young man goes to a  
10 hospital and he has had vomiting so bad that he's  
11 passed out from dehydration, you would expect that  
12 routine lab work would have been done, including blood  
13 tests; right?

14 A Yes.

15 Q So you would have known, based on the fact  
16 that they told you about dehydration, that there was  
17 some blood work out there based on this December  
18 visit; right?

19 A Yes.

20 Q And it was available for you at any time,  
21 wasn't it?

22 MR. ALTMAN: Objection. Calls for him to

1 speculate, Your Honor.

2 BY MR. MALONE:

3 Q Well, have you ever had the situation  
4 where you have known that a patient of yours has been  
5 in the hospital and has had lab work done and you  
6 called up the hospital emergency department secretary  
7 and said, "Hi, I'm Dr. Choi. I understand my patient  
8 was there a couple weeks ago. Can you please fax over  
9 any lab results?"

10 Have you ever done that?

11 A We don't usually, unless it's significant  
12 finding.

13 Q Well, how do you know there's a  
14 significant finding unless you ask?

15 A Because patient was already in the  
16 hospital. After that, the patient came back my  
17 office, he said what was the cause. I asked. He  
18 explained all of the symptoms and treatment. They  
19 made a diagnosis, and he said "I was dehydrated."

20 Q So he accurately told you that he was  
21 dehydrated?

22 A Yes.

1           Q     You don't expect him to know that he had  
2 an abnormal creatinine, do you?

3           A     If something wrong, the doctor should tell  
4 him that test was abnormal, you have to follow up.

5           Q     But isn't it your job as a primary care  
6 doctor to get that kind of information instead of  
7 relying on the patient's impression?

8           A     It's part of my job, but the patient came  
9 next visit and he had totally different symptoms.

10          Q     But wasn't the dehydration worth following  
11 up on?

12          A.    Yes. The dehydration had already been  
13 corrected by the rehydration.

14          Q     Okay. But if you have abnormal lab  
15 findings, don't you want to check them to make sure  
16 that they normalize in the interim by the patient  
17 "rehydrating," as you say?

18          A     A minor degree of abnormal kidney function  
19 can be corrected by rehydration.

20          Q     This isn't a minor degree abnormal of  
21 abnormal kidney function, sir, is it?

22          A     But I didn't know the value of these lab

1 results.

2 Q Because you didn't ask for it; right?

3 MR. ALTMAN: Objection. Asked and  
4 answered, Your Honor.

5 THE COURT: Sustained.

6 BY MR. MALONE:

7 Q This is a significantly abnormal kidney  
8 result, isn't it?

9 A Yes.

10 Q It's a patient whose kidneys are  
11 functioning at about half of their normal capacity;  
12 true?

13 A Yes.

14 Q And if you had had those lab results, you  
15 would have sent him to a kidney specialist in December  
16 '96?

17 A Yes.

18 Q Fair?

19 A Yes.

20 Q No other testing needed?

21 A No. I would repeat the test again before  
22 send to nephrologist.

1           Q     But assuming the test came back abnormal  
2 again, you would send him to the nephrologist;  
3 correct?

4           A     Yes.

5           Q     Okay. Let's talk about the cardiac  
6 catheterization for a few minutes.

7                     I'm sorry. Before I get to that -- I'm  
8 getting a little out of chronological order -- I want  
9 to ask another thing.

10                    In terms of the abnormalities that you  
11 knew about in my client Sotiri, you did know that he  
12 had a significantly elevated sedimentation rate in  
13 early December 1996 from the testing done by Dr.  
14 Horton, the cardiologist?

15           A     Yes.

16           Q     The normal value -- .

17                    First off, tell us what sedimentation rate  
18 is. What does it measure?

19           A     51.

20           Q     No, no. I mean, what does it generally  
21 measure?

22           A     15 to 20.

1           Q     I'm trying to ask a descriptive-type  
2 question. What is it all about? What does it mean  
3 when someone has a high sedimentation rate?

4           A     There are so many conditions made in  
5 elevation of sedimentation rate. Tells us some  
6 inflammatory disease, infectious disease.

7           MR. MALONE: Did I step on something?

8                 Excuse me one second, Your Honor.

9                 Would you mind if I turned that around for  
10 a minute because the big machine just went out.

11           THE COURT: Turn it around so the jury can  
12 see it.

13           MR. MALONE: I need to look at one so I  
14 can focus. Thank you very much.

15           BY MR. MALONE:

16           Q     Looking at your records, Exhibit 7, page  
17 18, you had a sedimentation rate reported to you of 51  
18 when the normal range is 0 to 15.

19           A     Yes.

20           Q     And sedimentation rate, as I think you  
21 were saying a minute ago, can indicate an inflammatory  
22 process just about anywhere in the body.

1           A     Yes.

2           Q     And this was reported to you on -- the  
3 blood was drawn on 12/4/96 and it was reported to you  
4 on 12/5/96. Do you see that?

5           A     Yes.

6           Q     Now, it occurred to you that it might be  
7 worthwhile in this patient to have done a repeat  
8 sedimentation rate at some point?

9           A     I don't think so.

10          Q     That did not occur to you? There's no way  
11 to know that the sedimentation rate has gone down to  
12 normal unless you test it; right?

13          A     Yes.

14          Q     And you never knew with this young man  
15 whether his sedimentation rate, in fact, had gone down  
16 during this time period of November-December-January?

17          A     I didn't know.

18          Q     Okay. In fact, when he got that cardiac  
19 catheterization done, the Arlington Hospital lab work  
20 found that -- . And this is Exhibit 16, which I will  
21 offer into evidence.

22               THE COURT: Any objection?



1 MR. ALTMAN: No objection, Your Honor.

2 THE COURT: No objection. It's received  
3 in evidence.

4 (The Arlington Hospital lab record  
5 previously marked as Exhibit No. 16  
6 for identification, was received in  
7 evidence.)

8 BY MR. MALONE:

9 Q I've got an excerpt from the record on the  
10 screen, page 12 of the hospital records. Do you see  
11 how the sedimentation rate had gone from 51 in  
12 December 1996 to 115 on January 10, 1997?

13 A I didn't know that.

14 Q But do you see this though?

15 A Yes.

16 Q You said you didn't know it; right?

17 A Yes.

18 Q But if you had done your own sedimentation  
19 rate testing, you don't have any doubt that you could  
20 have discovered this type of information; right?

21 A Yes.

22 Q And it would have been valuable

1 information; right?

2 A Yes.

3 Q This is a very, very abnormal -- it's  
4 really almost 10 times higher than the high-normal  
5 range; right?

6 A Yes.

7 Q Okay. Now, this was done in connection  
8 with the cardiac catheterization that Dr. Horton did  
9 on January 10, 1997, and on that same cardiac  
10 catheterization, page 13 of the records, he found that  
11 the creatinine had gone up from 1.9 to 2.1. Do you  
12 see that?

13 A Yes.

14 Q Now, again, that's something you contend  
15 you did not know.

16 A I didn't know.

17 Q Okay. You do agree though that any kind  
18 of routine blood testing that you would have done any  
19 time between November 1996, December '96, January '97,  
20 any routine blood test would have picked up this type  
21 of information?

22 MR. ALTMAN: Objection. Asked and

1 answered.

2 MR. MALONE: Not about this.

3 THE COURT: I'm going to allow it.

4 A Yes.

5 BY MR. MALONE:

6 Q You would have found that out?

7 A Yes.

8 Q And the first time you ever did blood and  
9 urine testing on this young man was on July 1, 1997.

10 A Yes.

11 Q And by that time the creatinine was up at  
12 4.5.

13 A Yes.

14 Q Now, I want to talk specifically about the  
15 cardiac catheterization for a minute. Now, other  
16 patients of yours have had cardiac catheterization;  
17 right?

18 A Yes.

19 Q And it's routine for you to receive a  
20 report of the catheterization even though you didn't  
21 do the test.

22 A Yes.

1 Q And this is an invasive procedure; right?

2 A Yes.

3 Q It actually has certain dangers attached  
4 to it?

5 A Yes.

6 Q It's a rather extraordinary procedure for  
7 a 20-year-old man to undergo?

8 A Yes.

9 Q And you have already told us that you  
10 never got the report of this cardiac catheterization;  
11 right?

12 A. Yes.

13 Q I think you have also already told us that  
14 of all the referrals that you made of Sotiri Ponirakis  
15 between November 1996 and January '97, this is the  
16 only one that you didn't get a report back from?  
17 Didn't you testify about that?

18 MR. ALTMAN: Asked and answered, Your  
19 Honor.

20 THE COURT: Sustained.

21 MR. MALONE: Well, I'm leading up to the  
22 next question.

1 THE COURT: That may be, but let's move  
2 forward. He's answered that question. Ask something  
3 he hasn't answered before.

4 MR. MALONE: Okay. Trying to lay some  
5 groundwork.

6 BY MR. MALONE:

7 Q The next question is, why weren't you  
8 curious to call up Dr. Horton's office and ask them to  
9 send you a copy of the report?

10 A Yes. When Mr. Ponirakis came back five  
11 days after catheterization, at that time too early to  
12 receive a report. Usually takes five days, a week or  
13 something, for the hospital record transcripts into  
14 chart.

15 Then Mr. Ponirakis, I asked him, What was  
16 the result of your catheterization? He said  
17 everything all right. Then he doesn't have any  
18 follow-up appointment. Just at liberty he come back.  
19 That's all I heard. I thought that his  
20 catheterization was completely normal and wait until  
21 maybe come back soon.

22 Q Sorry. What was that last sentence?

1           A       As I told you, four or five days after  
2 catheterization I would not expect to receive it at  
3 that time early date. That's why I was waiting to  
4 receive the report later.

5           Q       And then it just fell off the radar  
6 screen; is that what you're saying?

7           A       Maybe one week, two weeks or something.

8           Q       Well, when it didn't come in after a week  
9 or two, why didn't you give them a call?

10          A       I cannot track two weeks later. If Mr.  
11 Ponirakis come back and complain, maybe I can track  
12 this one. But I haven't heard since he left my office  
13 January 15th to next come back July 1st. Five or six  
14 months and I haven't heard anything.

15          Q       Well, certainly you heard back from this  
16 patient later on in January 1997 he was having more  
17 epigastric pain later on that month and he called your  
18 office; right?

19          A       Yes.

20          Q       He would have come in if you had told him  
21 to come in.

22                   MR. ALTMAN: Objection. Calls for

1 speculation.

2 THE COURT: Sustained.

3 BY MR. MALONE:

4 Q Well, let me put it this way. Did you ask  
5 him to come into the office?

6 A No, sir. He complained of stomach pains,  
7 so --

8 Q You sent him to a gastroenterologist.

9 A Yes.

10 Q Didn't it occur to you at that point that  
11 this is a young man who has had all these bouts of  
12 chest pain and stomach pain starting in November 1996  
13 clear up to the middle of January 1997 -- didn't it  
14 occur to you that it might be time to look for some  
15 cause that might explain everything?

16 A We can say this retrospectively, but he  
17 came to my office four times during two-month period  
18 each with all different complaints, and the next time  
19 come, the symptoms resolve. Next visit, second visit,  
20 complaint was resolved. That's why I thought this was  
21 independent symptoms, not as a whole group of disease.

22 Q You're saying his symptoms were different

1 every time?

2 A Mostly different symptoms every time.

3 Q But when he came to you on January 2nd he  
4 had vomiting, headache, midsternal pain -- that's  
5 chest pain; right?

6 A Part of it is chest pain.

7 Q And epigastric pain; right?

8 A Yes.

9 Q And he talked about having -- he had a  
10 similar vomiting spell about two weeks ago; right?

11 A Yes.

12 Q And fainted and was taken to the emergency  
13 room. He said he was dehydrated.

14 So he's having chest pain similar -- in  
15 January '97 he's having chest pain similar to the kind  
16 of chest pain that he first came to you with in  
17 November 1996; right?

18 A Yes.

19 Q And he's also having stomach pain and  
20 vomiting episodes that were similar to what had taken  
21 him to the emergency department a couple weeks  
22 previously; correct?



1           A     Yes.

2           Q     So he's not having distinctly different  
3 symptoms each time, is he?

4           A     More or less independent symptoms. Couple  
5 of symptoms are similar, but --

6           Q     Now, just to follow up a little bit on  
7 this cardiac catheterization report, the cardiac  
8 catheterization reports that you've received in the  
9 past from doctors would often have a lot of technical  
10 information on them that you wouldn't necessarily  
11 expect a patient to be aware of; true?

12          A     Yes.

13          Q     And this particular catheterization  
14 report, you have now seen it; right?

15          A     Yes.

16          Q     And he mentions right in the first  
17 paragraph of the report that he used a different  
18 technique. Because of an elevated creatinine of 2.1,  
19 he used a different dye material, contrast material;  
20 right?

21          A     Yes.

22          Q     Now, you know the reason for that is that

1 sometimes the contrast material they use can cause  
2 damage to the kidney filtrating system itself.

3 A Yes.

4 Q And on the second page of the report  
5 there's a discussion and he describes the history of  
6 Mr. Ponirakis' chest pain, and doesn't he ultimately  
7 tell the reader that there really is not a cardiac  
8 cause found for this young man's chest pain?

9 A Yes.

10 Q And you had kind of assumed that anyway, I  
11 assume, because the patient came in on January 15th,  
12 five days after this, and he told you that his  
13 impression was that the cardiac catheterization came  
14 back normal.

15 A Yes.

16 Q So what that meant was that he had been  
17 having all of this chest pain since November of 1996  
18 and there was not a cardiac explanation for it;  
19 right?

20 MR. ALTMAN: Objection. Calls for this  
21 witness to speculate since he said he didn't get this  
22 report.

1 BY MR. MALONE:

2 Q Well, even without knowing the contents of  
3 the report, you got all of Dr. Horton's reports  
4 leading up to this; right?

5 A Yes.

6 Q And then you had the information from the  
7 patient that the cardiac catheterization was normal.  
8 Just based on that, weren't you left with a question  
9 mark as to what had been causing chest pain in a  
10 20-year-old man that was so severe that he kept coming  
11 back to the doctor over and over?

12 A If I read this report at that time, I  
13 should take some action to rule out causes such as  
14 disease.

15 Q Oh, okay. Now you're answering a little  
16 bit different question, but let's follow up on that  
17 and then we'll come back to my question.

18 Connective tissue disease includes lupus;  
19 right?

20 A. Not only lupus but some other diseases.

21 Q Well, lupus is in the family of connective  
22 tissue disease; true?

1           A       Yes.

2           Q       And if you had gotten Dr. Horton's cardiac  
3 cath report in January '97, you would have done  
4 follow-up for connective tissue disease; right?

5           A       Yes.

6           Q       Indeed, he suggested right here on the  
7 bottom of the second page. He said: "Mr. Ponirakis'  
8 chest discomfort is most likely secondary to  
9 inflammation, although it is difficult to explain  
10 pericarditis" -- that's inflammation around the heart,  
11 in the immediate area around heart; right?

12          A       Yes.

13          Q       -- "lasting more than two months. If his  
14 sedimentation rate is still elevated, connective  
15 tissue disorder might be considered."

16                   Do you see that?

17          A       Yes.

18          Q       And you agree that -- remember I showed  
19 you that it turned out that the sedimentation rate had  
20 actually doubled in one month, and if you had known  
21 about it, you would have done testing for diseases  
22 including lupus; right?

1           A     Yes.

2           Q     So this would have been a valuable  
3 document for you to have received, this cardiac  
4 catheterization report, and yet you took no steps  
5 whatsoever to proactively get the report.

6                     MR. ALTMAN:  Objection.  Asked and  
7 answered.

8                     THE COURT:  Sustained.

9                     BY MR. MALONE:

10          Q     Now, when this patient had been coming to  
11 you -- let me show you the timeline.  It might be  
12 helpful.

13                     I'm not sure how to show this so that  
14 everybody can look at it.  Do you have a suggestion?

15                     THE COURT:  Can I offer something?  If  
16 that blackboard can be used, if there's no objection  
17 by Mr. Altman, I think that will be okay with me.

18                     MR. MALONE:  Here's my suggestion, would  
19 be to put this over here and ask him to stand over  
20 here for a minute with me.

21                     Would that be all right?

22                     THE COURT:  I don't have any objection.

1 MR. MALONE: Why don't you come over here  
2 for a second.

3 THE COURT: Mr. Altman, feel free to move  
4 around. Before you get it all set up, make sure that  
5 Mr. Altman is in a position where he can see, if you  
6 would, please.

7 MR. ALTMAN: Is this acceptable?

8 THE COURT: Wherever you can see it, Mr.  
9 Altman, as far as I'm concerned is okay.

10 Doctor, you may step down and come towards  
11 the jury box, sir.

12 BY MR. MALONE:

13 Q Actually why don't you and I get a little  
14 closer?

15 THE COURT: Right. Why don't you stand  
16 next to counsel, please.

17 BY MR. MALONE:

18 Q I will be on this side and you be on that  
19 side.

20 Do you see this timeline chart here? And  
21 the only colors we've got are blue for November, green  
22 is for December, purple is for January, and we've got

1 February, June, July.

2 Do you see this, Dr. Choi?

3 A Yes.

4 Q Okay. Now, the patient --

5 THE COURT: One second please. Feel free  
6 to move over. Any of the jurors can feel free to  
7 change their seats. Go ahead, sir.

8 BY MR. MALONE:

9 Q Your first encounter with the young man  
10 was the day before he came to your office. You signed  
11 an authorization for him to go to a walk-in clinic  
12 called Advanced Urgent Care; true?

13 A Yes.

14 Q According to their records, they told him  
15 to follow up with you.

16 A Right.

17 Q And he did follow up. The very next day  
18 he was in your office; right?

19 A Yes.

20 Q You sent him out to get a rib X-ray and he  
21 got that done the very next day; right?

22 A Yes.

1           Q     Okay. And he's back in your --. And you  
2 also told him to come back in seven days.

3           A     Yes.

4           Q     He was back in nine days; right?

5           A     Yes.

6           Q     Then he saw Dr. Horton and we can ask Dr.  
7 Horton about his follow-up here.

8                     But he next was at your office -- . You  
9 knew about all of those encounters; right? You knew  
10 about the Dr. Horton EKG, the Horton thing here, the  
11 Fairfax Emergency Room. You knew that these  
12 encounters had happened because you were gatekeeper;  
13 right?

14          A     Yes.

15          Q     On January 2, 1997, he was back in your  
16 office; right?

17          A     Yes.

18          Q     Now, one other thing we might mention here  
19 is you gave him Compazine at the time for his  
20 vomiting.

21          A     Yes.

22          Q     That's a drug that's supposed to calm the



1 the stomach; right?

2 A Yes.

3 Q And he went to an emergency room the next  
4 day and it turned out he was having an allergic  
5 reaction to Compazine and he called you back and  
6 reported that to you; right?

7 A Yes.

8 Q And you put that down in his records that  
9 he was allergic to Compazine.

10 A Yes.

11 Q On the January 2, '97 visit you told him  
12 to go get a gall bladder sonogram and an upper GI  
13 series.

14 A Yes.

15 Q He did that; right?

16 A Yes.

17 Q Then he did some tests with Dr. Horton.  
18 On January 15th he was back in your office.

19 You sent him to the orthopedist. He did  
20 that; right?

21 A Yes.

22 Q He followed up with the orthopedist on

1 January 20th?

2 A Yes.

3 Q On January 24th the patient called you,  
4 and we have already talked a little bit about this,  
5 about the gastric pain, and you referred him to a  
6 gastroenterologist. He kept the appointment with the  
7 gastroenterologist.

8 A Right.

9 Q He followed up with the  
10 gastroenterologist; right?

11 A Yes.

12 Q Did this patient ever do anything where he  
13 did not obey the recommendations that you gave to him?

14 A Very cooperative.

15 Q Thank you. You can sit down.

16 (Witness returning to stand.)

17 Q And the only other point I wanted to make  
18 on that, actually on this chart, is, didn't it ever  
19 occur to you, Dr. Choi, that a young man of 20 years  
20 old who is going to all of these doctors and all of  
21 this testing, this three-month testing, all of which  
22 is at your direction, that there might be something

1 significant going on with him that would warrant just  
2 a routine blood screening test and a urine test?

3 Didn't that ever occur to you during this  
4 time period that it's something out of the ordinary?

5 A Yes. If I gave urine test at that time,  
6 the blood and urine test, the blood test sometimes  
7 doesn't show because the patient has chest pains and  
8 some new symptoms. Usually does not show results to  
9 make diagnosis.

10 Q But we know in this test, because at the  
11 period of time other people were taking lab tests  
12 during this time, that they would have shown abnormal  
13 results.

14 A Yes. Retrospective.

15 Q Pardon me?

16 A Retrospectively. We know he had disease,  
17 should show something up.

18 Q I'm saying prospectively at that time,  
19 didn't it occur to you that a young man who is going  
20 to doctors over and over and over for a multitude of  
21 symptoms in November '96, December 1996, January '97,  
22 that there might be something overall of a serious

1 nature going on with him that would warrant routine  
2 blood and urine tests?

3 A Yes. Of course he went to so many  
4 doctors, but that's only a two-month period. He had  
5 four different symptoms when he came to my office.  
6 First I mentioned he had chest pain, next one is flu  
7 symptoms. Third one is stomach pain. Fourth one is  
8 joint pain.

9 Q But that's why you'd look for something to  
10 tie it altogether; right?

11 MR. ALTMAN: Objection. Asked and  
12 answered, Your Honor.

13 THE COURT: Sustained.

14 BY MR. MALONE:

15 Q Did you have in your office the ability to  
16 do a urinalysis?

17 A. I don't do urine test. I send out to lab.

18 Q You send it all out to the lab?

19 A Yes.

20 Q You don't have a microscope in your office  
21 that you can look at urine under the microscope?

22 A Yes. I don't do it myself.

1           Q     Did you have the ability to take blood out  
2 of someone's arm and send it to a lab?

3           A     Yes.

4           Q     And that's something that could be done  
5 very quickly; right?

6           A     Yes. I send same thing. I take blood and  
7 send it to lab and we get the results one or two days  
8 later.

9           Q     Okay. Now, you had mentioned -- I want to  
10 ask you a couple questions about the time that the  
11 patient came back to you on July 1, 1997. Do you  
12 contend that you did know what to do at that point, to  
13 send him to the right doctor on July 1st?

14          A     Repeat that, please.

15          Q     On July 1, 1997, the patient came to you  
16 that he had flank pain and you did a urine test at  
17 that time; right?

18          A     Yes.

19          Q     And you some found blood in the urine.

20          A     Yes.

21          Q     And you also did a blood test at the time;  
22 right?

1           A     Yes.

2           Q     Creatinine 4.5.

3           A     Yes.

4           Q     Did you realize, based on those two tests,  
5 on your own that you needed to refer this man to a  
6 specialist?

7           A     Yes.

8           Q     Okay. Let me ask you about a page in your  
9 record. Who is Dr. "Tahmassebi"?

10          A     "Tahmassebi."

11          Q     Says that July 3, 1997, the day when these  
12 tests results came back, the patient is there and Dr.  
13 Choi said, "Please evaluate lab results from 7/1/97  
14 and let me know if we need to refer him to a  
15 specialist. Thank you."

16          A     Yes. That was a long weekend. I was  
17 off. That's Dr. Tahmassebi cover my case. I received  
18 lab results but there's no way that Dr. Tahmassebi  
19 knew this one.

20          Q     Okay. You were not relying on Dr.  
21 Tahmassebi to tell you what to do for this patient?

22          A     No. I didn't talk to Dr. Tahmassebi about

1 this case.

2 Q Did he call your office staff?

3 A After I came back. He left a message.

4 Q A CT scan of the kidneys was the first  
5 thing ordered for this patient.

6 A Yes.

7 Q And that was on July 1, '97, according to  
8 page 35 of your records.

9 A Yes.

10 Q And this was followed by Julia Colon, your  
11 office assistant?

12 A Yes.

13 Q You didn't realize that the patient very  
14 likely had a medical problem and not a structural  
15 problem with his kidney at that time?

16 A Yes.

17 Q So a medical problem of the kidneys does  
18 not require a CT scan of kidneys, does it?

19 A Repeat it again, please.

20 Q A CT scan of the kidneys only gets  
21 structural-type evidence; right?

22 A Yes, we can find out if there's a problem

1 or not.

2 Q It does not tell you anything about  
3 whether a patient has a disease like lupus nephritis;  
4 right?

5 A Usually in the early stage it doesn't show  
6 much.

7 Q Even in the advanced stage you could have  
8 a normal-looking kidney on a CT scan, but if you  
9 looked at the kidney under the microscope it can be  
10 grossly diseased?

11 A If there's gross things, can be picked up,  
12 but size would be increased. Atrophy.

13 Q Actually there wasn't anything abnormal?

14 A No.

15 Q But he did have a grossly abnormal kidney  
16 under the microscope?

17 A Yes.

18 Q This was discovered later on.

19 A Yes.

20 Q Now, when did you first find out about  
21 this abnormal lab result of Fairfax Hospital in  
22 December 1996?



1           A     After all of this came out.

2           Q     You say after the lawsuit came out?

3           A     Yes.

4           Q     By that point you had already sent a copy  
5 of your record to my office, right, at my request?

6           A     I don't have the record.

7           Q     I'm saying your office records were sent  
8 to me --

9           A     Yes.

10          Q     -- right before the lawsuit was brought.

11          A     Yes, at your request.

12          Q     Yes, I requested them and you sent them.

13                Now, actually weren't you told about the  
14 abnormal creatinine many months before that by Dr.  
15 Mahoney, the nephrologist who ultimately diagnosed  
16 this patient's kidney problem?

17          A     I can't understand what you are saying.

18          Q     You just told us that you didn't find out  
19 about the creatinine from December 1996 until the  
20 lawsuit was brought. I'm asking you isn't it a fact  
21 that actually you learned about it a lot earlier from  
22 Dr. Mahoney, the nephrologist who diagnosed the

1 problem? Didn't he tell you about the December 96  
2 creatinine?

3 Let me show you a letter that he sent to  
4 you. Do you remember that he sent you some letters?

5 A Yes.

6 Q Here's one dated August 1997, page 46 of  
7 the record from Nephrology Associates of Northern  
8 Virginia.

9 A Yes.

10 THE COURT: This is Exhibit Number --

11 MR. MALONE: Part of Dr. Choi's records,  
12 Exhibit 7.

13 THE COURT: Thank you.

14 BY MR. MALONE:

15 Q He's got a long discussion here and then  
16 in the second line, second page, he said: I was able  
17 to obtain laboratory results from the emergency room  
18 visit to Fairfax Hospital in December '96. His value  
19 showed creatinine of 1.8.

20 Dr. Mahoney has told us this was the time,  
21 which does lend some idea of the time course of this  
22 disease.

1                   So didn't you really know by August 1997  
2   that this young man had had an abnormal creatinine  
3   back in December '96? You learned about it well  
4   before the lawsuit was filed.

5                   MR. ALTMAN: Objection. Relevance, Your  
6   Honor.

7                   THE COURT: What difference does it make?

8                   MR. MALONE: I'm getting to it.

9                   BY MR. MALONE:

10                  Q    Didn't you know this?

11                   MR. ALTMAN: Objection.

12                   THE COURT: Come on up to the bench.

13                   (Whereupon, there was a bench conference  
14   held without the hearing of the jury and reported as  
15   follows:)

16                   THE COURT: What is the relevance?

17                   MR. MALONE: The relevance is that if he  
18   found it out much earlier, he had a chance at that  
19   time to go back through his records and look and see  
20   if in fact that cath report was in there, and that's  
21   when this cath report might have been found in his  
22   records and might have disappeared.

1                   THE COURT: One second. What is Dr.  
2 Horton going to testify to in reference to the cath  
3 report?

4                   MR. MALONE: He's going to say he called  
5 the office of Choi. He's going to say that the  
6 hospital sent a copy. He's going to say that after he  
7 got back to his office a week later when it was on his  
8 desk, he took it to this office manager to mail a copy  
9 to him.

10                  THE COURT: Mr. Altman.

11                  MR. ALTMAN: That's pure speculation, Your  
12 Honor, to assert that somehow after he got a report in  
13 August of 1997 that he would go and throw away a  
14 document that was six months earlier. That makes  
15 really no sense.

16                  THE COURT: I don't know if it makes no  
17 sense or whether it really is terribly probative and  
18 is going to lead to the jury to decide.

19                  I have to decide whether it is probative,  
20 and I find it is probative, and I also feel that the  
21 probative value outweighs a minimal prejudice. I  
22 don't know how it could be prejudicial, unduly

1 prejudicial.

2               So the probative value outweighs the  
3 prejudice, the objection is overruled and your  
4 exception is noted.

5               THE COURT: Objection overruled.

6               (Whereupon, the bench conference was  
7 concluded.)

8               THE COURT: Go ahead, Mr. Malone.

9               MR. ALTMAN: Your Honor, might we be heard  
10 on the last issue, because, in reading this, I think  
11 there's an inaccurate reference here.

12              THE COURT: Come on up very quickly,  
13 gentlemen.

14              (Whereupon, there was a bench conference  
15 held without the hearing of the jury and reported as  
16 follows:)

17              MR. ALTMAN: Second page of the report,  
18 sir. Mr. Malone is suggesting that when Dr. Choi got  
19 that record, he would have discarded Dr. Horton's  
20 report. But this refers to ER visit, not Dr. Horton's  
21 report.

22              Dr. Choi would have no reason based on

1 this document from Dr. Mahoney to give him Dr.  
2 Horton's report. He would have had to have gotten it  
3 from the medical records.

4 THE COURT: One second. Let me take a  
5 look at this. It's Bates stamped 100047 to represent  
6 page 2 of the report from Dr. Mahoney. Give me a  
7 moment, Counsel.

8 (Reading document).

9 I don't want to comment. Suffice it to  
10 say that there's another year. It raises the issue  
11 one way or the other that something unusual happened  
12 here. Either a doctor didn't send records that he  
13 said he sent or something is not in the file that  
14 ought to be in the file and so that the jury can  
15 determine those issues in conjunction with everything  
16 else, that ruling stands. Anything else?

17 MR. ALTMAN: The two doctors from the  
18 emergency department testified in their depositions  
19 they don't know that they would have discussed the  
20 creatinine. And they're saying that they definitely  
21 called, we know that, that's in the medical record.  
22 But when you ask them, Do you recall discussing the

1 creatinine," they say no.

2 MR. MALONE: Excuse me. They also said --

3 THE COURT: Well, excuse me. You're not  
4 interrupting him in my courtroom, and I'll tell him to  
5 stop, not you. Go ahead.

6 MR. MALONE: I'm sorry.

7 MR. ALTMAN: That's the problem we have,  
8 is they are attempting to show that Dr. Choi would  
9 have discarded something that they can't say he got.  
10 That's my objection. I'd appreciate His Honor's  
11 reruling.

12 THE COURT: And this letter, if anything,  
13 this page, if anything, I believe supports my ruling  
14 rather than goes against my ruling. Your exception is  
15 noted.

16 (Whereupon, the bench conference was  
17 concluded.)

18 THE COURT: Objection overruled.

19 BY MR. MALONE:

20 Q Dr. Choi, my only point here is this, that  
21 after you were advised in August '97 that your  
22 patient's kidney problems dated back all the way to

1 December 1996, did you ever have the opportunity to go  
2 back through your records and see if there was any  
3 evidence in your records of whether or not you had  
4 ever received such a -- either a lab result, Dr.  
5 Horton's cath report or anything like that?

6 Did you ever go back and look for that to  
7 try to reconstruct what had happened, why you missed  
8 it?

9 MR. ALTMAN: Objection to the form of the  
10 question, Your Honor.

11 THE COURT: Do you understand the  
12 question, Dr. Choi?

13 THE WITNESS: Yes.

14 THE COURT: Okay. I overrule the  
15 objection.

16 A I didn't have any chance to summarize all  
17 of this things myself.

18 BY MR. MALONE:

19 Q My question was, did you look back at your  
20 record to see if there was any sign in there that  
21 maybe you had been reported these abnormal lab  
22 findings and you had simply overlooked it when the



1 reports came in to you?

2 MR. ALTMAN: Objection. At what time,  
3 Your Honor? Now?

4 BY MR. MALONE:

5 Q August 1997 when you got the reference  
6 from Dr. Mahoney when he told you that the abnormal  
7 lab findings dated back into December '96, did you at  
8 that time pick up your records and look through  
9 page-by-page to see if anyone had told you that  
10 before?

11 A No.

12 Q You did not. Okay.

13 Now, my final question is this: Do you  
14 agree that if you had known about this abnormal  
15 creatinine back in December 1996 and January '97, this  
16 young man's kidneys would have been saved?

17 A Yes.

18 Q Thank you. That's all I have.

19 THE COURT: Ladies and gentlemen of the  
20 jury, we'll take about five minutes. I'll send you  
21 back to the jury room just in case anyone needs to use  
22 the restroom. I'll bring you back out and we're going

1 to go until 4:00.

2 Take five minutes.

3 (Whereupon, a recess was taken.)

4 BAILIFF: Please remain seated and come to  
5 order.

6 THE COURT: Okay. Counsel, we're going to  
7 start at 9 o'clock tomorrow morning unless there's a  
8 reason that we can't.

9 MR. MALONE: That would be good for me,  
10 actually.

11 THE COURT: Nine o'clock.

12 Dr. Choi, come back up to the witness  
13 stand, please.

14 CROSS-EXAMINATION

15 BY MR. ALTMAN:

16 Q Doctor, let me first direct your attention  
17 to the document in your medical records, the referral  
18 to Dr. Horton for the catheterization.

19 May I approach the witness, Your Honor?

20 THE COURT: Yes, sir.

21 If everyone could refer to an exhibit  
22 number, and if it's Bates stamped, so the record is

1 clear. I know that the Appellate Court, if they ever  
2 see this case, would appreciate that.

3 MR. ALTMAN: Page 100024, Exhibit 7, Dr.  
4 Choi's records.

5 THE COURT: Thank you.

6 BY MR. ALTMAN:

7 Q Dr. Choi, let me show you the referral to  
8 Dr. Horton for the cardiac catheterization.

9 Let me ask you this question, sir. At the  
10 time you signed that, did you know when the  
11 catheterization was going to be performed?

12 A I don't know.

13 Q In fact, how long does that form authorize  
14 Dr. Horton to perform the cardiac catheterization  
15 before he has to come back to you for authorization  
16 again?

17 A The date is 60 days.

18 Q He has 60 days to complete the test?

19 A Yes.

20 Q So on January 9th you didn't know when it  
21 was going to be done but sometime within the next 60  
22 days?

1           A       Yes.

2                   MR. MALONE: Can I make a small objection  
3 to leading his own witness?

4                   MR. ALTMAN: The problem is because of  
5 language difficulties, Your Honor. I'll do the best I  
6 can.

7                   THE COURT: I overrule that objection.

8                   BY MR. ALTMAN:

9           Q       Doctor, when Mr. Ponirakis returned to see  
10 you on January 15, 1997, following the  
11 catheterization, did he tell you if Dr. Horton had  
12 told him about abnormal laboratory values?

13           A       No.

14           Q       Did Mr. Ponirakis tell you on January 15th  
15 when he returned to you following the cardiac  
16 catheterization that Dr. Horton had suggested that he  
17 might have kidney disease? Did Mr. Ponirakis tell you  
18 that?

19           A       If I heard that, I would take action.  
20 Repeated the blood test, creatinine.

21           Q       I understand. I'm sorry. I didn't mean  
22 to cut you off, but I'm asking a little bit of a

1 different question.

2 When Mr. Ponirakis came to see you on  
3 January 15th, did he tell you that Dr. Horton had told  
4 him that he might have kidney disease?

5 A No.

6 Q Now, you were asked a lot of questions  
7 about why you did not call Dr. Horton after the  
8 cardiac catheterization. Where was the  
9 catheterization performed, sir?

10 A Right. Arlington Hospital.

11 Q My question was, at what facility was it  
12 performed.

13 A Yes. Arlington Hospital.

14 Q Do you have privileges at Arlington  
15 Hospital, sir?

16 A No.

17 Q Do you know how long it takes to get  
18 reports from Arlington Hospital?

19 A I don't know the Arlington Hospital, but  
20 other hospitals usually take a week or two weeks or  
21 something.

22 Q So five days after the catheterization you

1 saw Mr. Ponirakis in your office; is that correct?

2 A Yes.

3 Q Did you expect to have received a copy of  
4 the catheterization report by that time?

5 A No.

6 Q You were also asked some questions about  
7 why you didn't call Dr. Horton after the January 15th  
8 appointment.

9 Let me ask -- .

10 Before I ask you that question, let me ask  
11 you some preliminary questions.

12 Doctor, how many patients do you see per  
13 day?

14 A About average 20.

15 Q Was that true in 1996 and 1997?

16 A Yes.

17 Q Do you refer other patients out to  
18 consultants and to have laboratory studies like you  
19 did for Mr. Ponirakis in this case?

20 A Yes.

21 Q Is there any way for you to keep track of  
22 who has sent you a consultant's report or who has sent

1 you laboratory results?

2 A It is very difficult to track.

3 Q Okay. Do you have any system in your  
4 office?

5 A No.

6 Q Why do you tell ladies and gentlemen it's  
7 difficult to keep track --

8 A Yes.

9 Q -- of laboratory studies and consultants'  
10 reports when you refer patients out?

11 A For example, I refer like two, three  
12 patients to different doctors for different tests.  
13 Patient has appointment, but not the same day.  
14 Sometimes three days later. But they didn't keep  
15 appointment, sometimes take 45 days, sometimes a week,  
16 sometimes even a few weeks. Unless patient return to  
17 me, otherwise I don't know when patient saw the  
18 specialist.

19 Q Okay. Now, Doctor, you were asked some  
20 questions about your first visit with Mr. Ponirakis  
21 and what questions you asked him about his history.

22 What is the question that you asked him to

1 try and get information about his history?

2 A Usually before starting I ask young man  
3 history in the past, drinking or smoking history;  
4 alcohol or cigarettes. Then I move to have you had  
5 any serious disease in the past or any type of  
6 operation you had; are you allergic to any medicine,  
7 which is most of the regular questions.

8 Q Did you ask those questions of Mr.  
9 Ponirakis?

10 A Yes.

11 Q Now, I think you have already answered  
12 this but let's go through this briefly.

13 Did he tell you about any prior history of  
14 urine problems or blood in the urine?

15 A No.

16 Q Did he give you any history of any  
17 problems when you asked him those questions about --

18 A Yes. He gave he had history of gastric  
19 ulcer disease in 1994.

20 Q Doctor, when you have a patient who comes  
21 to see you complaining of a particular problem as  
22 opposed to a patient who comes to see you for a



1 general physical exam, an annual physical exam, do you  
2 ask different questions of those patients?

3 A Yes.

4 Q Could you tell the ladies and gentlemen  
5 the different types of questions that you ask assuming  
6 one patient comes in with a problem whereas a  
7 different patient comes in just for an annual physical  
8 exam?

9 A Yes. I ask systems review, such as have  
10 you had any sudden vision change, have you had  
11 swallowing problem, any coughing, shortness of breath,  
12 did you have any unusual indigestion; how is the bowel  
13 movement, how often do you go to the bathroom. And  
14 once in a while I ask sexual problem. Do you have any  
15 numbness in the arms and legs. Those kinds of things  
16 I ask.

17 Q Now, did Mr. Ponirakis ever come to you  
18 for a general physical examination?

19 A No.

20 MR. ALTMAN: Your Honor, this might be a  
21 good stopping point.

22 THE COURT: Okay. Ladies and gentlemen of

\* \* \*

25371420-00

999-654933

Ponirakis, Sotiri

CASE NO.

PATIENT'S NAME

ADDRESS 8052 Powderbrook La. Springfield VA 22153 Humana DATE 11-14-96

TEL. NO. 455-2032 REFERRED BY Cor 855 2032 Student OCCUPATION 10-08-76 SEX M S.M.W.O.

FAMILY HISTORY: FATHER MOTHER

BROTHERS SISTERS

CANCER TUBERCULOSIS MENTAL ILLNESS DIABETES HEART DISEASE ARTHRITIS

GOUT THYROID OBESITY RENAL EPILEPSY OTHER NO history of substance abuse

PAST HISTORY: RUBELLA MEASLES MUMPS CHICKENPOX SCARLET FEVER

MALARIA PNEUMONIA JAUNDICE SOILS

RHEUMATIC FEVER TUBERCULOSIS ASTHMA HEART DISEASE HYPERTENSION DIABETES

GONORRHEA SYPHILIS FREQUENT TONSILLITIS RENAL OPERATIONS

MENSTRUAL: ONSET PERIODICITY TYPE DURATION PAIN L.M.P.

MARITAL: PREGNANCIES CHILDREN ABORTIONS SEXUAL

HABITS: ALCOHOL NO TOBACCO NO DRUGS COFFEE TEA MEALS WATER

SLEEP BOWEL MOVEMENTS EXERCISE AMUSEMENTS

770 serious diseases or operations

no known allergies allergic to benzocaine

Gastric ulcer disease 1994

PRESENT AILMENT: LT Anterior low chest pain for 4 days & he was in advanced urgent care center but yesterday he no injury by similar pain. He had chest X-Ray which said normal. He has occ. coughing but no dyspnea

PHYSICAL EXAMINATION: TEMP. PULSE 60 RESP. 20/6R. WT. 153

GENERAL APPEARANCE Well D/d

SKIN: no eruptions HEAD

EYES: VISION PUPIL equal in size FUNDUS

EARS: long e. e. e. w. l.

NOSE: Neth neg

THROAT: PHARYNX TONSILS

CHEST: symmetrical Tenderness BREASTS

HEART: RSR no m. LT parasternal region of 6-8th rib level

LUNGS: clear localized swelling or bruise

ABDOMEN: WNL

GENITALIA:

RECTUM:

PELVIC:

EXTREMITIES:

LYMPH NODES: NECK AXILLA INGUINAL ABDOMINAL

REFLEXES:

REMARKS:

LABORATORY FINDINGS:

(Urine - CBC - Smears - VDRL - Chemistry - Pregnancy Tests - X-Ray - Tine - Stool (Occult Blood))

Date

2PT 12-20-76, 1-31-77, 3-21-77

6-12-78

DT 8-22-81

phlebotomy 3-21-77, 5-23-77, 8-19-77

6-12-78, 8-22-81

mmR 2-23-78 8-8-97

P.P.D 3-8-97 neg

DIAGNOSIS: LT Ant. low chest pain Pres

Rec. 1 Rib X-Ray

Thoracic cage origin

TREATMENT: Lorazepam 1mg B.I.D. #30

2 R.T.O. 1 week

SYMBOLS: ✓ NORMAL, \_\_\_\_\_ ABNORMAL (UNDERLINE WORD)

DEGREE OF ABNORMALITY: X XX XXX

HISTACOUNT

FORM NO. 4011

HISTACOUNT CORPORATION, MELVILLE, L. I., N. Y. 11747

ORIGINAL

CLERK  
SUPREME COURT OF VIRGINIA

JUL 06 2000

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY, VIRGINIA

FILED

FAIRFAX COUNTY, VIRGINIA - IN COURTROOM

4/12/01

INITIALS

JOHN T. FRI  
Clerk of the Circuit  
of Fairfax County

SOTIRI PONIRAKIS

Plaintiff

v.

At Law No.

174553

DAVID CHOI, M.D.

Defendant

Videotape Deposition of Sotiri Ponirakis  
Fairfax, Virginia  
Monday, April 10, 2000  
5:40 p.m.

Pages 1 - 48

Reported by: Sandra K. Tremel, RMR/CRR



L.A.D. REPORTING COMPANY, INC.

VIDEOTAPE DEPOSITION OF SOTIRI PONIRAKIS  
CONDUCTED ON MONDAY, APRIL 10, 2000

1                   Deposition of Sotiri Ponirakis, held at  
2 the:

3  
4                   Fairfax Hospital  
5                   3300 Gallows Road  
6                   Fairfax, Virginia  
7  
8  
9  
10  
11

12                   Pursuant to agreement of counsel, before  
13 Sandra K. Tremel, Registered Merit Reporter/Certified  
14 Realtime Reporter and Notary Public of the  
15 Commonwealth of Virginia.  
16  
17  
18  
19  
20  
21  
22

VIDEOTAPE DEPOSITION OF SOTIRI PONIRAKIS  
CONDUCTED ON MONDAY, APRIL 10, 2000

A P P E A R A N C E S

ON BEHALF OF THE PLAINTIFF:

PATRICK A. MALONE, ESQUIRE  
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(202) 737-7777

ON BEHALF OF THE DEFENDANT:

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(703) 591-9700

ALSO PRESENT: BENJAMIN GLASS, ESQUIRE  
SHELLEY SANDERS, VIDEOGRAPHER

VIDEOTAPE DEPOSITION OF SOTIRI PONIRAKIS  
CONDUCTED ON MONDAY, APRIL 10, 2000

1	C O N T E N T S	
2	EXAMINATION OF SOTIRI PONIRAKIS	PAGE
3	By Mr. Malone	5
4	By Mr. Altman	28
5	E X H I B I T S	
6	(None)	
7		
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VIDEOTAPE DEPOSITION OF SOTIRI PONIRAKIS  
CONDUCTED ON MONDAY, APRIL 10, 2000

P R O C E E D I N G S

MR. MALONE: Would you swear in the  
witness, please.

SOTIRI PONIRAKIS

having been duly sworn, testified as follows:

EXAMINATION BY COUNSEL FOR THE PLAINTIFF

BY MR. MALONE:

Q. Tell us your full name.

A. Sotiri Ponirakis.

Q. How old are you?

A. 23 years old.

Q. We're here at Fairfax Hospital on the  
evening of April 10th, 2,000, after the first day of  
trial in this case. Sotiri, how long have you been  
in the hospital?

A. Since last Wednesday.

Q. What is your understanding of what's wrong  
with you now?

A. Infection of the lungs.

Q. Does it have anything to do with your  
kidneys that you're aware of?

A. No.

VIDEOTAPE DEPOSITION OF SOTIRI PONIRAKIS  
CONDUCTED ON MONDAY, APRIL 10, 2000

1           Q.    Okay.  Sotiri, I want to ask you some  
2 general background questions.  I'm going to ask you a  
3 little bit about your medical history.  Tell us where  
4 you were born and when?

5           A.    I was born in Arlington, Virginia.  
6 October 8, 1976.

7           Q.    And where did you grow up?

8           A.    Mainly early part of my life in Woodbridge,  
9 and until about third grade and then Springfield,  
10 Virginia until present.

11          Q.    Who are your parents?

12          A.    Amongil and Amina Ponirakis.

13          Q.    Have you lived with your parents your  
14 entire life?

15          A.    Yes.

16          Q.    What language is spoken at home?

17          A.    Primarily Greek.

18          Q.    Where did you go to school?

19          A.    High school I went to Robert E. Lee High  
20 School, graduated in June of 1994.

21          Q.    How were your grades in high school?

22          A.    Average.



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1 Q. When did you start working?

2 A. In October of 1992.

3 Q. You were still in high school at the time?

4 A. Yes.

5 Q. What kind of work did you do?

6 A. I worked for Dominos pizza.

7 Q. Did you make those pizzas?

8 A. Yes.

9 Q. And was that an after school type job?

10 A. Yes.

11 Q. After you graduated from high school, did  
12 you go to work full-time for Dominos?

13 A. Yes.

14 Q. What was your career plan?

15 A. Hopefully to get into managing and maybe  
16 franchise a Dominos.

17 Q. Did you attend college before you got sick?

18 A. Yes.

19 Q. When did you start college?

20 A. In late 1995.

21 Q. So did you take a year off between high  
22 school graduation and starting college?

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1 A. Yes.

2 Q. And where did you start college?

3 A. Northern Virginia Community College.

4 Q. Where were you going to college at the time  
5 you first saw Dr. Choi in November '96?

6 A. George Mason University.

7 Q. What was your major?

8 A. Business management.

9 Q. What did you do for fun for recreation  
10 around the time you were finishing up high school and  
11 the years right after high school?

12 A. Recreational sports and going out to  
13 movies, hang out with my friends.

14 Q. Did you have a lot of friends?

15 A. Yes.

16 Q. And you say recreational sports. What  
17 kinds of sport did you like to play?

18 A. Basketball, lacrosse, tennis, just every  
19 kind of sport.

20 Q. Pardon me?

21 A. All kinds of sports.

22 Q. Okay. Were you a good athlete?

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1 A. Yes.

2 Q. What was your health like during the first  
3 17 or 18 years of your life?

4 A. Pretty normal.

5 Q. After you graduated from high school in  
6 1994, did you develop any health problems?

7 A. Yes.

8 Q. What happened?

9 A. I developed some flu like symptoms and I  
10 saw Dr. Sabert in July of 1994.

11 Q. When did -- when did you first find out  
12 about any urine problems?

13 A. In July of 1994.

14 Q. And Dr. Sabert informed you about that?

15 A. Yes.

16 Q. What was your understanding of what the  
17 problem was?

18 A. Just that there was blood in my urine.

19 Q. And did you get any x-ray of your kidney?

20 A. Yes.

21 Q. After that?

22 A. Yes.

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1 Q. When was the kidney x-ray done?

2 A. In October of 1994.

3 Q. Did Dr. Salbert eventually refer you to an  
4 urologist in March 1995?

5 A. Yes.

6 Q. And did you go to that urologist?

7 A. Yes.

8 Q. Did you discuss the episode of blood in  
9 your urine at that time?

10 A. Yes.

11 Q. Could you actually see anything wrong with  
12 your urine previously?

13 A. Yes. In July.

14 Q. What did you see in July '94.

15 A. It was dark colored.

16 Q. After July '94, when was the next time that  
17 you saw with your eyes any problem with your urine?

18 A. July of 1997.

19 Q. Three years later?

20 A. Yes.

21 Q. Okay. After you saw the urologist in  
22 March 1995, did he send you back to Dr. Salbert?

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1 A. Yes.

2 Q. And according to the records, you went back  
3 to Dr. Salbert one time after that. Was any further  
4 follow-up of any specific nature ordered to your  
5 understanding?

6 A. No.

7 Q. Were all of your blood tests that you knew  
8 about in 1994 and 1995 normal?

9 A. Yes.

10 Q. And did you know what the result of the  
11 kidney x-ray was in the fall of '94.

12 A. It was normal.

13 Q. Okay. Now, in the spring of '95, after you  
14 saw Dr. Salbert again, did you switch doctors?

15 A. Yes.

16 Q. Why did you switch doctors?

17 A. For -- I had company insurance through  
18 Dominos, and while I was with Dr. Salbert I didn't  
19 have insurance.

20 Q. So can you switch to a doctor who was  
21 covered by the insurance plan?

22 A. Yes.

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1 Q. And who was that?

2 A. Dr. Pappas.

3 Q. When you first saw Dr. Pappas, did you sign  
4 a form for him to obtain your old medical records  
5 from Dr. Salbert?

6 A. Yes.

7 Q. And did he get those forms?

8 A. Yes.

9 Q. And did you also sign authorization for  
10 Dr. Pappas to get the report of your kidney x-ray?

11 A. Yes.

12 Q. Did you have any more urine problems that  
13 you're aware of in 1995 after you started seeing  
14 Dr. Pappas around the middle of the year?

15 A. No.

16 Q. Did you have some other kinds of problems  
17 that you saw Dr. Pappas for?

18 A. Yes.

19 Q. What was that?

20 A. Stomach pains, and he did a upper GI  
21 series.

22 Q. And what was found, to your knowledge, with

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1 the upper GI series?

2 A. That I had an ulcer.

3 Q. And did he treat you for the ulcer?

4 A. Yes.

5 Q. Dr. Choi's records said you had a gastric  
6 ulcer in 1994. Did you mean to say that it was 1995?

7 A. Yes.

8 Q. Okay. What did he treat, what doctor  
9 Pappas treat for that ulcer 1995?

10 A. He gave me Pepcid medicine and I believe an  
11 antibiotic.

12 Q. Okay. Now, did that seem to help the  
13 stomach problem?

14 A. Yes.

15 Q. According to Dr. Pappas's records, you last  
16 saw him in December 1995 and then we don't have any  
17 more records for you until November 1996. Did you go  
18 to any doctors in that 11 month interval between  
19 December '95 and November '96?

20 A. No.

21 Q. Why not?

22 A. I was feeling generally good at the time.

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1 Didn't have any symptoms.

2 Q. What happened concerning your health in  
3 November 1996 that sent you to the doctor?

4 A. I had chest pains and went to the urgent  
5 medical care and they took some chest x-rays.

6 Q. And did they have you follow-up with  
7 Dr. Choi?

8 A. Yes.

9 Q. Did you do that the next day?

10 A. Yes.

11 Q. What did Dr. Choi ask you about any prior  
12 medical problems on your very first visit with him on  
13 November 14, 1996?

14 A. If I had any major illnesses or major  
15 operations in the past.

16 Q. Did he ask you any specific questions going  
17 through different organ systems in your body, like,  
18 your eyes, your hearing, your throat, et cetera?

19 A. No.

20 Q. Did he ever ask you whether or not you'd  
21 ever had blood in your urine?

22 A. No.



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1 Q. What would you have told him if he had  
2 asked if you had blood in your urine?

3 A. That I had episodes of blood in my urine.

4 Q. Why didn't you mention it when he asked if  
5 you had any prior serious medical problems?

6 A. I didn't think that it was serious at the  
7 time, and plus they did a kidney x-ray and showed  
8 that I was normal.

9 Q. Had you -- had any doctor given you any  
10 specific treatment for this blood in your urine.

11 A. No.

12 Q. Did Dr. Choi ask you who the names were of  
13 any of your previous doctors?

14 A. Yes.

15 Q. Did you give those to him?

16 A. Yes.

17 Q. And what names did you give him?

18 A. Dr. Salbert and Dr. Pappas.

19 Q. Okay. Now, you wound up going to see --  
20 I'm going to skip over a few things, Sotiri, but you  
21 saw Dr. Horton several times in December 1996. Do  
22 you recall that?

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1 A. Yes.

2 Q. And why were you seeing Dr. Horton, a  
3 cardiologist?

4 A. My chest pains continued.

5 Q. And did he do some testing for you?

6 A. Yes.

7 Q. And did he have blood work done?

8 A. Yes.

9 Q. Okay. Did you wind up going to Fairfax  
10 hospital emergency room on December 13, 1996?

11 A. Yes.

12 Q. What lead up to that?

13 A. I had some flu like symptoms again, and  
14 fainted, and they said I was dehydrated.

15 Q. Did they tell you to go back to see  
16 Dr. Choi for follow-up?

17 A. Yes.

18 Q. And did you in fact do that?

19 A. Yes.

20 Q. Did the hospital give you any laboratory  
21 sheets or any specific information about what your  
22 laboratory findings were?

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1 A. No.

2 Q. The records show you saw Dr. Choi on  
3 January 2nd, 1997?

4 A. Yes.

5 Q. Do you remember what your problems were at  
6 that time?

7 A. At that time I think it was chest pains  
8 again.

9 Q. And did you have any nausea and vomiting  
10 around that time?

11 A. Yes.

12 Q. Did you tell Dr. Choi you had been to the  
13 Fairfax emergency room a couple of weeks previously?

14 A. Yes.

15 Q. Did Dr. Choi give you a medication called  
16 Compazine to calm down your stomach?

17 A. Yes.

18 Q. What happened when you took the Compazine?

19 A. I had to go to the Alexandria emergency  
20 room because I was having muscle spasms due to the  
21 fact that I was allergic to the Compazine.

22 Q. You didn't know you were allergic to the

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1 Compazine before this, right?

2 A. No.

3 Q. Did you phone in that information to  
4 Dr. Choi?

5 A. Yes. I let him know.

6 Q. Okay. Now, the records show that you had a  
7 gallbladder sonogram and upper GI series in July --  
8 I'm sorry, January 7th, 1997. Do you remember  
9 undergoing that at Dr. Choi's direction?

10 A. Yes.

11 Q. And then you went back to Dr. Horton for a  
12 couple of tests including a stress echo test and then  
13 a couple of days later, a cardiac catheterization?

14 A. Yes.

15 Q. Okay. Where did you go for the cardiac  
16 catheterization?

17 A. Arlington Hospital.

18 Q. And from your point of view as a patient,  
19 what did you understand was happening to you during  
20 that procedure?

21 A. You mean what was going to be done?

22 Q. Right. What did they do to you?

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1           A.    They went in through my groin and shot some  
2 dye into my heart and got a view of my heart, took  
3 pictures of my heart, see what was going on, if I had  
4 any problems with my heart.

5           Q.    How did you feel in the immediate aftermath  
6 of several hours after the catheterization was  
7 finished?

8           A.    I was pretty drugged up.

9           Q.    Do you remember speaking to Dr. Horton  
10 about the results that day?

11          A.    No.

12          Q.    Do you recall any conversation at all with  
13 Dr. Horton after the cardiac catheterization?

14          A.    No.

15          Q.    The record of Dr. Choi reflects that you  
16 went back and saw him five days later. Do you recall  
17 going back to see him?

18          A.    Yes.

19          Q.    The record also reflects that you told him  
20 that the results of the cardiac catheterization were  
21 normal?

22          A.    Yes.

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1           Q.   How did you know that they were normal if  
2 you don't remember talking with Dr. Horton  
3 afterwards?

4           A.   My father had called and got the results  
5 from Dr. Horton's office.

6           Q.   Okay. Now, Dr. Choi sent you to an  
7 orthopedist on January 15th for your knee pain?

8           A.   Yes.

9           Q.   And did you follow-up with that  
10 orthopedist?

11          A.   Yes.

12          Q.   Later on that month, Dr. Choi sent you to  
13 gastrointestinal doctor, why was that?

14          A.   I was having stomach problems again.

15          Q.   And you had called Dr. Choi's office?

16          A.   Yes.

17          Q.   Okay. And did you have testing done by the  
18 gastrointestinal doctor?

19          A.   Yes.

20          Q.   Now, the records show that between  
21 February '97 and June '97 you had no doctor visits.  
22 Is that right?

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1 A. Right.

2 Q. Why didn't you have any doctor visits  
3 during that time?

4 A. I wasn't having any symptoms at the time.

5 Q. Were you feeling better after these  
6 episodes in November, December, and January?

7 A. Yes.

8 Q. During any of this interval in December or  
9 '96 or January '97, did you ever hear the word  
10 creatinine?

11 A. No.

12 Q. Did you ever hear anything about an  
13 abnormal kidney function?

14 A. No.

15 Q. When did you first hear that you had some  
16 abnormal kidney function?

17 A. July of 1997.

18 Q. What lead you to go to Dr. Choi's office on  
19 July 1, '97?

20 A. Symptoms came back. I was starting to feel  
21 bad again.

22 Q. And did you see any problems in your urine

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1 at that time?

2 A. Yes.

3 Q. What did you see?

4 A. Dark colored urine again.

5 Q. Was this the first time since July '94

6 A. Yes.

7 Q. Did Dr. Choi take blood and urine from you  
8 on that day?

9 A. Yes.

10 Q. Was this the first time that he had done  
11 this?

12 A. Yes.

13 Q. Ultimately you saw a Dr. Mahoney a  
14 nephrologist on July 10, '97?

15 A. Correct.

16 Q. And how soon after that did you find out  
17 you had the lupus nephritis?

18 A. Three days later.

19 Q. When did you go on dialysis?

20 A. March of 1998.

21 Q. What was the reason why you went on  
22 dialysis?



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1           A.    My kidneys got worse. And I needed  
2 dialysis to survive, basically.

3           Q.    How did they get access to your blood to do  
4 the dialysis?

5           A.    When I first started dialysis I had a  
6 fistula in my arm.

7           Q.    That a tube in your arm?

8           A.    It connects to a vein to a major artery and  
9 you get -- they stick two needles and one drains the  
10 blood out and one returns the blood.

11          Q.    And did they redo it each and every time  
12 you had the dialysis or was it in their permanently?

13          A.    It was permanently.

14          Q.    Okay. And did you ultimately change over  
15 to another kind of blood access?

16          A.    Yes. Now I have a permanent catheter.

17          Q.    Can you show us where that is?

18          A.    It's here in my chest.

19          Q.    What are those two tubes that kind of end  
20 there, what are they for?

21          A.    One is the arterial line and one is the  
22 venous line, goes into my heart and one pulls out the

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1 blood and one returns the blood.

2 Q. Okay. Have you had dialysis ever since  
3 March 1998?

4 A. Yes.

5 Q. How long does it last?

6 A. Three and a half hours, three times a week.

7 Q. How do you feel after you have had dialysis  
8 on a particular day?

9 A. Pretty much drained.

10 Q. Are you able to do anything other than lay  
11 around on a day that you have had dialysis?

12 A. No.

13 Q. How about the next day, how do you feel  
14 usually?

15 A. Sometimes all right. But usually I gain  
16 fluid on my off days. So that puts a lot on my body.

17 Q. And so then the next day after the off day  
18 you will be back in for dialysis?

19 A. Every other day, yes.

20 Q. Okay. Did you have dialysis yesterday here  
21 at the hospital, by the way?

22 A. Yes.

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1 Q. Okay. Now did you have a kidney transplant  
2 in July '98?

3 A. Yes.

4 Q. Just describe briefly what happened.

5 A. My father donated a kidney to me in July of  
6 1998.

7 Q. And you had surgery done at Georgetown  
8 hospital?

9 A. Yes.

10 Q. He had surgery to take out the kidney and  
11 was put in you around the same time?

12 A. Yes. A few hours later.

13 Q. Did the transplant take?

14 A. No.

15 Q. Did you go back on dialysis after the  
16 transplant?

17 A. I never stopped dialysis.

18 Q. Okay. What happened to your health --  
19 well, was the transplanted organ ultimately removed?

20 A. Yes.

21 Q. When?

22 A. October of 1998.

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1 Q. Did you develop some new health problems  
2 shortly after that?

3 A. Yes.

4 Q. What were they?

5 A. GI bleeding, mostly.

6 Q. And just describe generally what your  
7 health has been like over the last, since  
8 November '98 last year, and several months?

9 A. I have had a lot of bleeding problems, and  
10 I had my spleen removed, some of my small intestine  
11 removed, some of my colon removed. And I have a  
12 fistula in my GI tract, and I have to wear three  
13 ostomy bags because I have three holes in my stomach.  
14 And that's about it.

15 Q. Okay. What's your plan for the future in  
16 terms of what you want to do?

17 A. Right now I just want to get better, and  
18 hopefully start up a family business with my family.

19 Q. Are you hoping to get another transplant?

20 A. Yes.

21 Q. Have you talked with any other family  
22 members about that?

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1 A. Yes.

2 Q. Is anybody lined up ready to give you  
3 another kidney?

4 A. My mother and brother are willing to get  
5 tested.

6 Q. Okay. By the way, when did you first hear  
7 that you had any abnormal kidney function?

8 A. In July of 1997.

9 Q. When did you first find out that the prior  
10 December '96 and January '97 you in fact had had a  
11 high creatinine on two different occasions?

12 A. In July of 1997.

13 Q. Who did you find that out from?

14 A. Dr. Mahoney.

15 Q. The nephrologist?

16 A. Yes.

17 Q. How did you feel when you learned that you  
18 had this abnormal kidney function six months earlier  
19 and you hadn't known about it?

20 A. I was angry because if they had notified me  
21 at that time that I had abnormal lab results,  
22 something could have been done to ultimately save my

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1 kidneys from failing.

2 MR. MALONE: That's all I have. Thank you  
3 very much.

4 Do you want to take a break or would you  
5 like Mr. Altman to go ahead and ask some questions?

6 THE WITNESS: I need some water.

7 MR. MALONE: Okay. Let's take a short two  
8 minute break.

9 THE VIDEOGRAPHER: Off record 18:02:03.

10 (recess)

11 THE VIDEOGRAPHER: On record 18:02:49.

12 EXAMINATION BY COUNSEL FOR DEFENDANT

13 BY MR. ALTMAN:

14 Q. Mr. Ponirakis, let me just ask you a few  
15 questions, sir. Okay?

16 A. Okay.

17 Q. It's my understanding based upon what you  
18 just told Mr. Malone that in 1994 you became aware  
19 that there was some problem with blood and protein in  
20 your urine, is that correct, sir?

21 A. Yes.

22 Q. It's also my I understanding based upon the

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1 questions that Mr. Malone asked you, that you were  
2 referred to an urology. Is that also correct?

3 A. Yes.

4 Q. Now, correct me if I'm wrong, you really  
5 have no idea what happened to you after 1994 as far  
6 as the blood and protein in your urine; is that  
7 correct?

8 A. Yes.

9 Q. Is it my understanding correct that your  
10 recollection is that the doctors never told you  
11 anything that you needed to do nor did they ever tell  
12 you what was going on that caused the blood and  
13 protein in your urine; is that correct?

14 A. Yes.

15 Q. Now, Mr. Malone asked you a question  
16 whether or not when you went to see Dr. Pappas in  
17 1995 whether or not he signed or had you sign a form  
18 authorizing him to get other medical records. Do you  
19 recall those questions?

20 A. Yes.

21 Q. Am I correct, sir, that even after  
22 Dr. Pappas got those medical records, he never

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1 discussed with you anything about your kidneys or the  
2 previous problem with your urine; isn't that correct?

3 A. Correct.

4 Q. He didn't send you for more urine test, did  
5 he?

6 A. No.

7 Q. He didn't do any blood studies to try and  
8 find out what was going on with the urine, did he?

9 A. No.

10 Q. Now, let's move ahead if we could to the  
11 time when you saw Dr. Choi. There came a time in  
12 November of 1996 you came to Dr. Choi for the first  
13 time; is that correct?

14 A. Yes.

15 Q. Now, am I correct, sir, that you really  
16 don't have a very good recollection of your  
17 conversations with Dr. Choi?

18 A. Yes.

19 Q. Well, I don't want to rush you. I want you  
20 to take your time, okay? But the ladies and  
21 gentlemen of the jury may want to know how good your  
22 recollection is of your conversations with Dr. Choi.



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1 It's my understanding that it's not a very good  
2 recollection. Is that correct?

3 A. I remember most of it.

4 Q. I'm sorry, sir?

5 A. I remember most of the conversations.

6 Q. Okay. For instance, let's deal with the  
7 first visit. Do you remember what questions Dr. Choi  
8 asked of you?

9 A. Yes.

10 Q. What did he ask you?

11 A. If I had major operations or major  
12 illnesses in the past.

13 Q. Did he use the term operations or  
14 illnesses?

15 A. Yes.

16 Q. Okay. Now, you would agree with me that  
17 your ulcer had not been very active; is that correct?

18 A. Right.

19 Q. Now that's not a major operation? Was it?

20 A. No.

21 Q. And nor was it a major illness, was it?

22 A. Right.

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1 Q. So but you told him about the ulcer, right?

2 A. Yes.

3 Q. Okay. Now, as far as your first visit, I  
4 think you told the ladies and gentlemen based upon  
5 questions from Mr. Malone that it was your  
6 recollection that Dr. Choi asked you about previous  
7 doctors at that visit. Is that correct?

8 A. Yes.

9 Q. Well, what names did you give them?

10 A. Dr. Salbert and Dr. Pappas.

11 Q. Did you sign a form authorizing him to  
12 obtain the medical records from these doctors?

13 A. No.

14 Q. Did you tell him what treatment you had had  
15 with Dr. Salbert?

16 A. I don't recall.

17 Q. If in fact Dr. Choi asked you about these  
18 doctors, did you tell him that you were seen by  
19 Dr. Salbert for blood and protein in your urine?

20 A. If he would have asked I would have told  
21 him.

22 Q. That's not my question. You said earlier,

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1 sir, that in response to a question from Dr. Choi you  
2 told him that you were seen by Dr. Salbert. Is my  
3 understanding, correct?

4 A. Yes.

5 Q. Okay. Did you tell him that Dr. Salbert  
6 found blood and protein in your urine?

7 A. No.

8 Q. Your first visit with Dr. Choi, that was  
9 for the chest pain, am I correct?

10 A. Yes.

11 Q. And Dr. Choi sent you out for some rib  
12 x-rays, is that also correct?

13 A. Yes.

14 Q. Okay. Now the second time you saw Dr. Choi  
15 was about nine days later on November 23rd, 1996. Do  
16 you remember that?

17 A. Yes.

18 Q. Okay. What was your complaint at that  
19 time?

20 A. I think it was stomach pains again.

21 Q. All right. Now, you just said stomach  
22 pains. If I told you that Dr. Choi's records for

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1 that day talk about coughing and vomiting and a sore  
2 throat, and when he looked in your throat he saw that  
3 it was red, would that refresh your recollection as  
4 to why you came to him that day?

5 A. Yes.

6 Q. Do you agree with me that your second  
7 visit, since I have refreshed your recollection, was  
8 for upper respiratory problems?

9 A. Yes.

10 Q. So you don't have a real good recollection  
11 of that second visit, am I correct, sir?

12 A. I remember the end of November he diagnosed  
13 me with upper respiratory infection.

14 Q. Okay. Now, the next time you saw Dr. Choi  
15 after the upper respiratory infection was on  
16 January 2nd? Do you remember that?

17 A. Yes.

18 Q. Okay. Let's go back for a minute if I  
19 could. If I jump around too much, you let me know,  
20 okay?

21 A. Okay.

22 Q. Let go back to the November 23rd visit. On

VIDEOTAPE DEPOSITION OF SOTIRI PONIRAKIS  
CONDUCTED ON MONDAY, APRIL 10, 2000

1 that visit, Dr. Choi's notes reflect that you didn't  
2 have chest pain anymore, right?

3 A. Right.

4 Q. You didn't have chest pain at that time,  
5 did you?

6 A. No.

7 Q. Okay. Now, a week or so later, you called  
8 Dr. Choi because you were having chest pain again,  
9 right?

10 A. Yes. Yes.

11 Q. And Dr. Choi sent you over to Dr. Horton or  
12 to Northern Virginia Cardiology and you ended up  
13 seeing Dr. Horton, is that correct?

14 A. Yes.

15 Q. When Dr. Horton took care of you I think it  
16 was on December 4th and December 5th, 1996, did he  
17 tell you you had an abnormal sedimentation rate or  
18 abnormal laboratory value?

19 A. No.

20 Q. Did he tell you at that time that you had a  
21 condition called pericarditis?

22 A. He said I possibly could have it.

VIDEOTAPE DEPOSITION OF SOTIRI PONIRAKIS  
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1 Q. Okay. Now on that date, he said or shortly  
2 after that testing, Dr. Horton told you that he  
3 wanted to do a stress echocardiogram, do you remember  
4 that?

5 A. Yes.

6 Q. Do you remember that he wanted to do it  
7 fairly soon and that you put it off until  
8 January 8th?

9 A. Yes.

10 Q. Okay. Now, let's turn our attention if we  
11 could to the December 13th, 1996 visit to the  
12 emergency department at Fairfax Hospital. In  
13 response to a question from Mr. Malone, you told the  
14 ladies and gentlemen that you didn't know you had an  
15 elevated creatinine in 1996 until Dr. Mahoney told  
16 you sometime I think it was in either late July or  
17 August of 1997. Is that correct?

18 A. Yes.

19 Q. All right. Therefore, can we assume that  
20 when you left the emergency department on  
21 December 13, 1996, you did not have any information  
22 that you had abnormal laboratory values, is that

VIDEOTAPE DEPOSITION OF SOTIRI PONIRAKIS  
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1 correct?

2 A. Correct.

3 Q. Okay. Did they say anything to you about  
4 problems that you might be having other than  
5 dehydration?

6 A. No.

7 Q. In fact, the only thing they really told  
8 you that was the matter with you is because of the  
9 vomiting you had gone through for the week or two  
10 immediately prior to the December 13th visit, that  
11 you had become dehydrated, right?

12 A. Correct.

13 Q. And the only thing they did for you at that  
14 time besides examine you was to give you fluids,  
15 right?

16 A. Yes.

17 Q. And following receiving those fluids in the  
18 emergency department, you felt better? Right?

19 A. Correct.

20 Q. And the only thing they told you at the  
21 time of discharge not that you had abnormal  
22 laboratory values, but they told you drink lots of

VIDEOTAPE DEPOSITION OF SOTIRI PONIRAKIS  
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1 fluids and go see Dr. Choi. Right?

2 A. Correct.

3 Q. Now, the next time you saw Dr. Choi would  
4 have been about two weeks later on January 2nd, 1997.  
5 Is that correct, sir?

6 A. Yes.

7 Q. All right. Now on this visit, you came in  
8 again with different complaints, didn't you?

9 A. Yes.

10 Q. This time you came in not with the flu like  
11 symptoms, but came in actually with a stomach ache.  
12 That was the main component of your problem, right?

13 A. Right.

14 Q. Dr. Choi examined you, right?

15 A. Right.

16 Q. And he asked you how long it had been going  
17 on, right?

18 A. Yes.

19 Q. And you told him when your stomach was  
20 upset and what was bothering you, right?

21 A. Yes.

22 Q. And did you discuss also your visit to the



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1 emergency department on December 13, 1996?

2 A. I don't remember.

3 Q. Well, if Dr. Choi's records state that you  
4 had had a previous episode of vomiting about two  
5 weeks ago and went -- and fainted and went to the  
6 emergency department, you would wouldn't have any  
7 reason to doubt that, would you?

8 A. Right.

9 Q. Okay. and I take it you just don't have any  
10 recollection whether or not that was discussed  
11 between you and Dr. Choi on January 2, 1997, correct?

12 A. Correct.

13 Q. On January 2nd he referred you for some  
14 testing, didn't he?

15 A. Yes.

16 Q. Okay. I take it, since you don't have a  
17 good recollection of discussing the emergency  
18 department visit, you don't know whether or not  
19 Dr. Choi was surprised or whether or not he already  
20 knew that information. Is that correct?

21 A. Right.

22 Q. Now on January 2nd he referred you for some

VIDEOTAPE DEPOSITION OF SOTIRI PONIRAKIS  
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1 testing of your stomach; is that correct?

2 A. Yes.

3 Q. Did you tell Dr. Choi that the problems you  
4 were having on January 2nd, 1997 were similar to the  
5 ulcer problems or the discomfort that you felt when  
6 the ulcer was diagnosed in 1995?

7 A. Yes.

8 Q. Now, let's turn our attention if we could  
9 to the stress echocardiogram and the cardiac  
10 catheterization. Following the -- excuse me. Let's  
11 go back to early December 1996. That's when  
12 Dr. Horton initially scheduled you for the stress  
13 echocardiogram, is that correct, sir?

14 A. Yes.

15 Q. Okay.

16 And at that time, your understanding was  
17 that you were just about to go undergo one test and  
18 that was the stress echocardiogram?

19 A. Correct.

20 Q. It wasn't until after the stress  
21 echocardiogram was performed that you were told that  
22 you needed to undergo a cardiac catheterization, is

VIDEOTAPE DEPOSITION OF SOTIRI PONIRAKIS  
CONDUCTED ON MONDAY, APRIL 10, 2000

1 that correct?

2 A. Yes.

3 Q. And in fact you needed to undergo the  
4 cardiac catheterization because the stress  
5 echocardiogram done two days before was abnormal;  
6 isn't that correct?

7 A. Right.

8 Q. Now it's your understanding that the idea  
9 or the purpose of the cardiac catheterization was to  
10 look at the blood vessels that supplied blood  
11 actually to your heart. Is that correct?

12 A. Yes.

13 Q. Now, you told the ladies and gentlemen that  
14 following the cardiac catheterization you were fairly  
15 drugged up, is that correct?

16 A. Correct.

17 Q. And that you didn't learn the results of  
18 the cardiac catheterization until your father called  
19 Dr. Horton, is that correct?

20 A. Correct.

21 Q. All right. Did your father tell you that  
22 Dr. Horton said you had abnormal blood values?

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1 A. No.

2 Q. Did you your father tell you that  
3 Dr. Horton said that you might have kidney disease?

4 A. No.

5 Q. Did your father tell you that Dr. Horton  
6 allegedly told him that you might have connective  
7 tissue disease or some other serious problem?

8 A. No.

9 Q. Let's if we can turn our attention to your  
10 visit with Dr. Choi on January 15, 1997. You came in  
11 that day with the new complaint. Am I correct?

12 A. Correct.

13 Q. You didn't make complaints about your  
14 stomach, right?

15 A. Right.

16 Q. You didn't make complaints about vomiting  
17 or flu like symptoms or even chest pain, did you?

18 A. No.

19 Q. You came in that day with complaints just  
20 related to your knee, right?

21 A. Correct.

22 Q. And that you told Dr. Choi that your knee

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1 problem began within one day after you underwent the  
2 cardiac catheterization. Is that correct?

3 A. Yes.

4 Q. And in fact you and Dr. Choi discussed the  
5 possibility that the cardiac catheterization might  
6 have somehow caused the knee problem, isn't that  
7 correct?

8 A. Yes.

9 Q. And the knee that you were complaining  
10 of -- which knee was it, sir? I'm sorry?

11 A. Right.

12 Q. It was on that side where you had the  
13 cardiac catheterization lying in place in the right  
14 groin area; isn't that correct?

15 A. Yes.

16 Q. Now, the next time you saw Dr. Choi was in  
17 July of 1997, is that correct?

18 A. Yes.

19 Q. Did you tell him at that time that you had  
20 pain in your side, sir, as opposed to pain in your  
21 stomach?

22 A. I believe so, yes.

VIDEOTAPE DEPOSITION OF SOTIRI PONIRAKIS  
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1 Q. Okay. And as result he did a urine test  
2 and some blood studies, didn't he?

3 A. Yes.

4 Q. Okay. And after he got those studies he  
5 told you that you needed to see another doctor,  
6 didn't he?

7 A. Yes.

8 Q. Okay. And do you remember which doctor he  
9 sent you to?

10 A. Urologist.

11 Q. Okay. And the urologist in turn send to a  
12 nephrologist?

13 A. Yes.

14 Q. Okay. And the nephrologist that you have  
15 been primarily seeing since then is Dr. Mahoney, am I  
16 correct?

17 A. And his partners.

18 Q. And who is Dr. Mahoney's partners?

19 A. Dr. Museo and Dr. Macow.

20 Q. Okay. Now, let me ask you just a couple  
21 questions if I could and I apologize if you're  
22 getting tired, sir. Just a couple questions about

VIDEOTAPE DEPOSITION OF SOTIRI PONIRAKIS  
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1 another area that Mr. Malone went into.

2           You told us that you had your transplant in  
3 July of 1998. Is that correct? Or am I wrong on the  
4 date?

5           A. That's correct. July.

6           Q. July. Okay. And when was the kidney that  
7 your father donated actually removed, sir?

8           A. October 1998.

9           Q. Okay. Since October of 1998, except for  
10 your dialysis, and I understand you undergo that  
11 three times a week at this time?

12          A. Yes.

13          Q. Except for your dialysis, have you had any  
14 treatment directed towards your kidney?

15          A. No.

16          Q. Okay. The rest of the treatment has been  
17 for some other problems that have developed, right?

18          A. Yes.

19          Q. The bleeding that you have described for  
20 the ladies and gentlemen in the colon, right?

21          A. Yes.

22          Q. And because of the bleeding, you now have

VIDEOTAPE DEPOSITION OF SOTIRI PONIRAKIS  
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1 to be fed through a tube, is that correct?

2 A. Yes.

3 Q. And in addition to that you have developed  
4 a condition called thrombotic thrombocytopenia  
5 purpura, right?

6 A. Yeah.

7 Q. You have had to undergo some treatment for  
8 that as well?

9 A. Yes.

10 Q. Are you still getting plasmapheresis  
11 treatment?

12 A. Yes.

13 Q. Am I correct that until recently you were  
14 undergoing plasmapheresis twice a week, now you're  
15 undergoing it once a week?

16 A. Yes.

17 Q. I just want to confirm something. Neither  
18 at Fairfax Hospital nor through Dr. Horton were you  
19 ever advised of abnormal urinalysis or abnormal  
20 values on laboratory studies, is that correct?

21 A. Yes.

22 MR. MALONE: That's all I have.



VIDEOTAPE DEPOSITION OF SOTIRI PONIRAKIS  
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1 I have no questions. Thank you.

2 THE VIDEOGRAPHER: This ends the videotape  
3 deposition. We're going off the record 18:19:20.

4 (Signature having been waived, the  
5 deposition of SOTIRI PONIRAKIS was concluded at 6:19  
6 p.m.)

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VIDEOTAPE DEPOSITION OF SOTIRI PONIRAKIS  
CONDUCTED ON MONDAY, APRIL 10, 2000

1 CERTIFICATE OF SHORTHAND REPORTER - NOTARY PUBLIC

2 I, Sandra K. Tremel, Registered Merit  
3 Reporter/Certified Realtime Reporter, the officer  
4 before whom the foregoing deposition was taken, do  
5 hereby certify that the foregoing transcript is a  
6 true and correct record of the testimony given; that  
7 said testimony was taken by me stenographically and  
8 thereafter reduced to typewriting under my  
9 supervision; and that I am neither counsel for or  
10 related to, nor employed by any of the parties to  
11 this case and have no interest, financial or  
12 otherwise, in its outcome.

13 IN WITNESS WHEREOF, I have hereunto set my  
14 hand and affixed my notarial seal this 10th day of  
15 April 2000.

16 My commission expires:

17 September 30, 2000

18 *Sandra K Tremel*

19 \_\_\_\_\_  
20 NOTARY PUBLIC IN AND FOR THE  
21 COMMONWEALTH OF VIRGINIA  
22

# COPY

## PARTIAL I

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

- - - - - x  
SOTIRI PONIRAKIS, :  
Plaintiff, :  
vs. : At Law No. 171553  
NORTHERN VIRGINIA CARDIOLOGY :  
ASSOCIATES, P.C., et al., :  
Defendants. :  
- - - - - x

Fairfax, Virginia  
Tuesday, April 11, 2000

The trial commenced at 9:00 a.m.

BEFORE:

THE HONORABLE STANLEY P. KLEIN.

APPEARANCES:

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Mezines, 1100 Connecticut Avenue,  
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BROWN, ESQ., Montedonico, Hamilton &  
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Suite 100, Fairfax, Virginia 22030,  
counsel for defendant David Choi, M.D.

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## I-N-D-E-X

## WITNESS: DIRECT CROSS REDIRECT RECROSS:

David Choi, M.D.	107	140		
Jack Horton, M.D.	157	180	207	210
Allen Mackintosh, M.D.	212	294	330	
Voir Dire Examination (Mr. Altman):			219	
David Mahoney, M.D.	335	367	380	
Michael Kashgarian, M.D.	382	415		
Voir Dire Examination (Mr. Altman)			386	

## E-X-H-I-B-I-T-S

## DEFENDANT'S EXHIBIT MARKED: REC'D:

No. 1 (Choi CV)	113	114
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## PLAINTIFF'S EXHIBIT

No. 8A (Cath report)	173	173
No. 72 (Excerpt/Washington Physicians Directory)	208	210
No. 68D (Mackintosh CV)	240	240
No. 73/74 (Charts)	254	
No. 76 (Chart)	344	
No. 54 (Photograph)	358	359
No. 68C (Kashgarian CV)	393	393

\* \* \*

1 MR. ALTMAN: Some of mine I know I'm going  
2 to have to withdraw. The finding instruction was  
3 drafted at a time when I thought it was Dr. Choi and  
4 Dr. Horton.

5 THE COURT: That's the type of thing that  
6 I want to look at so that I may be able during the  
7 course of the trial to remind counsel that it may be  
8 needed to be changed. You can contact your offices  
9 and make sure that you have available for you what  
10 you're going to need. It's not my intention to  
11 discuss the substance of any instruction that may be  
12 in conflict before all the evidence is in.

13 Dr. Choi, you can come back to the witness  
14 stand.

15 (Jury returning to jury box and witness  
16 taking stand.)

17 THE COURT: Ladies and gentlemen of the  
18 jury, good morning.

19 Mr. Altman, you can continue your cross of  
20 Dr. Choi.

21 CROSS-EXAMINATION (Continued)

22 BY MR. ALTMAN:

1           Q     Dr. Choi, let's change from where we ended  
2 yesterday and let's go back to some preliminary  
3 matters.

4                     You already told the ladies and gentlemen  
5 where you did your medical school training. Did you  
6 receive training in the United States, sir?

7           A     Yes.

8           Q     Now, you told the ladies and gentlemen  
9 that you served a residency. Where was that again?

10          A     Prince George's Hospital and Freedman  
11 Hospital.

12          Q     So you served your residency at two  
13 different locations?

14          A     Yes.

15          Q     What exactly is a residency program, sir?

16          A     Residency is in internal medicine, so we  
17 train all fields of internal medicine.

18          Q     Is a residency program a chance for you to  
19 put your education from medical school into practice;  
20 that is, you get to practice on patients under the  
21 care of other doctors?

22                     THE COURT: Dr. Choi, before you answer

1 that question, push the microphone between you and Mr.  
2 Altman. You seem to be looking at him and it will  
3 make it easier for you to speak into the microphone.

4 A It is more practical training.

5 BY MR. ALTMAN:

6 Q It's your practical training?

7 A Yes.

8 Q Now, the residency program that you served  
9 at Prince George's Hospital and then Freedman's  
10 Hospital in Washington, D.C., was that the same  
11 residency program that other doctors who were trained  
12 or educated in the United States received?

13 A Yes, sir.

14 Q Now, when you took the test to become  
15 licensed in the state of Maryland -- .

16 First of all, am I correct that you had to  
17 take a test to become licensed in the State of  
18 Maryland?

19 A I cannot remember exact year, but I expect  
20 1971 or 1972.

21 Q I wasn't asking the year. I was just  
22 asking did you have to take a test --

1           A     Yes.

2           Q     -- to become licensed in the State of  
3 Maryland.

4           A     Yes.

5           Q     Now, when you took that test, sir, did you  
6 take the same test as all the other doctors who were  
7 trying to become licensed in the State of Maryland?

8           A     Yes.

9           Q     When you got your Virginia license, I  
10 understand from the questioning of Mr. Malone  
11 yesterday that you got your Virginia license through  
12 filling out an application because you were already  
13 licensed in the State of Maryland. Is that correct?

14          A     Yes.

15          Q     At any time when you took the test in the  
16 State of Maryland or when you applied for licensure  
17 here in the State of Virginia were you asked if you  
18 were Board certified?

19          A     No.

20          Q     Did Board certification make any  
21 difference in whether or not you got a Maryland  
22 license or a Virginia license?



1           A     Yes.

2           Q     It did make a difference?

3           A     No.

4           Q     Let me ask the question again because the  
5 ladies and gentlemen want to know the answer to this.

6                     When you applied and took the test in  
7 Maryland and then when you applied for your licensure  
8 in Virginia, was your ability to get those licenses  
9 dependent upon whether or not you were Board  
10 certified?

11          A     No.

12          Q     Doctor, since becoming licensed in the  
13 State of Virginia -- .

14                     What year was that, by the way, sir, when  
15 you got your Virginia license?

16          A     I guess 1973.

17          Q     Your Virginia license in '73?

18          A     Yes.

19          Q     Have you continued to have to get your  
20 license renewed on a yearly basis?

21          A     Yes. The first time every year, but now  
22 every two years.

1 Q Every two years now?

2 A Yes.

3 Q Has your license to practice medicine ever  
4 been refused because you were not Board certified?

5 A Not refused.

6 Q Has your license in any way ever been  
7 limited? Have you been told you can't do certain  
8 things because you're not Board certified?

9 A No.

10 Q Dr. Choi, do you have attend continuing  
11 medical education courses?

12 A Yes.

13 Q Are those the same courses that other  
14 doctors who are Board certified take?

15 A Yes, sir.

16 Q Under Virginia law are you required to  
17 have a certain amount of continuing medical education  
18 credits?

19 A Yes.

20 Q Do you meet those requirements?

21 A Yes, I met those requirements.

22 Q Now, Doctor, do you have privileges at any

1 hospitals, sir?

2 A Right. Now I have Mt. Vernon Hospital and  
3 Alexandria Hospital.

4 Q Have your privileges at those hospitals  
5 ever been limited or refused because you were not  
6 Board certified?

7 A No.

8 Q Now, Doctor, let me show you what I think  
9 has been marked as Defendant's Exhibit No. 1. Let me  
10 show you this document.

11 MR. ALTMAN: May I approach the witness,  
12 Your Honor?

13 THE COURT: Yes, sir.

14 BY MR. ALTMAN:

15 Q If you would, tell us what that document  
16 is?

17 A My curriculum vitae.

18 MR. ALTMAN: Your Honor, at this time I  
19 would move the admission of Defendant's Exhibit No. 1,  
20 which is Dr. Choi's curriculum vitae.

21 THE COURT: Any objection?

22 MR. MALONE: No, sir.

1 THE COURT: Received in evidence.

2 (The curriculum vitae, previously  
3 marked as Defendant's Exhibit No. 1  
4 for identification, was received in  
5 evidence.)

6 BY MR. ALTMAN:

7 Q Doctor, could you tell the ladies and  
8 gentlemen when you first went into the private  
9 practice of medicine?

10 A When was it?

11 Q Yes, sir, when was it?

12 A I think 1971 or 1972.

13 Q Okay. Now, since 1971 or 1972 can you  
14 tell the ladies and gentlemen the types of patients  
15 who you would see in your practice?

16 A Just field of general medicine field.  
17 Everything.

18 Q Tell the ladies and gentlemen what general  
19 medicine is. Do you see children?

20 A No, I don't see the small children.

21 Q Do you see young adults?

22 A Yes.

1 Q Do you see older individuals?

2 A Yes.

3 Q Do you see woman who are pregnant?

4 A Yes.

5 Q Do you see patients who have heart  
6 problems?

7 A Yes.

8 Q Do you see patients who have virtually  
9 every type of medical problem and condition?

10 A Yes.

11 Q As part of your practice, Dr. Choi, do you  
12 have occasion to order urinalysis and blood studies on  
13 patients?

14 A Yes.

15 Q Could you tell the ladies and gentlemen  
16 when generally you order urinalysis or blood studies  
17 on patients?

18 A The patient come to my office for general  
19 checkup, so I do the blood tests and the urine tests.  
20 That one patient has a certain condition,  
21 hypertension, diabetes, gout, those patients I do some  
22 blood tests and urine tests.

1                   Then the other ones patient come to my  
2 office with -- like, for example, patient has pain on  
3 urination, I took urine tests.

4                   Q     If I understood what you just told us,  
5 there are three times you order tests, three  
6 circumstances: When a patient comes in for a general  
7 physical exam.

8                   A     Yes.

9                   Q     Why would you order urinalysis and blood  
10 studies when a patient comes in for a general exam?

11                  A     For screening underlying disease.

12                  Q     You told them that you might order a test  
13 if a patient has a history of a problem -- I think you  
14 mentioned diabetes or gout. Can you tell the ladies  
15 and gentlemen why it would be important to order a  
16 blood study or urinalysis?

17                  A     Yes. If the patient has diabetes, usually  
18 complicating some kidney problem. And usually patient  
19 has hypertension, abnormal kidney may show up.

20                  Q     You also said if a patient comes in with a  
21 specific problem you might order a urinalysis or blood  
22 study. Why would it be important in that

1 circumstance?

2           A       If the patient has jaundice, for example,  
3 then the patient needs liver function test. Blood in  
4 urine or frequent urination, patient needs for  
5 infection. That's what I'm doing.

6           Q       You were asked yesterday by Mr. Malone if  
7 you do a review of systems with your patients. My  
8 question to you is this: When is it, Dr. Choi, that  
9 you do a review of systems with your patients?

10          A       I usually do review of systems when  
11 patients come first time with general checkup.

12          Q       Now, Doctor, are there certain  
13 circumstances when you will get a patient's prior  
14 medical record?

15          A       If the patient has significant previous  
16 history which should be in follow-up, then I request  
17 the prior records.

18          Q       Now, if I could, I would like to direct  
19 you to Mr. Ponirakis' first visit with you on November  
20 14, 1996, and this is Plaintiff's Exhibit Number 7,  
21 page 1, for the record.

22                 Doctor, do you have that document in front

1 of you?

2 A I don't have it to review.

3 Q No, no, no. I'm just asking if you have a  
4 copy of your notes for your first visit?

5 A Yes, I have.

6 Q Can you tell the ladies and gentlemen what  
7 question you asked, or questions you asked, Mr.  
8 Ponirakis to try and find out about his past history,  
9 sir?

10 A I think that's all been done.

11 MR. MALONE: I just object as asked and  
12 answered.

13 THE COURT: During the cross or during  
14 your direct?

15 MR. MALONE: I thought he had done it, but  
16 I can't quite remember.

17 THE COURT: Give me one second, please.

18 MR. ALTMAN: I'm trying not to be  
19 repetitious.

20 THE COURT: Hold on for one second. You  
21 did go into it at the beginning of your  
22 cross-examination, but I'm going to give you leeway.



1 You didn't go into much detail then.

2 I would like to move the case forward.  
3 I'll give you a little bit of leeway.

4 BY MR. ALTMAN:

5 Q Tell the ladies and gentlemen what  
6 question, or questions, you asked Mr. Ponirakis about  
7 his prior history.

8 A Have you had history of substance abuse,  
9 do you smoke, drink alcohol or cigarettes, have you  
10 had any serious disease or any significant disease in  
11 the past, have you had any kind of operations in the  
12 past, are you allergic to any medicine.

13 Q When you asked these questions of Mr.  
14 Ponirakis, did he tell you anything about a prior  
15 history approximately two years before of blood and  
16 protein in his urine?

17 A No, he didn't say anything.

18 Q Now, what was his complaint on that date,  
19 sir?

20 A He complained of pain in the left,  
21 anterior, lower chest.

22 Q Tell the ladies and gentlemen, in case

1 they don't have an understanding, where would the  
2 left-anterior-lower chest be?

3 A This area (indicating).

4 Q You're pointing to the area on the left  
5 side?

6 A Left side of lower chest.

7 Q Now, as a result of these complaints, did  
8 you do an examination?

9 A Yes.

10 Q What did your examination reveal?

11 A The positive finding was tenderness. Pain  
12 was left side of the lower parasternal region. That  
13 means next to the sternum.

14 Q You said tenderness. How do you as a  
15 physician determine tenderness?

16 A Tenderness means little pressure makes  
17 pain.

18 Q So you pressed on the area and a little  
19 pressure made the pain?

20 A Yes.

21 Q Now, what did you do as a result of what  
22 Mr. Ponirakis told you on that day and what you found

1 during the course of your examination?

2 A I explained that this was chest wall  
3 pain. That mean chest wall consist of ribs, muscles  
4 and skin, so most of it is costochondritis. Ribs has  
5 cartilage. Area quite common area for pain and makes  
6 tenderness.

7 Q Let's make sure the jury understands. You  
8 thought that maybe there was a condition called  
9 costochondritis?

10 A Yes.

11 Q That's where the ribs join the muscles?

12 A Yes.

13 Q What did you think was the problem there?  
14 Do you understand my question?

15 A Repeat.

16 Q You told the ladies and gentlemen that you  
17 thought the name of the condition was costochondritis.  
18 What did you think the problem was between the ribs  
19 and the muscles?

20 A The cause is unknown, but usually resolve  
21 by itself.

22 Q As a result of making that determination,

1 what did you order for Mr. Ponirakis?

2 A I gave Motrin. That's antiinflammatory  
3 medication which I prescribed, and I ordered some rib  
4 X-rays, and I asked him to come back in one week.

5 Q Did you get the results of the rib X-rays?

6 A Yes.

7 Q What did they reveal?

8 A It was normal.

9 Q Now, regarding that first visit, Dr. Choi,  
10 did you do a urinalysis or blood studies on that first  
11 visit?

12 A No.

13 Q Why not?

14 A Because blood test or urine test will not  
15 make a diagnosis for the chest pain.

16 Q Okay. Now, let's turn to your second  
17 visit. Your second visit was on November 23rd.

18 MR. ALTMAN: And, Your Honor, for the  
19 record, this is Plaintiff's Exhibit 7, page 2.

20 BY MR. ALTMAN:

21 Q Did you ask when Mr. Ponirakis returned on  
22 November 23rd if he was still having chest pain?

1           A     Yes.

2           Q     What does your record show?

3           A     Improved.

4           Q     What were his complaints when he came to  
5 you on that second visit?

6           A     Chills, fever. Vomiting twice. Numbness  
7 forearm and the hands. And coughing. That's what he  
8 complained.

9           Q     What did you attribute these problems to?

10          A     I had examination and I found that his  
11 throat was red, so I impressed that he may have a  
12 viral infection.

13          Q     What did you order for him?

14          A     Prescribed Amoxicillin antibiotic for  
15 upper respiratory infection and cough medicine for the  
16 cough.

17          Q     I didn't quite hear what you said, so I'm  
18 going to ask that you repeat it. You said you ordered  
19 Amoxicillin and then you said something after that.

20          A     That's a cough medicine.

21          Q     No, no, that wasn't the context.

22                 After the Amoxicillin. What did you say

1 the reason was you ordered the Amoxicillin?

2 A Because he may have upper respiratory  
3 infection.

4 Q Did you order either a urinalysis or blood  
5 studies as a result of that second visit on November  
6 23rd?

7 A No.

8 Q Why not?

9 A Because usually a viral infection doesn't  
10 bring up any results by the blood and urine.

11 Q Now, you just told the ladies and  
12 gentlemen that a viral infection would not generate  
13 any results on a urinalysis or a blood study.

14 A Yes. For example, like if I ordered some  
15 CBC, complete blood count, usually viral infection  
16 might be slightly down, that kind of thing.

17 Q You told the ladies and gentlemen that you  
18 ordered antibiotics. Do antibiotics take care of  
19 viral infections?

20 A Actually antibiotic doesn't affect, but  
21 that usually prescribed for the prevention of  
22 secondary infection.

1           Q     Tell the ladies and gentlemen what you  
2 mean by "prevention of secondary infection."

3           A     The patient has a viral infection but  
4 later some bacteria grow up in the throat and  
5 respiratory tract, which would be prevented.

6           Q     Now, there came a time after the second  
7 visit when you received a telephone call from Mr.  
8 Ponirakis and he again had chest pain?

9           A     Yes.

10          Q     Is that when you referred him to Northern  
11 Virginia Cardiology?

12          A     Yes.

13          Q     Let me ask you some questions about  
14 Northern Virginia Cardiology, if I could.

15                     Did there come a time when you received a  
16 report from Dr. Horton about his findings?

17          A     Yes.

18          Q     Did he attribute Mr. Ponirakis' problems  
19 to pericarditis?

20          A     Yes. He impressed pericarditis or  
21 myocarditis.

22          Q     Just briefly for the ladies and gentlemen,

1 what is pericarditis?

2 A Pericarditis is a sac which we call  
3 pericardium which inflamed.

4 Q So the sac around the heart is called the  
5 pericardium and that's inflamed?

6 A Yes.

7 Q He said it was either pericarditis or  
8 myocarditis. What is myocarditis?

9 A The heart itself is composed of muscle,  
10 which is inflamed.

11 Q So the heart itself can be inflamed?

12 A Yes.

13 Q In one of those reports that you got,  
14 either on December 4th or December 6th, Dr. Horton  
15 reports that the patient had a sedimentation of 51.  
16 Do you remember that?

17 A Yes.

18 Q Would a patient who has pericarditis or  
19 myocarditis -- would that explain an elevated  
20 sedimentation?

21 A Yes.

22 Q By the way, you were asked some questions



1 about whether or not you were aware of the increase in  
2 the sedimentation by Mr. Malone. Do you remember  
3 that?

4 A Yes.

5 Q Let me show you, if I could, Plaintiff's  
6 Exhibit 98, specifically pages 1 -- it's actually  
7 4000001, -2 and -3, and I'll represent to the Court  
8 that this is the Arlington Hospital cardiac  
9 catheterization report for Mr. Ponirakis.

10 Doctor, let me turn -- may I approach the  
11 witness, Your Honor?

12 THE COURT: Yes, sir.

13 BY MR. ALTMAN:

14 Q Doctor, let me direct your attention to  
15 the conclusion part, specifically regarding the  
16 sedimentation. What does it say about the  
17 sedimentation?

18 A Would you ask that again, please?

19 Q Sure. Is there a reference in the  
20 conclusion to the sedimentation rate?

21 A It's pending.

22 Q So the sedimentation rate was pending?

1 A Yes.

2 Q What does that mean?

3 A Pending means he request the laboratory  
4 but he didn't get results.

5 Q So he didn't have the results by the time  
6 he dictated this report.

7 Doctor, let's turn for what would be your  
8 third visit with Mr. Ponirakis. That would be the  
9 visit of January 2, 1997. Is that correct?

10 A Yes.

11 Q That's the third time he came to your  
12 office?

13 A Yes.

14 Q Once again, this is Exhibit 7, page 2.  
15 Plaintiff's Exhibit 7.

16 Doctor, that record indicates that about  
17 two weeks before the patient came to see you he had  
18 been in the emergency department because of an episode  
19 of vomiting that led to fainting and he was taken to  
20 the emergency department.

21 A Yes.

22 Q You now know that the records from Fairfax

1 Hospital say "Dr. Choi called"; right?

2 A Yes.

3 Q Do you have a recollection of that  
4 telephone call, sir?

5 A I don't remember.

6 Q Now, what did Mr. Ponirakis tell you when  
7 he came to see you on January 2, 1997, about that  
8 visit to the emergency department?

9 A He mentioned about he went to the  
10 emergency room because he had vomiting, nausea and  
11 fainting.

12 Q Okay. And did he tell you what the  
13 doctors at Fairfax in the emergency department said?

14 A I asked him what the doctor said why he  
15 had a fainting and he said "I was dehydrated."

16 Q Okay. Did he tell you what they did for  
17 him at the emergency department at Fairfax Hospital?

18 A He had some IV fluids supplied.

19 Q IV fluids supplied?

20 A Yes.

21 Q Now, Dr. Choi, what would you have done if  
22 you had received information about an elevated

1 creatinine or an elevated BUN in that telephone call?

2 A I would have another test, repeated test.

3 Q And if the values were elevated again on  
4 the creatinine and BUN, what would you have done?

5 A I would refer him to the nephrologist for  
6 the follow-up and find out the cause for the elevated  
7 creatinine.

8 Q Let's deal with your January 2nd visit and  
9 Mr. Ponirakis' complaints. What were his complaints  
10 on January 2nd?

11 A He complained of vomiting, headache,  
12 midsubsternal, epigastric pain for three days.

13 Q Was he still complaining of chills and  
14 fever when he came to see you on January 2, 1997?

15 A Yes.

16 Q Look at your record, sir. I'm not sure  
17 you understood my question.

18 Did he have chills and fever on January 2,  
19 1997?

20 A No.

21 Q Okay. Those were the problems that he had  
22 when he saw you on November 23, weren't they?

1 A No.

2 Q Okay. Look at your record for November  
3 23rd. Did he have chills and fever?

4 A Yes. He had -- November 23rd had chills  
5 and fever.

6 Q Okay. Now, so his symptoms had changed  
7 between November 23rd and January 2nd; is that  
8 correct?

9 A Yes.

10 Q In your notes of January 2nd did he  
11 complain of the left anterior chest pain that he had  
12 had when he first came to see you?

13 A No.

14 Q His complaints was substernal pain; right?

15 A Yes.

16 Q Point out for the ladies and gentlemen  
17 where the sternum is and where --

18 A. Like a bone in the middle of chest; like  
19 necktie coming down.

20 Q It's a hard bone right in the middle of  
21 the chest?

22 A Yes. Substernal means behind this bone.

1 Q Okay. Now, he was also complaining, I  
2 think you said, of mid-epigastric pain?

3 A Yes.

4 Q Can you point out to the ladies and  
5 gentlemen where mid-epigastric pain is?

6 A The epigastrium is here and under the  
7 bone. In between navel and here, about here  
8 (indicating).

9 Q Were these new complaints as to the  
10 location of the discomfort?

11 A Yes.

12 Q Now, did you order -- or did you do an  
13 examination?

14 A Yes, I did.

15 Q What did your examination reveal?

16 A He had some tenderness, pain, when I  
17 little pressed down in the mid-epigastric region.

18 Q What did you think was going on with Mr.  
19 Ponirakis on that visit?

20 A I thought that he may have aggravation of  
21 the ulcer disease again.

22 Q So what did you do?

1           A     I ordered some upper GI series and  
2 gallbladder sonogram and I requested non-spicy, soft  
3 diet.

4           Q     In case the ladies and gentlemen aren't  
5 familiar with it, what is a gallbladder sonogram and  
6 what is an upper GI series?

7           A     Upper GI series is X-ray to find out any  
8 disease of the food pipe, stomach and duodenum. When  
9 you have the test, the radiologist give you white  
10 contrast which you swallow. Then patient lay down in  
11 position and take X-ray for food pipe, stomach and  
12 duodenum.

13          Q     What was the result of those studies?

14          A     It was normal.

15          Q     Let's deal with the visit of January 2,  
16 1997. Did you order a urinalysis or blood studies on  
17 that visit?

18          A     No.

19          Q     Why not?

20          A     Because usually the stomach pain doesn't  
21 show in lab or blood to make a diagnosis.

22                 The patient has some exceptions. If the

1 person has been drinking alcohol --

2 COURT REPORTER: Sorry. I'm missing that.

3 BY MR. ALTMAN:

4 Q Doctor, you have to speak very slowly, not  
5 just enunciate your words.

6 THE COURT: Doctor, move a little bit  
7 closer to the microphone and make it easier for us to  
8 hear you also.

9 BY MR. ALTMAN:

10 Q Move it closer to you. Okay.

11 Now, Doctor, let me go back and just pick  
12 up what you just said for the court reporter.

13 Let me see if I can ask questions to  
14 elicit what she may not have gotten.

15 A moment ago you mentioned that you can do  
16 something if a patient has a history of drinking, you  
17 can order some tests. When were the names of those  
18 tests that you just told us?

19 A Amylase.

20 Q Amylase?

21 A A-m-y-l-a-s-e. Or Lipase. L-i-p-a-s-e.

22 Q So if a patient has stomach pain and



1 they've got a history of drinking, you might order  
2 those tests?

3 A Yes.

4 Q Now, let's turn our attention to the next  
5 medical treatment that Mr. Ponirakis had. Yesterday  
6 we did go through the fact that on January 9th you  
7 filled out a referral to Dr. Horton for him to do a  
8 cardiac catheterization. Is that correct?

9 A Yes.

10 Q I think you also testified yesterday that  
11 you didn't know when it was going to be done and the  
12 report said -- or, excuse me -- the referral said it  
13 could be done any time within 60 days. Is that  
14 correct?

15 A Yes.

16 Q When Mr. Ponirakis came back to you for  
17 his next visit, which I think was January 15th -- is  
18 that correct?

19 A Yes.

20 MR. ALTMAN: Your Honor, I believe that's  
21 also Plaintiff's Exhibit Number 7, page 2.

22 BY MR. ALTMAN:

1           Q       -- had you received by the time Mr.  
2 Ponirakis came to see you on January 15th -- had you  
3 received a copy of this report of the cardiac  
4 catheterization?

5           A       No.

6           Q       When was the first time you learned that  
7 the catheterization had actually gone forward?

8           A       After I --

9           Q       I'm not asking you about when you got the  
10 report. When was the first time that you learned that  
11 the catheterization had gone forward on January 10th?

12          A       Mr. Ponirakis come back to my office on  
13 January 15th.

14          Q       So on January 15th he told you about it?

15          A       Yes.

16          Q       Did he tell you anything else about the  
17 catheterization?

18          A       I asked question what was the result. He  
19 said normal.

20                 MR. MALONE: This was all gone through,  
21 according to my notes, so I object to the repetition.

22                 THE COURT: I would tend to agree that

1 this is starting to get repetitious. I'm giving a  
2 little bit of leeway, but I don't want there to be  
3 repetition.

4 MR. ALTMAN: I'll move on, Your Honor.

5 BY MR. ALTMAN:

6 Q Doctor, did Mr. Ponirakis give you any  
7 further information that was conveyed to him by Dr.  
8 Horton?

9 A No.

10 Q Did Mr. Ponirakis tell you if there was  
11 additional treatment planned for him by Dr. Horton?

12 A No.

13 Q Did he tell you if Dr. Horton put him on  
14 any medications or limited his activity in any way?

15 A No.

16 Q Now, what were Mr. Ponirakis' complaints  
17 when he came to see you on January 15th?

18 A He complained of pain, swelling and  
19 localized pain of the right knee for the past four  
20 days.

21 Q Did he make any complaints of chest pain?

22 A No.

1           Q     Did he make any complaints of upper  
2 respiratory like symptoms?

3           A     No.

4           Q     Did he make any complaints of stomach  
5 pain?

6           A     No.

7           Q     Was it your impression that these problems  
8 had been improving or gone away?

9           A     Yes.

10          Q     What did you do as a result of his  
11 complaints on January 15, 1997?

12          A     I prescribed some medication, Daypro, 10  
13 milligrams, and I asked him to come back in two  
14 weeks. Meanwhile I refer him to the orthopedic  
15 surgeon, Dr. Theiss.

16          Q     Did you do a urinalysis or blood studies  
17 that day?

18          A     No.

19          Q     Why not?

20          A     Joint pain doesn't necessarily show in  
21 urine testing.

22          Q     Doctor, you were asked some questions

1 yesterday by Mr. Malone about when you actually  
2 learned of the elevated creatinine that was found by  
3 Dr. Horton. Do you remember being asked those  
4 questions?

5 A Would you repeat again?

6 Q Sure. Strike that. Let me ask a  
7 different question.

8 Doctor, did you ever get a copy of the  
9 Arlington Hospital cardiac catheterization report?

10 A No.

11 Q Did you receive a telephone call from Dr.  
12 Horton advising you of the results of the cardiac  
13 catheterization?

14 A I cannot remember.

15 Q If he had told you that he thought this  
16 patient had kidney disease or if he told you that he  
17 thought this patient might have connective tissue  
18 disease or if he had told you about an elevated  
19 creatinine, what would you have done?

20 A I would have repeated tests for  
21 confirmation.

22 Q If they were still elevated, what would

1 you do?

2 A I would refer to the nephrologist.

3 Q Now, Doctor, it has been suggested that  
4 possibly you threw away a medical record.

5 A No.

6 Q Let me ask you the question. Did you  
7 throw away any medical records from Mr. Ponirakis'  
8 chart?

9 A No.

10 Q Have you ever thrown away a medical record  
11 for a patient who was still actively being treated by  
12 you?

13 A No.

14 MR. ALTMAN: The Court's indulgence for  
15 one minute.

16 THE COURT: Yes sir.

17 MR. ALTMAN: I have nothing further.

18 THE COURT: Any redirect, Mr. Malone?

19 MR. MALONE: Yes, sir, and thank you.

20 REDIRECT EXAMINATION

21 BY MR. MALONE:

22 Q Let's start kind of backwards and start at

1 the end and move backwards. January 15, 1997, your  
2 impression was that this patient had arthritis in his  
3 right knee, according to page 2, Plaintiff's Exhibit  
4 7; is that right?

5 A Yes.

6 Q Now, arthritis is an inflammatory disease;  
7 correct?

8 A Yes.

9 Q And a typical blood test that's done to  
10 measure the level of activity of a patient's  
11 inflammation when they have arthritis is a  
12 sedimentation?

13 A Yes.

14 Q You didn't do a sedimentation on January  
15 15th?

16 A This is only four-day-old arthritis. We  
17 usually treat it first. Not responding, I do the  
18 follow-up in the blood test.

19 Q But you knew that a whole month previously  
20 this young man had an elevated sedimentation all the  
21 way up to a 51 from a normal baseline between 0 and  
22 14. You did know that from early December; correct?

1           A     Yes.

2           Q     And yet in January when he comes back in  
3 with inflammatory symptoms in his knee, it didn't  
4 occur to you that you might want to repeat the  
5 sedimentation; true?

6           A     But that's impression. That's not final  
7 diagnosis.

8           Q     Isn't that all the more reason to check it  
9 out with standardized blood tests?

10          A     I didn't understand what you're talking  
11 about.

12          Q     Isn't the fact that it's just an  
13 assumption on your part and not a final diagnosis of  
14 arthritis even more reason to do some standardized  
15 blood tests like a sedimentation to see if his  
16 inflammation had gone down or maybe if he was having  
17 the same inflammation that had inflamed his heart a  
18 month previously?

19          A     I just had impression. That was the  
20 impression, but not final diagnosis. So I just put  
21 the medicine. I want to follow-up if I need further  
22 tests or something.



1           Q     How common is it for a young man to have  
2 inflammation that's so bad that it's causing him chest  
3 pain in one month -- which is what pericarditis is;  
4 right?

5           A     Yes.

6           Q     -- and the next month he's having  
7 inflammation that is causing him painful arthritis in  
8 his knee? How common is that?

9           A     Very rare thing.

10          Q     Another reason to do a blood test; right?

11          A     I don't know.

12          Q     Now, you have also told us that if this  
13 young man had come in to you for a general physical  
14 examination --

15          A     No.

16          Q     Just let me finish my question. If this  
17 young man had come to you for a general history and  
18 physical without any symptoms whatsoever, just a  
19 general annual examination, you would have done a  
20 baseline blood test and a urine test. Do you remember  
21 saying that?

22          A     Yes.

1           Q       So are you saying that the fact that he  
2 had chest pain, which is very unusual in a 20-year-old  
3 man, disqualified him in some way to have baseline  
4 blood and urine testing?

5                   MR. ALTMAN:  Objection.  Mischaracterizes  
6 his testimony.

7                   MR. MALONE:  I'm trying to clarify.

8                   THE COURT:  I overrule the objection.

9           A       As I already mentioned, that usually the  
10 blood test and urine test doesn't make a diagnosis for  
11 the chest pain case.

12                   BY MR. MALONE:

13           Q       Well, but you don't make a diagnosis when  
14 a patient has no signs and symptoms in a routine  
15 physical either, do you?  You're just looking for  
16 anything that might be wrong with the patient; right?

17           A       That's right.  That's what most patients  
18 want to do.

19           Q       Are you saying you would have only done  
20 blood and urine work on the patient if he asked you  
21 specifically to do it?

22           A       That's only the complete examination.

1 Everybody come for examination, they want to do like a  
2 blood test, urine test.

3 Q Well, that's what I'm trying to ask you.  
4 Are you saying it was up to Sotiri Ponirakis to figure  
5 out that he needed a complete physical examination, at  
6 which point you would have done both blood and urine  
7 and you would have done a review of systems; is that  
8 what you're saying?

9 A Repeat it again, sir.

10 Q Well, you told us that you would have done  
11 a review of systems top to bottom, including specific  
12 questions about different parts of the body, including  
13 blood and the urine, if he just came in for a routine  
14 history and physical.

15 A Yes.

16 Q You also told us that if he had come in  
17 for a routine physical exam you would have done  
18 baseline blood and urine testing on him; right?

19 A I don't usually young patients do the  
20 blood tests. Eighteen-20 years, I don't. Usually I  
21 do like venereal disease, I check. HIV or those  
22 things.

1           Q     How old would he have to be to qualify for  
2 routine blood and urine testing?

3           A     Maybe about 30-year-old or something.

4           Q     Okay. I think you said something else  
5 yesterday about how busy your practice was and I want  
6 to -- Mr. Altman asked you some questions about that  
7 and it related -- his questions, I think, related to  
8 my asking you why you just didn't do a review of  
9 systems. I believe said you didn't have time to do  
10 all of that. Do you recall that?

11          A     Yes, I can explain about. If a patient  
12 come for first time my office, we cannot -- for  
13 example, hurt finger, I can't take all of systems  
14 review.

15          Q     How common is a hurt in your finger  
16 compared to severe chest pain in a 20-year-old man?

17          A     The chest pain in 20-year-old man is not  
18 rare problem. That's quite common. Young person.

19          Q     How common is it for a 20-year-old man to  
20 wind up getting two EKGs, stress echo test and cardiac  
21 catheterization for chest pain, all of which results  
22 in no cardiac diagnosis? How common is that?

1                   MR. ALTMAN: Objection. Assumes facts not  
2 in evidence. We have a cardiac diagnosis.

3                   MR. MALONE: That's not right. I think we  
4 can clarify it with the next witness.

5                   BY MR. MALONE:

6                   Q       How common is it for a young man to come  
7 in and have chest pain where you do a rib X-ray, he  
8 gets a chest X-ray at the Urgent Care Center, he gets  
9 two EKGs, he gets a stress echo test and he gets  
10 cardiac catheterization, and ultimately, according to  
11 the cardiac catheterization, there's no abnormalities  
12 in his coronary arteries?

13                               How common is that?

14                   A       I don't know.

15                   Q       But what I was leading to was your point  
16 about not having the time to do a review of systems  
17 for every patient who comes in with every little  
18 thing.

19                               You said that you averaged about 20  
20 patients a day?

21                   A       Yes.

22                   Q       That's not a busy medical practice, is it,

1 sir?

2 MR. ALTMAN: Objection. Calls for him to  
3 speculate what is being done for the 20 patients.

4 THE COURT: Mr. Malone, I sustain the  
5 objection to that question.

6 BY MR. MALONE:

7 Q I don't want to nitpick, but in your  
8 deposition didn't you tell me that actually you only  
9 saw about 15 or 18 patients a day?

10 A All variable. Sometimes busy, sometimes  
11 less busy.

12 Q If you saw 15 patients in a day, that  
13 would be one about every half-hour; right?

14 A Sometimes half-hour. Sometimes more;  
15 sometimes less.

16 Q If you had a patient every half-hour or  
17 one every 20 minutes, wouldn't that give you plenty of  
18 time to do a review of systems?

19 MR. ALTMAN: Objection. It calls for him  
20 to speculate. We don't know what the presenting  
21 symptoms are.

22 MR. MALONE: I'm talk about Mr. Ponirakis.

1 MR. ALTMAN: Well --

2 THE COURT: Why don't you rephrase the  
3 question directly to the plaintiff and then I'll find  
4 out if there's an objection.

5 MR. MALONE: All right.

6 BY MR. MALONE:

7 Q Are you saying that on November 14, 1996,  
8 you were just too darn busy to do a review of systems  
9 for Mr. Ponirakis that day?

10 A I don't say that way.

11 Q If it was an average day, you would have  
12 had roughly a half-hour to 20 minutes for each and  
13 every patient on that day, assuming it was an average  
14 day. Fifteen to 20 patients a day; correct?

15 A Yes.

16 Q You could have easily spent 15 or 20  
17 minutes with him going over his prior history,  
18 couldn't you have?

19 MR. ALTMAN: Objection. Calls for  
20 speculation. There were problems that were dealt with  
21 on that visit.

22 THE COURT: Objection is overruled.

1                   If there's an objection, I just want the  
2   legal basis for the objection. If I don't understand  
3   it, I'll ask for an explanation. That objection is  
4   overruled. He can answer the question.

5                   MR. MALONE: I don't remember what I  
6   asked. Do you remember what I asked?

7                   THE COURT: If he had 15, an average  
8   number of patients, on that day, wouldn't he have had  
9   enough time to go over the system review.

10                  MR. ALTMAN: For Mr. Ponirakis.

11                  THE COURT: For Mr. Ponirakis, is  
12   basically what the question was.

13                  MR. MALONE: Right.

14                  A     Not a time problem.

15                  BY MR. MALONE:

16                  Q     So there wasn't a time problem.

17                  A     Yes. I spent a lot of time for the  
18   patient mostly.

19                  Q     Now, Mr. Altman was also asking you some  
20   questions about you regularly doing continuing medical  
21   education courses to keep your Virginia license  
22   up-to-date.



1           A       Yes.

2           Q       One thing you do not do though, as other  
3 family practitioners do, is take a certification test  
4 every seven or eight years, which is common for family  
5 practitioners?

6                   MR. ALTMAN:  Objection.  It assumes facts  
7 not in evidence

8                   THE COURT:  Sustained.

9                   BY MR. MALONE:

10          Q       You never took the family practice  
11 certification; true?

12                   MR. ALTMAN:  Asked and answered.

13                   THE COURT:  I'll allow him to answer the  
14 question.

15          A       No.

16                   BY MR. MALONE:

17          Q       You're aware that many medical certifying  
18 bodies, including the American Academy of Family  
19 Practice, they have a system where you don't just get  
20 certified once at the beginning of your career but you  
21 take continuing medical education and then you come  
22 back and you get recertified?  Are you aware of that?

1 MR. ALTMAN: Objection. Assumes a lot of  
2 facts not in evidence and beyond the scope of my  
3 cross.

4 MR. MALONE: The fact will come out with  
5 the next witness.

6 THE COURT: Well, ask him a hypothetical  
7 question and you can tie it in with a later witness.  
8 But the question seemed to assume that that's true,  
9 and if it's not in evidence yet, that's not a proper  
10 way to ask the question.

11 MR. MALONE: All right.

12 BY MR. MALONE:

13 Q Assume that the American Academy of Family  
14 Practitioners has a system where doctors can not only  
15 get their competency in family medicine tested at the  
16 beginning of their careers but they can have it  
17 retested every X number of years, seven-eight-nine-ten  
18 years.

19 Have you ever heard of such a system?

20 A Yes.

21 Q Have you ever availed yourself of such a  
22 system?

1 A Yes.

2 Q You have actually gone and had the test  
3 taken?

4 A No, not test taken. You're talking about  
5 continuing education?

6 Q But continuing medical education where  
7 there's an exam to figure out how much you have  
8 learned.

9 A No.

10 Q You never took the test?

11 A No.

12 Q Okay. Now, Mr. Altman asked you if you  
13 would get prior medical records on your patients and  
14 you said you would if there was a significant history.  
15 Do you remember that?

16 A I cannot understand what you're talking  
17 about.

18 Q He was asking you about on what occasions  
19 you get prior records for your new patients.

20 A Yes.

21 Q And you said that if there was a, quote,  
22 "significant history," you would get the prior

1 records; right?

2 A Yes.

3 Q And is a 20-year-old man who has a history  
4 of an ulcer, is that a significant condition?

5 A I don't think so.

6 Q It's not significant for a young man to  
7 have an ulcer?

8 A Many young persons has ulcer disease.

9 Q If the ulcer flares back up, is that a  
10 reason to go back and look at his old records to  
11 compare?

12 A I don't think so. The ulcer is a curable  
13 disease.

14 Q Curable disease. Blood in the urine is  
15 curable too?

16 A It depends on what is the underlying  
17 disease that makes blood in the urine. Many patients  
18 have cystitis, they have passing blood.

19 Q Pardon me?

20 A Many patients have acute cystitis, bladder  
21 infection. They pass blood.

22 Q And then it goes away?

1           A     Yes.

2           Q     And it's no longer a problem.

3           A     Yes. Depends on what is the primary cause  
4 of the bleeding.

5           Q     So you wouldn't expect a lay person to  
6 know whether or not the cause of blood in their urine  
7 was a significant disease or something that had just  
8 gone away like cystitis?

9                     MR. ALTMAN: Asked and answered yesterday.

10                    MR. MALONE: This goes to what he was just  
11 saying.

12                    THE COURT: I overrule the objection.

13           A     Would you ask again?

14                    BY MR. MALONE:

15           Q     You have just now told us that there are  
16 some conditions where you get blood in the urine like  
17 cystitis, which is a bladder infection; right?

18           A     Yes.

19           Q     And it can go away without any further  
20 consequence to the patient.

21           A     Yes. Cystitis is a curable decease.

22           Q     So a patient who knows he has had blood in

1 his urine, you would not expect that patient to  
2 automatically know that that's a serious condition in  
3 the past?

4 A Most of patients know blood passing stool  
5 or urine, then that is serious.

6 MR. MALONE: I have no further questions.  
7 Thank you very much.

8 THE COURT: You may step down and have a  
9 seat next to your attorney, Dr. Choi.

10 Plaintiff's next witness.

11 MR. MALONE: Dr. Horton.

12 Counsel, can I see you at the bench for  
13 one moment?

14 (Whereupon, there was a bench conference  
15 held without the hearing of the jury and reported as  
16 follows:)

17 THE COURT: I don't think this is an issue  
18 but I wanted to put it on the record. One of the  
19 jurors told the deputy that she had been treated by  
20 Dr. Theiss. I wanted to let you know.

21 And while you're up here, let me hand  
22 these back to you. Where it says "D" in the corner,

1 that means duplicate. I'm going to hand these back to  
2 you.

3 THE COURT: I just want to put on the  
4 record that I spoke to one of the attorneys for the  
5 plaintiff and one of the attorneys for the defendant  
6 on Friday because I've been treated by -- not by Dr.  
7 Horton, I don't think I have met Dr. Horton, but  
8 others in his group have treated me, and I was told by  
9 you that you don't have a problem with that; is that  
10 correct?

11 MR. MALONE: That's correct.

12 MR. ALTMAN: No, sir.

13 MR. MALONE: Let me just put a preliminary  
14 motion right now to object to any cross-examination  
15 questions which suggest that Dr. Choi did not get the  
16 cardiac catheterization report. If he does suggest  
17 that, that opens the door for his panel finding.

18 THE COURT: We'll cross that bridge when  
19 we get to it, Mr. Malone.

20 Whereupon,

21 JACK HORTON, M.D.

22 witness, was called for examination by counsel for

1 plaintiff, and, after having been first duly sworn,  
2 was examined and testified as follows:

3 DIRECT EXAMINATION

4 BY MR. MALONE:

5 Q Tell us your full name.

6 A Jack Horton.

7 Q What kind of doctor are you?

8 A Cardiologist.

9 Q Are you Board certified in cardiology?

10 A Yes.

11 Q When did you take your Boards?

12 A 1975.

13 Q Have you practiced cardiology ever since?

14 A Yes.

15 Q Are you also Board certified in internal  
16 medicine?

17 A Yes.

18 Q When did you take those Boards?

19 A 1971.

20 Q Was that at the end of your internal  
21 medicine training?

22 A Sorry. I have those dates wrong. I



1 graduated from med school in 1971, so the Board for  
2 internal medicine would have been 1974 and for  
3 cardiology would have been 1976.

4 Q Where did you go to medical school?

5 A University of Pennsylvania.

6 Q Your residency training in internal  
7 medicine and cardiology was where?

8 A Internal medicine at Barnes Hospital in  
9 St. Louis and University of Pennsylvania in  
10 Philadelphia. Cardiology at Georgetown.

11 Q Here in Washington?

12 A Yes.

13 Q How did you become involved in Sotiri  
14 Ponirakis' care? Was he referred to you by Dr. Choi?

15 A Yes, he was.

16 Q How do you as a specialist work with the  
17 primary care doctors who send patients to you? Just  
18 describe the general practice.

19 A I'm the consultant for possible cardiac  
20 problems, and if someone feels that a person may have  
21 a cardiac problem, they'll refer the patient to me and  
22 I will evaluate them for the possibility of underlying

1 cardiac disease and refer back to him the results.

2 Q Why do you send your results back to the  
3 referring doctor instead of just kind of sending him a  
4 thank you letter for referring a patient and go on and  
5 treat the patient without any further contact with the  
6 primary care doctor? Why do you send him back the  
7 information?

8 A Several reasons. One is that he's the  
9 primary care doctor, the doctor responsible for  
10 orchestrating the care of the patient. Another reason  
11 is that if the person has a particular type of  
12 insurance company that requires that I refer back to  
13 the primary care doctor for many studies or many of  
14 the routes that I might want to take, then he has to  
15 approve or authorize those. And the third reason is  
16 if I just went off on my own and took care of a  
17 patient, I probably wouldn't get many referrals.

18 Q When Sotiri Ponirakis came to you on  
19 December 4, 1996, he had significant chest pain?

20 A Yes.

21 Q How common was this in a young man?

22 A It's not uncommon. It's unusual for it to

1 have a cardiac basis, but it's not uncommon for young  
2 people to have chest discomfort. It is not a rare  
3 condition; it's not common though.

4 Q You did some testing, and I'm going to  
5 skip ahead because I want to get fairly quickly to the  
6 ultimate test you did, the cardiac catheterization.  
7 But you did some testing on him on December 4, 1996  
8 and December 5, 1996.

9 My question to you is simply, did you  
10 report back to Dr. Choi the results of all the tests  
11 that you had done?

12 A Yes.

13 Q And did you ask Dr. Choi for authorization  
14 for each new set of testing that you wanted to do on  
15 this patient?

16 A It would depend on the test. Some blood  
17 studies, I don't need authorization. For studies such  
18 as a cardiac catheterization I would need  
19 authorization for.

20 Q And so you did ask him for specific  
21 authorization for the cardiac catheterization?

22 A Yes.

1           Q     Before we get to that, you did a  
2 sedimentation on this patient in early December?

3           A     Yes.

4           Q     Why did you do that test?

5           A     My impression with Mr. Ponirakis was that  
6 he possibly had an inflammatory process, viral/flu  
7 type syndrome, and I was looking for the possibilities  
8 of underlying inflammation. And sedimentation, if  
9 elevated, is a gross test. It's not very specific for  
10 anything. But it does suggest the possibility of  
11 inflammation.

12          Q     We learned yesterday that it was 51. Is  
13 that significantly elevated?

14          A     Yes.

15          Q     Does that pinpoint any particular part of  
16 the body that it's elevated in?

17          A     No.

18          Q     Why did you do the further testing on Mr.  
19 Ponirakis in January? Describe those tests and the  
20 stress test and then the cardiac catheterization.

21          A     When I first saw him on December 4th I had  
22 the studies and the results of some other studies that

1 were elevated. He called that night to one of my  
2 associates who was on call saying that he was having  
3 chest pain and my associate suggested he go to the  
4 emergency room. The pain abated before he went to the  
5 emergency room. Actually he didn't go to the  
6 emergency room.

7 But the next day I got the laboratory  
8 results and I suggested that he come back to our  
9 office on that day.

10 Q Which he did?

11 A Yes, December 5th, and we did an EKG which  
12 showed the same thing that the EKG on December 4th had  
13 shown. It did not show elevation to suggest heart  
14 attack, but I was still concerned and suggested that  
15 he return for a stress echocardiogram in the future.  
16 And we discussed some possible dates and arrived at  
17 the date of January 8th as the best date for him.

18 Q Then when you did the stress echo test,  
19 why did you decide after that --.

20 The stress echo is on January 8th; right?

21 A Yes.

22 Q Why did you decide to go ahead and do the

1 cardiac catheterization?

2           A       Because the stress echocardiogram  
3 suggested an area of the heart that didn't move  
4 normally with exercise and this is what you're looking  
5 for with the stress echocardiogram, some wall motion  
6 abnormalities. If you do see wall motion  
7 abnormalities, that suggests the possibility of  
8 coronary artery disease. But it's a way of pinning  
9 down further is there a wall motion abnormality.

10                   Since there was, we were concerned about  
11 the possibility of coronary artery disease and we  
12 proceeded with the cardiac catheterization two days  
13 later.

14           Q       Did you call up Dr. Choi personally on the  
15 phone to ask him about this?

16           A       Yes. I called him on January 8th.

17           Q       And you also sent him a letter at that  
18 time explaining your rationale for wanting to do the  
19 cardiac catheterization?

20           A       Yes.

21           Q       How unusual was it to do a cardiac  
22 catheterization on a 20-year-old?

1           A.     It's unusual. It's certainly not the  
2 youngest person I have done a cardiac catheterization  
3 on for coronary artery disease.

4                     And one thing we have to differentiate is  
5 pediatric cardiology with congenital heart disease.  
6 Cardiac catheterizations are done in that population  
7 not infrequently.

8                     But at 20 years old --

9           Q     Babies.

10          A     Babies. Young children.

11                     But at 20 years old, it's unusual, but  
12 certainly not unheard of and certainly not the  
13 youngest that I have done.

14          Q     Now, to prepare for that cardiac  
15 catheterization, did you have some -- did you order  
16 some blood drawn for Sotiri?

17          A     Yes.

18          Q     Why did you do that?

19          A     Because it makes a difference how the  
20 cardiac catheterization is done. For example, in  
21 people who might have kidney disease, you would use a  
22 non-ionic type of contrast, which is less nephrotoxic,

1 do less damage to the kidneys. You try to limit the  
2 amount of dye exposure.

3 If there's severe kidney abnormality, then  
4 you might not want to do the study at all.

5 You're looking for a potential bleeding  
6 problem because the cardiac catheterization involves  
7 insertion of a long thin hollow tube into the artery  
8 and you rely on the body's ability to clot afterwards  
9 to close that arterotomy. And you do a blood count  
10 beforehand to make sure that there's not an infection,  
11 because if they're sick and you cath the body, it  
12 might push the infection further or might cause a  
13 worsening of the infection.

14 Q Did you do specifically a creatinine test  
15 to look for kidney function?

16 A Yes.

17 Q Is that part of the routine panel of  
18 tests?

19 A Yes. It's called Basic Metabolic Panel or  
20 Chem 6.

21 Q Chem 7 is similar?

22 A I'm trying to think. Sorry. That is a



1 Chem 7. The one I ordered was a Chem 7. There's Chem  
2 7, 6, and Medicare has changed the name.

3 Q Did you have any specific reason, going in  
4 to the cardiac cath study on January 10th, to be  
5 concerned about this young man's kidney function?

6 A I had the Chem 7, it was dated December  
7 13th, that showed an elevated BUN and elevated  
8 creatinine.

9 Q How had you obtained that study?

10 A It had come to my office.

11 Q Do you know where it came from at the  
12 time? Where did you think it had come from?

13 A. At the time I thought it had come from Dr.  
14 Choi's office.

15 Q Why did you think that?

16 A Because that was my only contact with Mr.  
17 Ponirakis ... was through Dr. Choi.

18 Q Any other reason why you thought that?

19 A No, there was no other reason.

20 Q Okay. And did you later learn that this  
21 lab came from Fairfax Hospital Emergency Room?

22 A Yes.

1 Q Okay. Had you made any assumptions one  
2 way or the other whether or not Dr. Choi had done any  
3 baseline blood testing on the patient?

4 A I assumed that he had and I assumed this  
5 was the baseline blood testing that I had received.

6 Q Why did you make that assumption?

7 A Because Mr. Ponirakis had a systemic  
8 illness and I thought that that would be useful.

9 Q Now, what new lab data did you obtain on  
10 January 10, 1997, that was significant for this young  
11 man?

12 A The creatinine level was still elevated.

13 Q Had it in fact gone up from the prior  
14 month?

15 A December 13th it was 1.9 and now it was  
16 2.1 and there's a trend, but I'm not sure there's a  
17 significant difference.

18 Q How did that influence how you did the  
19 procedure, or did it influence how you did it?

20 A It did. I used non-ionic contrast, which  
21 is less nephrotoxic than the usual contrast. The  
22 usual contrast is a lot cheaper, but in somebody who

1 has an elevated creatinine, you would use a contrast  
2 that was not a nephrotoxic to try to not influence the  
3 kidneys.

4 I also, at the end of the procedure, did  
5 X-rays of the kidneys, which would not involve any  
6 extra contrast because the contrast that we used  
7 through the cardiac catheterization was there. So you  
8 could get a good picture of the collecting system of  
9 the kidneys at the end of the procedure.

10 Q And you mentioned all of this in your  
11 report?

12 A Yes. It is in the catheterization report.

13 Q What did you find as a result of your  
14 cardiac catheterization of the heart?

15 A His coronary arteries were clean, they  
16 were patent; there was no evidence of coronary artery  
17 disease. And what had given the abnormality was a  
18 ventricular diverticulum, an outpouching, a congenital  
19 variance, and it had not been described as a potential  
20 reason for a false positive of the stress  
21 echocardiogram. Subsequently it has been.

22 Q Just to translate that into lay terms, you

1 say this gave you a false positive on the stress echo?  
2 Am I hearing you right that you found a normal  
3 variation in the structure of this heart wall that had  
4 made it look like on the stress echo that there was  
5 something abnormal with his heart?

6 A Yes. I found no cardiac disease.

7 Q So the bottom line was, after all of this  
8 testing that you had done from December 1996 and  
9 January '97, did you have any cardiac explanation for  
10 his recurrent chest pain?

11 A No, and certainly not for his generalized  
12 malaise.

13 Q And did you refer the patient back to Dr.  
14 Choi?

15 A Yes.

16 Q Why did you do that?

17 A Because I felt that there was a systemic  
18 process that was ongoing and that potentially involved  
19 the kidneys and that follow-up was needed.

20 Q So you told him to go see Dr. Choi?

21 A I told Mr. Ponirakis, yes.

22 Q And did you give him any of the technical

1 details?

2           A       What I told him was that he had an ongoing  
3 process that possibly involved his kidneys and that he  
4 should follow up with Dr. Choi.

5           Q       Now, did you rely on the patient to convey  
6 the message about the kidneys possibly being involved?

7           A       No.

8           MR. ALTMAN:  Objection to relevance, Your  
9 Honor.

10          THE COURT:  Any response?

11          MR. MALONE:  Well, it is highly relevant  
12 and I will be happy to explain it.

13                 (Whereupon, there was a bench conference  
14 held without the hearing of the jury and reported as  
15 follows:)

16          THE COURT:  Mr. Malone.

17          MR. MALONE:  We're going to go into the  
18 fact that Dr. Horton called Dr. Choi's office  
19 personally and he also had two copies of the report  
20 sent to Dr. Choi's office, all because he did not want  
21 to rely on the patient to convey the message about the  
22 kidney problem because he wanted to communicate

1 directly with Dr. Choi.

2 MR. ALTMAN: He has already said he told  
3 the patient. Whether or not he relied on the patient  
4 as an additional form is irrelevant here.

5 THE COURT: Let me see if I can strike a  
6 balance and take care of both of your concerns,  
7 because whether relying upon or not relying upon may  
8 turn out to be a standard of care issue in this case  
9 and it may be part of contrib in this case and I want  
10 to be careful how we're dealing with it.

11 Mr. Malone, your point is you want to make  
12 it clear to the jury that in addition to speaking to  
13 the patient he took other steps. Can't you just ask  
14 him whether there's anything else that he did?

15 MR. MALONE: Shouldn't I be able to ask  
16 why didn't he do all of these other things? It's a  
17 flat question. He wouldn't expect a layman to convey  
18 a kidney message to the doctor directly and that's  
19 just a core part of this case, Judge.

20 MR. ALTMAN: I don't know what Dr. Horton  
21 would say in response to that question, but I still  
22 think the question as it was asked -- . I think he

1 could probably ask the question, Why did you call Dr.  
2 Choi. I think that's probably the perfect question.

3 MR. MALONE: We could go at it that way.

4 THE COURT: You both agree to go about it  
5 that way.

6 (Whereupon, the bench conference was  
7 concluded.)

8 BY MR. MALONE:

9 Q Looking at your cath report -- and I'm  
10 offering it into evidence as Plaintiff's 8A, the  
11 report itself, two-page report.

12 THE COURT: Hold on for one second. Is  
13 there any objection? You want me to accept a separate  
14 Exhibit 8A. Is there any objection to 8A?

15 MR. ALTMAN: No.

16 THE COURT: It's received in evidence.

17 (The cardiac catheterization  
18 report, previously marked as  
19 Plaintiff's Exhibit No. 8A for  
20 identification, was received in  
21 evidence.)

22 BY MR. MALONE:

1 Q Do you see it there, Dr. Horton?

2 A Yes.

3 Q Is this a copy of your catheterization  
4 report on Sotiri Ponirakis?

5 A Yes, it is.

6 Q Okay. Now, you mentioned creatinine here  
7 on the first page.

8 A Yes.

9 Q That was the creatinine from December  
10 13th?

11 Sorry. I'm sorry. Correction. That was  
12 the catheterization.

13 A That was the creatinine that I had done  
14 prior to the catheterization on January 10th.

15 Q Okay. You also had found -- and I'm not  
16 sure that we discussed this -- that he had a slightly  
17 low hematocrit, 37 percent?

18 A Yes.

19 Q Would that indicate potential bleeding?

20 MR. ALTMAN: Objection to the leading.

21 THE COURT: Sustained.

22 A It could indicate many different things.



1 Potential bleeding, chronic illness, you could have a  
2 slightly lowered hematocrit. Also may be associated  
3 with kidney disease. It's a non-specific finding,  
4 particularly at that level.

5 BY MR. MALONE:

6 Q Now, on page 2 of the report in your  
7 discussion -- let's go to your conclusion here where  
8 you talk about the catheterization demonstrates patent  
9 coronary arteries. Does that mean wide open?

10 A That means open.

11 Q Then you talk about this diverticulum  
12 which was the variation that we talked about earlier;  
13 right?

14 A Yes.

15 Q Now, tell us why you wrote this here about  
16 -- and let me read it to everyone and then you  
17 explain what you meant there by "Mr. Ponirakis' chest  
18 discomfort most likely is secondary to inflammation  
19 although it is difficult to explain pericarditis  
20 lasting more than two months. His sedimentation is  
21 still elevated; connective tissue disorder might be  
22 considered."

1                   Who were you writing that for?

2           A       Dr. Choi.

3           Q       Why weren't you just writing it for your  
4 own purposes?

5           A       It would not serve my purposes. I was  
6 evaluating for cardiac disease and at that point I did  
7 not foresee seeing Mr. Ponirakis again.

8           Q       Because you had concluded the cardiac  
9 workup?

10          A       Yes.

11          Q       And then on the next page you talk about:  
12 "In addition, his creatinine was 1.8 in the beginning  
13 of December." Is that a typo?

14          A       It should have been 1.9.

15          Q       "-- in the beginning of December and it  
16 is now 2.1. Patient has no known history of the  
17 kidney disease and on fluoroscopy" -- those were the  
18 X-rays at the time of the cardiac catheterization --  
19 "his kidneys appeared unremarkable. In addition, his  
20 hematocrit is 37 percent and no reason is found for a  
21 low hematocrit in this young gentleman although he  
22 does have a past history of ulcer disease."

1                   Who were you writing this for?

2           A       Again, Dr. Choi.

3           Q       And in your conclusion did you mention  
4 once again these issues --

5           A.      Yes.

6           Q       -- hematocrit of 37 percent and creatinine  
7 2.1 and sedimentation is pending.

8                   Tell us what that involved, the  
9 sedimentation being pending.

10          A       What I was trying to suggest was that a  
11 sedimentation should be rechecked because I was  
12 concerned that the original sedimentation was 51 and  
13 that his repeat creatinine was still elevated. Again,  
14 I was concerned about a systemic process possibly  
15 involving the kidneys.

16          Q       What did you do to communicate your  
17 suspicions about kidney disease, systemic disease,  
18 connective tissue disease --

19                   And, by the way, connective tissue  
20 disease, does that include lupus?

21          A       Yes.

22          Q       What did you do to communicate these

1 concerns?

2           A.     I called Dr. Choi immediately following  
3 the procedure and told them that the cardiac  
4 catheterization demonstrated no evidence of cardiac  
5 disease but that his creatinine was still elevated.

6           Q     And then what did you do besides the oral  
7 conversation?

8           A     I immediately, after dictating this  
9 report, asked the stenographer, who is responsible for  
10 the medical records, to send a copy of this to myself  
11 and a copy to Dr. Choi.

12          Q     Does this indicate here that you dictated  
13 it on January 10th and that they transcribed it the  
14 next day?

15          A     Yes. I dictated it the same day as the  
16 cardiac catheterization procedure and I made sure to  
17 do that and to call Dr. Choi that same day, or Dr.  
18 Choi's office that same day, because I was leaving  
19 that Saturday for a conference out west.

20          Q     Was this a Friday?

21          A     Yes, this was a Friday. January 10th was  
22 a Friday.

1           Q     Okay. And you were going to a cardiology  
2 meeting?

3           A     Yes.

4           Q     So after you had made the original contact  
5 and told the hospital to send him a copy of the cath  
6 report out of the dictation, when you got back into  
7 town from the cardiology meeting did you do anything  
8 else to communicate these findings to Dr. Choi?

9           A     Yes. I found a copy of the cardiac  
10 catheterization report and asked my office to send a  
11 copy of that to Dr. Choi.

12          Q     Why did you take that follow-up step?

13          A     That's our routine. We generally send a  
14 copy once it gets to the office, in addition to having  
15 a copy sent directly from the hospital.

16          Q     Isn't that a waste of trees?

17          A     It could be, though sometimes it gives us  
18 an opportunity to read it, find any type of  
19 typographical errors and correct it, because the copy  
20 sent from the hospital we haven't seen, and also it's  
21 a way of making sure that a copy has been generated  
22 and we do send it from the office.

1           Q     Now, you say you had spoken to Dr. Choi  
2 the day before this cardiac catheterization about the  
3 fact that you were imminently planning to do it?

4           A     Yes.

5           Q     Did you hear back from him that he had not  
6 received a report?

7           A     No.

8           Q     If he had called to ask about the report,  
9 what would you have done?

10                   MR. ALTMAN: Calls for speculation, Your  
11 Honor.

12                   BY MR. MALONE:

13           Q     What would have been the standard practice  
14 to do?

15           A     I would have sent him a copy of the report  
16 from my office.

17           Q     Thank you. No further questions.

18                   THE COURT: Any cross-examination, Mr.  
19 Altman.

20                   MR. ALTMAN: Thank you.

21                   CROSS-EXAMINATION

22                   BY MR. ALTMAN:

1           Q     Dr. Horton, did I hear you correctly state  
2 that in early December you made plans for the cardiac  
3 catheterization -- the echo -- excuse me -- the stress  
4 echocardiogram? Is that what you said?

5           A     It was December 10th that the plans were  
6 made.

7           Q     Do you have a copy of your medical  
8 records, sir, your chart on this patient?

9                     Do you have in front of you a Patient  
10 Encounter Form dated December 18, 1996. This is about  
11 12 days after you saw the patient.

12                    MR. ALTMAN: I'm referring, Your Honor, to  
13 Exhibit 8, and it is page 400028.

14           A     Yes, I do.

15                    BY MR. ALTMAN:

16           Q     Let's see if we can read that together for  
17 the ladies and gentlemen.

18                    It says: "Sotiri was seen by cardiologist  
19 in Fairfax Emergency Room on 12/16/96."

20           A     Yes.

21           Q     "Was told that chest X-ray" --

22           A     I have 12/16.

1 Q That's what I said, 12/16.

2 A I thought you said 12/19.

3 Q Let me start over. This form, so the  
4 ladies and gentlemen know what this is, this form is  
5 stated "Patient Encounter Form"; correct?

6 A Yes.

7 Q It says "Patient Name, Sotiri Ponirakis,  
8 Date: 12/16/96."

9 A Yes.

10 Q It lists a home phone number. It lists  
11 you as his cardiologist.

12 A. Yes.

13 Q Then in handwriting it says: "Sotiri was  
14 seen by cardiologist in Fairfax Emergency Room on  
15 12/16/96. Was told that chest X-ray was abnormal and  
16 that he needed a stress thallium ASAP and was at risk  
17 of having heart attack," closed quote.

18 A Yes.

19 Q It goes on to say: "Father is going to  
20 emergency room to get report from M.D. who saw  
21 Sotiri"; right?

22 A Yes.



1           Q     It says: "Schedule for GXT 1/8/97." What  
2 is GXT?

3           A     X-ray of the chest. I wrote "stress  
4 echo." The rest was written by the nurse.

5           Q     It says: "Mr. Ponirakis will probably stop  
6 by this afternoon." That's when you would have gotten  
7 the laboratory value from Fairfax Hospital; right?

8           A     Again, I'm not sure. When I saw this, I  
9 thought I was going to get a report from a  
10 cardiologist because the father is going to the  
11 emergency room to get a report from the M.D.

12                   I never got one and I could never find out  
13 who the cardiologist was.

14           Q     It says "12/18/96: Per Dr. Horton, chest  
15 X-ray normal." I take it you saw the chest X-ray, or  
16 don't you have a recollection of that?

17           A     Actually I didn't see the chest X-ray. My  
18 impression was that the chest X-ray was normal and  
19 that what they were talking about is EKG was abnormal  
20 and that's why you need a stress echo, because you  
21 can't make a diagnosis of heart attack from a chest  
22 X-ray.

1           Q     I don't know whether you can or not. I'm  
2 just trying to read this document. It says: "Needs  
3 stress echo. Scheduled 1/8/97."

4           A     Yes.

5           Q     When was it scheduled? On December 18th  
6 or earlier?

7           A     Actually you may not have this, but I have  
8 a form dated December 10th. It was part of our  
9 records. December 10, 1996, and it has down  
10 appointment time and date for stress test, January 8,  
11 1997, at 3 o'clock. We did go back on this because I  
12 -- particularly when he continued to have chest pain,  
13 I wasn't happy with January 8th, and we discussed  
14 several other dates for the stress echocardiogram and  
15 they're listed as December 17th and December 18th as  
16 possibilities. But Mr. Ponirakis called back and said  
17 that he was feeling better and that the January 8th  
18 would be much better for him.

19          Q     Okay. Now, after your first visit with  
20 Mr. Ponirakis on December 4th, you wrote Dr. Choi a  
21 report; is that correct?

22          A     Yes.

1           Q     And then you saw him a second time, I  
2 believe it was December 6th, and you wrote him a  
3 report?

4           A     Actually it was either December 5th or  
5 December 6th, and I wrote him a report on December  
6 6th.

7           Q     But you did some testing on December 4th  
8 and you wrote a report on December 4th and then you  
9 saw him either the next day or two days later and you  
10 did some testing and you wrote Dr. Choi a report; is  
11 that correct?

12          A     Yes. Well, actually the December 6th was  
13 regarding the testing that had been done the day  
14 before and on December 4th.

15          Q     Okay. Well, let me see if I can  
16 understand this and make sure the ladies and gentlemen  
17 do.

18                   On December 4th you saw him and on  
19 December 4th you wrote a report to Dr. Choi about the  
20 results of December 4th; correct?

21          A     About my initial examination.

22          Q     Okay.

1           A       Not about the lab results. They didn't  
2 have those yet.

3           Q       On December 6th you wrote Dr. Choi a  
4 letter describing your contact with the patient on the  
5 5th and these additional lab results that had come in;  
6 is that correct?

7           A.     That's correct.

8           Q       And then on January 9th you saw the  
9 patient for -- was it the 8th or 9th that you saw him  
10 for the stress echo?

11          A.     The 8th.

12          Q       I want to make sure I understand this.  
13 You didn't write a separate report, a separate letter,  
14 to Dr. Choi following the cardiac catheterization; is  
15 that correct, sir?

16          A       You mean --. Sorry. I guess I don't  
17 understand the question.

18          Q       Let me make it real simple. On the 4th  
19 and the 6th and January 9th you wrote a separate  
20 letter to Dr. Choi that says David Choi, and it's got  
21 his address. It says "Sotiri Ponirakis" and it starts  
22 out "Dear Dr. Choi." You did that for the 4th, the

1 6th and January 9th. You didn't do that following the  
2 cardiac catheterization; is that correct?

3 A Well, because on January 4th and January  
4 6th I didn't have a report to send. All I had were  
5 laboratory reports and there was no report. I had no  
6 place to put any discussions or interpretation and  
7 that's what I put in the cath report.

8 Q I'm just asking a simple question. Even  
9 though you have told the ladies and gentlemen that you  
10 went back to the office after you came back from this  
11 medical convention and that you wanted to make sure  
12 that Dr. Choi had this information, my question is a  
13 simple one: You didn't dictate a straight letter to  
14 him like you had done previously.

15 A Did I dictate another report in addition  
16 to the catheterization report?

17 Q Did you dictate a letter like you had on  
18 December 4th, December 6th and January 9th?

19 A I did not dictate a letter that had Dr.  
20 Choi's address at the top.

21 Q Now, following your initial visits you did  
22 actually have a presumed diagnosis for what was going

1 on with this patient and that was pericarditis or  
2 myocarditis; is that correct?

3 A I thought that was possible.

4 Q You thought it was more than possible;  
5 that was your presumed diagnosis, wasn't it?

6 A It was my first in the differential.

7 Q Well, in your letter did you say what else  
8 was in the differential?

9 A As time went on I became more concerned  
10 that it might be coronary artery disease and that's  
11 why I did the stress echo and the cardiac  
12 catheterization, and certainly -- again, I'm not sure  
13 who this cardiologist was, but whoever saw him in the  
14 emergency room was concerned about coronary artery  
15 disease because he was concerned that Mr. Ponirakis  
16 was at risk of having a heart attack and that would  
17 not be a sequellae of pericarditis or myocarditis.

18 Q Answer my question. In your initial  
19 evaluation you told him or you told Dr. Choi in the  
20 reports that you thought he had pericarditis or  
21 myocarditis; isn't that correct?

22 A Yes. That was before I had any lab

1 results.

2 Q Well, actually you did have the lab  
3 results by December 6th because you included the  
4 elevated sedimentation in your report to Dr. Choi  
5 dated December 6th; isn't that correct?

6 A. That's correct.

7 Q So did you have some of the laboratory  
8 studies back and even in your letter of December 6th  
9 you had two things in there that you thought were  
10 reasons for Mr. Ponirakis' chest pain and that was  
11 pericarditis and myocarditis. Am I correct, sir?

12 A Possibly, yes.

13 Q Do you have your report there, sir?

14 A Yes.

15 Q The word "sequellae" appears up above.  
16 What else did you attribute his problems to as of that  
17 date other than pericarditis and myocarditis?

18 A I stated it may be seen with pericarditis  
19 or myocarditis and I say further down that it's a  
20 possibility of an evolving myocarditis picture and I  
21 do say that the picture is atypical for myocardial  
22 injury.

1 Q Myocardial injury would be a heart attack?

2 A Yes.

3 Q So you're saying this presentation is  
4 atypical for a heart attack?

5 A It is.

6 Q So there's only two things that you're  
7 saying in your report, and this is all I'm trying to  
8 establish. There are two things that you're saying as  
9 of December 6th even when you have the sedimentation  
10 back. You're saying it's pericarditis or myocarditis;  
11 right?

12 A Those were first in my differential.

13 Q Well, a differential diagnosis is a list  
14 of things that it could be; right?

15 A Right.

16 Q So what you're saying is that "I only see  
17 two things it could be: Pericarditis and myocarditis"?

18 A Saying something is atypical doesn't mean  
19 that you have ruled it out. And, again, I wanted to  
20 put that in there because that was still a possibility  
21 and that's why I was recommending the stress echo down  
22 the line.



1           Q     In fact, when you discussed the elevated  
2     sed rate in your report of December 6th you state that  
3     "This may be seen with severe pericarditis and  
4     myocarditis," don't you?

5           A     That's true.

6           Q     In fact, you thought that the elevated  
7     sedimentation was related to what you thought was an  
8     inflammatory process going on with the heart?

9           A     I thought that was a possibility, yes.

10          Q     Well, you didn't say it's a possibility.  
11     This is what you attribute in your letter to Dr. Choi,  
12     don't you?

13          A     On December 10th, which is quite soon  
14     after December 6th, I'm scheduling him for a stress  
15     echocardiogram. I'm still considering other  
16     possibilities for the chest discomfort.

17                     Another reason for doing the stress  
18     echocardiogram is to look for underlying coronary  
19     artery disease and that's still in my differential and  
20     that's why on December 10th I had rescheduled a stress  
21     echocardiogram.

22          Q     There are other things that can cause

1 heart pain, chest discomfort, other than coronary  
2 artery disease; correct?

3 A Sure.

4 Q Pericarditis is one of those conditions?

5 A Yes.

6 Q It could cause heart pain and still have  
7 what you described as patent arteries; isn't that  
8 right?

9 A It can cause chest pain with patent  
10 arteries.

11 Q In fact, the catheterization looks at  
12 entirely different processes than pericarditis and  
13 myocarditis; isn't that correct?

14 A Than pericarditis. It may detect  
15 myocarditis, but it will not detect pericarditis.

16 Q When you do a cardiac catheterization you  
17 inject dye and then you look at the dye as it flows  
18 through the blood supply as that actually feeds the  
19 heart muscle itself?

20 A We do that through a catheter, which is a  
21 long, thin, hollow tube and you insert that into the  
22 open coronary artery and you take a motion picture of

1 the coronary arteries.

2 A part of the procedure also is to have a  
3 catheter within the main pumping chamber to see how  
4 well the heart contracts during each one of the  
5 systolic cycles and what you're looking at is to see  
6 whether or not there's any myocardial disease.  
7 Myocarditis may be picked up, valvular disease may be  
8 picked up. That could also cause heart discomfort.  
9 We don't look for pericarditis in the catheterization.

10 Q Are you done, sir?

11 A Yes.

12 Q Okay. Now, you told the ladies and  
13 gentlemen that you called Dr. Choi after the cardiac  
14 cath; is that correct?

15 A Yes.

16 Q You don't remember whether you spoke to a  
17 man or woman?

18 A I don't remember who I talked to. I  
19 talked to somebody in the office. I tried to talk to  
20 Dr. Choi, but he wasn't available.

21 Again, I was going to be gone so I had to  
22 talk to somebody.

1           Q     You don't know whether it was a man or  
2 woman?

3           A     No.

4           Q     You don't know whether the person was  
5 medically trained or not?

6           A     No.

7           Q     You don't remember anything about that  
8 conversation?

9           A     I do remember that I told them that the  
10 coronary arteries were patent and the creatinine was  
11 still elevated, and I do remember saying it that way,  
12 that the creatinine was still elevated because I was  
13 concerned because it was still elevated.

14          Q     Did you tell Mr. Ponirakis, your patient,  
15 that he might have kidney disease?

16          A     I said that he had what appeared to be an  
17 ongoing process that possibly involved the kidneys.

18          Q     You told him that he had elevated  
19 laboratory studies?

20          A     I told him that before the procedure. I  
21 told him that one of the laboratory studies was a bit  
22 elevated and I asked him at that time did he know of

1 this and he said no.

2 Q He told you that he did not know of the  
3 elevated lab studies. Did you tell him what the  
4 studies were that were elevated?

5 A No.

6 Q I want to make sure that we're dealing  
7 with the right person. You told this to your patient  
8 Mr. Ponirakis, not Mr. Ponirakis' father; is that  
9 correct?

10 A I don't know if the father was there or  
11 not during this conversation.

12 Q Well, my question is, did you tell it to  
13 your patient?

14 A I was talking to the patient.

15 Q And this was before your patient was  
16 sedated; right?

17 A Actually we did not give him sedation.

18 Q So he didn't have any sedation?

19 A No.

20 Q You're telling us that you conveyed this  
21 information while he was alert and oriented, not under  
22 any sedation?

1           A     Yes.

2           Q     You wouldn't communicate this information  
3 to somebody who couldn't understand it, would you?

4           A     I would try not to.

5           Q     I appreciate that. And that wouldn't make  
6 sense; right?

7           A     Again, I would try not to.

8           Q     Well, I don't understand what is difficult  
9 about my question. If you were trying to convey  
10 important medical information about a patient, it  
11 would be important to you that the patient was alert  
12 and in a position to understand that information;  
13 right?

14          A     The question was not so much "did he  
15 know." The question was more geared toward doing the  
16 cardiac catheterization at this point because it was  
17 right before the cardiac catheterization and I was  
18 trying to ascertain why the creatinine might be  
19 elevated but more in the context of doing the  
20 procedure.

21          Q     Doctor, you're not answering my question.  
22 It really was a simple one. I will be glad to

1 re-ask. My question is a simple one.

2           You had some important information about  
3 this patient in the form of abnormal laboratory  
4 values; correct?

5           A     Yes.

6           Q     And you told us already that before the  
7 patient underwent the procedure you communicated this  
8 information to your patient; yes?

9           A     In the form of a question.

10          Q     In the form --

11          A     What I asked him, I asked him if he knew  
12 if he had any abnormal kidney function.

13          Q     Any lab data? I just want to make sure.

14                Did you tell him you've got some abnormal  
15 values here that may need followed up? Did you tell  
16 him that?

17          A     I'm not sure.

18          Q     So I take it you didn't think that was  
19 important enough to communicate with the patient?

20          A     No. At the time I was trying to find out  
21 if this was a chronic problem or if it was something  
22 that had just happened, and it was more: Did you know

1 that your kidney function lab studies may not be  
2 normal?

3 Q Doctor, do you recall when we took your  
4 deposition, sir, in this case --

5 A Uh-huh.

6 Q -- back on February 9th? Do you recall  
7 that? I think it was earlier than that, wasn't it?

8 A Yes.

9 Q February 9, 1999.

10 A Yes.

11 Q More than a year ago. Do you remember,  
12 sir, in response to questions about your conversation  
13 that you told us that you told the patient --

14 THE COURT: Do you have a page and line?

15 MR. ALTMAN: Page 88.

16 MR. MALONE: May we give the witness a  
17 copy?

18 MR. ALTMAN: I will be glad to, but I think  
19 I can ask the question first.

20 THE COURT: If you don't want to give it  
21 to him, that's up to you, but I do want you to state  
22 the page and line number so opposing counsel can



1 follow along.

2 BY MR. ALTMAN:

3 Q Specifically let's start with -- how about  
4 line 19, page 87, and I'll sort of take a question or  
5 two to put it in context for you.

6 You were asked this question: "So you  
7 were not finished with this patient on January 10,  
8 1997?"

9 Your answer: "I was, because I did not  
10 feel he had a cardiac problem, so I was finished with  
11 him as far as a cardiac evaluation and there was  
12 nothing I was going to treat or any additional studies  
13 I was going to perform. I felt that I had effectively  
14 ruled out cardiac disease and I did tell Mr. Ponirakis  
15 that."

16 And then someone interrupted you with a  
17 question.

18 Question: "When you say 'Mr. Ponirakis,'  
19 are you referring to the father or the son?"

20 And your answer was: "The son. There was  
21 other members of the family there and I don't remember  
22 who. But did I tell them at the time that there were

1 some laboratory studies that suggested the possibility  
2 of a possible kidney problem and I told them that we  
3 had essentially ruled out cardiac disease, that the  
4 diverticulum he had was a normal variant and not to  
5 worry about that, but that there were other problems  
6 and that he needed to follow up with Dr. Choi. I did  
7 the cardiac catheterization report and at the end of  
8 the report I dictated, or I said, 'Please send a copy  
9 of this report to myself, Dr. Jack Horton, and also to  
10 Dr. David Choi, the referring physician'."

11 Now, did you or you did not, sir, tell  
12 your patient that there were some laboratory  
13 studies --

14 THE COURT: Before you do that, let's find  
15 out if that was his testimony during the course of the  
16 deposition.

17 BY MR. ALTMAN:

18 Q Was that your testimony back on February  
19 9, 1999, at the time of your deposition?

20 A That sounds right.

21 Q My question to you -- and this is the  
22 reason I'm asking, did you tell your patient when you

1 spoke to him before the cardiac catheterization that  
2 there was a possibility of a possible kidney problem?  
3 Did you tell him that?

4 A What I said there was actually what  
5 happened after the cardiac catheterization. I thought  
6 we were talking about before the cardiac  
7 catheterization.

8 Q Did you tell him something different  
9 before the cardiac catheterization?

10 A We didn't discuss in detail before. We  
11 discussed it in more detail after. But what you said  
12 that was when I talked to him after the cardiac  
13 catheterization.

14 Q You told us ten minutes ago before I  
15 started reading your deposition testimony that you  
16 told the patient before the test while he was alert  
17 that he had some abnormal lab tests.

18 A Yes.

19 Q And did you tell him even more before,  
20 that this may need to be worked up?

21 A Not before.

22 Q So you had a little bit of conversation

1 where you told him about the abnormal laboratory  
2 values.

3 A Before the main thrust of the conversation  
4 was regarding the cardiac catheterization and the  
5 risks of cardiac catheterization and I did question  
6 him about did he know that he had any abnormal  
7 laboratory values.

8 What I wrote was from after the cardiac  
9 catheterization, which was a different conversation,  
10 and, yes, I mean that's what we discussed after the  
11 cardiac catheterization.

12 Q Dr. Horton, it makes no difference to me  
13 whether you did it before or after. I'm trying to  
14 understand you conversation. You're the one that  
15 started out by saying you had this conversation  
16 before.

17 At sometime on January 10th when you were  
18 dealing about Mr. Ponirakis, not the father, did you  
19 communicate to him that he had a kidney problem, it  
20 might be a kidney problem, and that he had some  
21 abnormal laboratory values and he needed to go back to  
22 Dr. Choi?

1           A       I communicated to him that he had a kidney  
2 problem.

3           Q       And there's no question that you did that?

4           A       No question. That he might have a kidney  
5 problem; not that he had a kidney problem. Make that  
6 change in testimony right above.

7           Q       In your cardiac catheterization report,  
8 not the very final line but one of the conclusions  
9 said "Sedimentation is pending."

10          A       Yes.

11          Q       Do you remember that?

12          A       Yes.

13          Q       That's something that's frequently seen in  
14 a medical report, isn't it, sir, that a test is  
15 pending?

16          A       It means that the test has to be done.

17          Q       To be done or that you were awaiting the  
18 results?

19          A       If it were the results, I would say  
20 "sedimentation results" are pending.

21          Q       You said that you thought Dr. Choi would  
22 do it. Anywhere in there did you say, "Dr. Choi, you

1 need to do a sed rate"?

2           A     Yes. In the discussion I said that if his  
3 sedimentation is still elevated, connective tissue  
4 disorder might be considered.

5                     So it was my suggestion that sedimentation  
6 be rechecked because I was concerned that the process  
7 was ongoing.

8           Q     It's equally probable that you're telling  
9 him that if the sedimentation that you have ordered,  
10 the results of which are pending, are still elevated,  
11 that it might indicate that? Equally plausible;  
12 right?

13           A     Again, I would have said -- in the  
14 conclusion I would say "Sedimentation results are  
15 pending" and I would have put in the cardiac  
16 catheterization that a sedimentation had been drawn  
17 and the results are not back.

18           Q     I take it that when you dictated that you  
19 wanted a copy of your cardiac catheterization report  
20 sent to Dr. Choi you were under the assumption that he  
21 had privileges at Arlington Hospital and they would  
22 know who Dr. Choi is?

1           A       I don't know if I thought about that, no.

2           Q       Are there other Dr. Choi's in the State of  
3 Maryland?

4           A       I suppose, yes.

5           Q       Did you tell them which Dr. Choi should  
6 get a copy of your report?

7                   MR. MALONE: Is there a proffer that  
8 there's another David Choi, M.D., out there?

9                   THE COURT: In light of the witness'  
10 answer, I overrule the objection. Otherwise your  
11 objection may have been well-taken.

12                   BY MR. ALTMAN:

13           Q       Am I correct that the only actual  
14 conversation you can remember with Dr. Choi is the one  
15 where you called up and said you wanted to do the  
16 cardiac catheterization? Is that correct?

17           A       Actually I don't remember if I spoke  
18 directly with Dr. Choi or not or if it was with his  
19 office, but I said we needed authorization. I believe  
20 I talked to Dr. Choi. I'm not sure.

21           Q       So as you sit here right now, you can't  
22 remember any actual conversations with Dr. Choi

1 himself; is that correct, sir?

2 A I can't be sure.

3 Q Now, you would agree with me that it was a  
4 practice for you to communicate to Mr. Ponirakis your  
5 findings not only of the cardiac catheterization but  
6 your lab findings and what they might mean? You would  
7 agree with that; right?

8 A Certainly the cardiac catheterization.

9 The lab findings? Again, my impression  
10 was that these had been known earlier because I had  
11 received copies of them from the 13th and my  
12 discussion with Dr. Choi was that he still -- with Mr.  
13 Ponirakis was that he still needed to follow up, that  
14 there seemed to be an ongoing process.

15 Q Is it your testimony, sir, that it was not  
16 important for you to communicate that to Mr.  
17 Ponirakis?

18 A No. I think it's important and I did  
19 suggest that there was some kidney abnormalities.

20 Q And it would be important for you to make  
21 that suggestion to him?

22 A Yes.



1 MR. ALTMAN: The Court's indulgence for  
2 one minute.

3 I don't have anything further.

4 THE COURT: Any redirect?

5 MR. MALONE: Just quickly.

6 REDIRECT EXAMINATION

7 BY MR. MALONE:

8 Q Why, in addition to telling the patient of  
9 a possible kidney abnormality, did you also telephone  
10 Dr. Choi and have two copies of the report of the  
11 cardiac catheterization sent to him?

12 A Because I was the consultant to Dr. Choi  
13 on this case and the information had to go back to Dr.  
14 Choi. I mean, that was -- that's his primary care  
15 physician and the physician who would follow up on  
16 these results.

17 Q And you told the Arlington Hospital to  
18 send it to Dr. David Choi?

19 A Yes.

20 MR. MALONE: Let me have this marked as  
21 the next plaintiff's exhibit, Washington Physicians  
22 Directory. Excerpt of a page. It will be Plaintiff's

1 72.

2 THE COURT: Mark this for identification  
3 as Plaintiff's 72.

4 Have you seen this, Mr. Altman?

5 MR. ALTMAN: I was just shown. I do have  
6 an objection.

7 THE COURT: All we're doing is marking it  
8 for identification.

9 (The excerpt from the  
10 Washington Physicians Directory was  
11 marked as Plaintiff's Exhibit 72  
12 for identification.)

13 MR. MALONE: Maybe we should approach the  
14 bench.

15 THE COURT: Unless and until you seek to  
16 have it introduced into evidence, I'm not sure you  
17 need to approach the bench.

18 MR. MALONE: There's an objection to  
19 relevance.

20 THE COURT: Why don't you come up.

21 (Whereupon, there was a bench conference  
22 without the hearing of the jury and reported as

1 follows:)

2 THE COURT: Mr. Malone.

3 MR. MALONE: There was a suggestion on  
4 cross that maybe there was another Choi that he could  
5 have sent it to. This is the Washington Physicians  
6 Directory. There's only one David Choi and that's  
7 this doctor right here.

8 MR. ALTMAN: The suggestion wasn't that  
9 there was more than one. I was just asking this  
10 witness if he knew. It goes to his ability to  
11 recollect and what instruction you might give.

12 THE COURT: That may have been where you  
13 were going but that wasn't what I thought you were  
14 trying to say and I felt that you might be trying to  
15 make an inference and the jury might have thought the  
16 same thing. So if it's relevance, that's overruled.

17 (Whereupon, the bench conference was  
18 concluded.)

19 BY MR. MALONE:

20 Q I want to show you 72 real quickly the  
21 Washington Physicians Directory.

22 Are there any David Choi's in the

1 Washington Physicians Directory other than the one who  
2 you knew was an internal medicine family practice  
3 doctor?

4 A No.

5 MR. MALONE: I'll offer 72 into evidence.

6 MR. ALTMAN: Same objection.

7 THE COURT: The objection is overruled.

8 It's received in evidence.

9 (The excerpt from the Washington  
10 Physicians Directory marked as  
11 Plaintiff's Exhibit 72 for  
12 identification was received in  
13 evidence.)

14 MR. ALTMAN: One question based on that  
15 exhibit.

16 THE COURT: If it's based on that exhibit,  
17 I'll let you recross.

18 RECROSS-EXAMINATION

19 BY MR. ALTMAN:

20 Q There are doctors who are outside the  
21 Washington Metro area who aren't listed in that book;  
22 is that correct?

1           A       Yes. That book is for the Washington  
2 Metro area.

3           Q       Just the Washington Metro area?

4           A       Yes.

5           Q       But you could be in Baltimore and not be  
6 listed in that book; right?

7           A       Yes.

8           THE COURT: Any further questions of the  
9 witness based on recross?

10          MR. MALONE: No.

11          THE COURT: Is Dr. Horton free to go or  
12 subject to recall?

13          MR. MALONE: He's free to go.

14          MR. ALTMAN: He's free to go. I had him  
15 under subpoena.

16          MR. MALONE: The next witness is a lengthy  
17 witness.

18          THE COURT: It's been almost two hours.  
19 We'll go ahead and take our morning recess right now.

20          Ladies and gentlemen, leave your pads in  
21 the jury box and don't discuss anything about the  
22 case. We'll take 15 minutes.

1 (Whereupon, a recess was taken.)

2 BAILIFF: Please be seated and come to  
3 order.

4 THE COURT: All set, Counsel?

5 MR. MALONE: Yes, sir.

6 THE COURT: Bring the jury in, please.

7 MR. MALONE: This is a family  
8 practitioner, Dr. Mackintosh.

9 THE COURT: All right.

10 (Jury returning to courtroom.)

11 THE COURT: Next witness, Mr. Malone.

12 MR. MALONE: Your Honor, our next witness  
13 is Dr. Allen Mackintosh.

14 (Witness sworn.)

15 THE COURT: Good morning, Dr. Mackintosh.  
16 If you can move the microphone a little bit closer,  
17 keep your voice up and listen to and answer only the  
18 specific questions that the attorneys may pose.

19 Whereupon,

20 ALLEN MACKINTOSH, M.D.,  
21 a witness, was called for examination by counsel for  
22 plaintiff, and, after having been first duly sworn,

1 was examined and testified as follows:

2 DIRECT EXAMINATION

3 BY MR. MALONE:

4 Q What kind of doctor are you?

5 A I'm a family practice physician.

6 Q And are you Board certified in family  
7 practice?

8 A Yes, I am.

9 Q When were you first Board certified?

10 A I was a charter diplomate. That was the  
11 first year it was available. That was 1970.

12 Q You have a beautiful accent. Where did  
13 that come from?

14 A Ireland.

15 Q How long have you been practicing medicine  
16 in Fairfax County, Virginia?

17 A Since 1959.

18 Q When did you come over to the United  
19 States?

20 A 1958.

21 Q You say you're a charter diplomate of the  
22 American Board of Family Practice. Does that mean you

1 were in the first crop?

2 A Yes. They originated the concept of  
3 continuing medical education and we renew our diploma  
4 at six- or seven-year intervals, so I have repeated  
5 that exam again in 1976, 1982 and 1988 and 1994, and I  
6 need to make a decision about whether I'll do it in  
7 2001.

8 Q And why does the American Board of Family  
9 practice have the concept of recertification as  
10 opposed to just resting on your initial laurels?

11 MR. ALTMAN: Your Honor, objection as to  
12 the hearsay nature because this is something that he's  
13 enunciating.

14 THE COURT: Objection sustained.

15 MR. ALTMAN: Hearsay and relevance.

16 BY MR. MALONE:

17 Q You are the former President of the  
18 Virginia Academy of Family Physicians?

19 A Yes. I've been active in that organization  
20 since 1961 and I have served on various committees,  
21 executive committees, until I elevated to President in  
22 1972.



1           Q     Why did you get recertified? Why not just  
2 rest on your initial laurels?

3           MR. ALTMAN: Objection as to relevance,  
4 Your Honor.

5           MR. MALONE: It goes to his  
6 qualifications, Your Honor.

7           THE COURT: If the issue is going to his  
8 qualifications, I sustain the objection. He has  
9 already told the members of the jury that he has taken  
10 the test a number of times. I sustain the objection.

11          BY MR. MALONE:

12          Q     Have you had any positions in the Fairfax  
13 County Medical Society?

14          A     Like positions. Committeeman, Secretary,  
15 Treasurer, and eventually President again in 1972.

16          Q     Of the Fairfax County?

17          A     Yes.

18          Q     And describe what your practice was like  
19 in the 1996 and 1997 timeframe when my client was  
20 being seen by Dr. Choi.

21          A     My stepson was my associate and partner.  
22 We had a two-man practice right here in the City of

1   Fairfax and we were both Board certified family  
2   physicians so we saw patients of all ages from cradle  
3   to the grave. We had a large geriatric practice but  
4   we also saw newborns, teenagers, young adults.

5               We did what we would term pediatric/adult  
6   internal medicine. Some office gynecology. No  
7   obstetrics. Minor surgery. Good deal of counselling.

8               Q     What was your typical daily patient load?

9               A.    I have ranged all the way up to 70, even  
10  100 people a day back in early days when there was a  
11  shortage of doctors. My average in the last few years  
12  would be about 35 or 40.

13              Q     Patients per day?

14              A.    Per day.

15              Q     Is that a load that you can comfortably  
16  handle and see everyone?

17                   MR. ALTMAN:  Objection as to relevance.

18                   MR. MALONE:  He brought it up with his  
19  witness, Dr. Choi.

20                   THE COURT:  I sustain the objection.

21                   BY MR. MALONE:

22              Q     In any event, have you had other

1 leadership positions in medicine; for example, at  
2 Fairfax Hospital itself?

3 A Yes. I have served as chairman of several  
4 committees. Before I move to Virginia Beach in 1997 I  
5 was Vice-Chairman of the Department of Family  
6 Practice. I have put in literally hundreds of hours  
7 working on committees: Peer review committees,  
8 medication committees, chart review committees.

9 Q Tell us what that means. How does peer  
10 review committees and chart committees -- does that  
11 relate to reviewing the quality of care of other  
12 doctors?

13 A Yes. The quality of care of most of the  
14 medical specialties. Usually involved in surgical  
15 specialties, but internal medicine, pediatrics, family  
16 practice. Reviewing charts to make sure that the  
17 documentation was adequate. Not necessarily  
18 disciplining doctors but advising them that they  
19 needed to improve their documentation.

20 Q Give us a rough idea how many different  
21 doctors' charts you have reviewed for purposes of  
22 quality assurance.

1           A       Hundreds, over the years.

2           Q       And have you served as an expert witness  
3 previously in medical negligence cases?

4           A       In the last ten years I have reviewed  
5 cases -- maybe between 100 and 200 cases. Some went  
6 on to trial and some did not.

7           Q       Give us a rough idea of how often that you  
8 have done that for the patient versus how often you  
9 have done that for the doctor's side of the table?

10          A       It's currently about 50/50. When I began  
11 first, I was asked by St. Paul Insurance to review  
12 cases for the defense of physicians and in the  
13 early --.

14                   MR. ALTMAN: May we approach, sir?

15                   (Whereupon, there was a bench conference  
16 held without the hearing of the jury and reported as  
17 follows:)

18                   MR. ALTMAN: This is a very experienced  
19 witness. His interjection of St. Paul Insurance  
20 Company on behalf of doctors was a deliberate attempt  
21 to inject medical malpractice insurance into this  
22 proceeding. I would move to have this witness'

1 testimony stricken.

2 In the alternative, I would move for a  
3 mistrial.

4 You can't unring this bell.

5 MR. MALONE: I certainly didn't intend  
6 to --

7 THE COURT: Let me tell you what I'm going  
8 to do. I have no reason to believe that Dr.  
9 Mackintosh intentionally injected the issue of  
10 insurance into the case, but if you believe he did, I  
11 will give you opportunity to ask him some questions.

12 I'm going to send the jury back to the  
13 jury room at this point and I'll hear your positions  
14 on the motion and I'll make my ruling.

15 (End of bench conference.)

16 THE COURT: Ladies and gentlemen, there  
17 are matters that I have to discuss and it's going to  
18 take more than a minute or two, so I will be forced to  
19 send you back to the jury room.

20 (Jury leaving courtroom.)

21 THE COURT: Mr. Altman, did you want to  
22 ask any questions of Dr. Mackintosh?

1 MR. ALTMAN: I do, sir.

2 VOIR DIRE EXAMINATION

3 BY MR. ALTMAN:

4 Q Doctor, you have been an expert witness in  
5 trial on many occasions; is that correct, sir?

6 A Not as such in trial as just reviewing  
7 cases.

8 Q Well, how many times have you been an  
9 expert witness in trial?

10 A About 20 times.

11 Q And that's been in various jurisdictions;  
12 right?

13 A Yes.

14 THE COURT: Mr. Altman, one second. The  
15 record should reflect that the colloquy is taking  
16 place outside of the hearing of the jury.

17 BY MR. ALTMAN:

18 Q Mr. Malone asked you a question about the  
19 breakdown of cases between patients versus doctors.  
20 Do you remember that being the question?

21 A Yes.

22 Q Why did you interject the insurance,

1 malpractice insurance?

2 A Did I? I mentioned St. Paul's Insurance?

3 A You sure did.

4 Q And you know that's not proper, don't you?

5 A No, I didn't know that.

6 Q In your 20 times being an expert  
7 witness --.

8 By the way you have been a defendant in  
9 malpractice actions, haven't you?

10 A Yes.

11 Q Have you ever heard malpractice insurance  
12 mentioned in any proceeding, sir?

13 A Come to think of it, I haven't, but I  
14 wasn't aware that it was a no-no.

15 MR. ALTMAN: Your Honor, I would renew my  
16 motion. This bell cannot be unrung.

17 THE COURT: I'm going to ask Dr.  
18 Mackintosh to step outside for a moment and then I'll  
19 hear the argument of counsel so that the argument of  
20 counsel won't affect Dr. Mackintosh's testimony.

21 (Witness leaving courtroom.)

22 THE COURT: Okay, Mr. Altman. Make your

1 argument, sir.

2 MR. ALTMAN: As the Court is well aware,  
3 this is a very serious case and it's a very hotly  
4 contested case in liability and this was just totally  
5 inappropriate and I don't know whether it was maybe he  
6 too hastily spoke.

7 I have had occasion to have this witness  
8 be an expert witness against clients I have  
9 represented many times and I will venture to say that  
10 I think probably more than 20 times that he has been  
11 an expert in court, but he's an experienced expert  
12 witness.

13 Mr. Malone was very careful in the way he  
14 asked the question. This bell cannot be unring. The  
15 St. Paul Insurance Company on behalf of doctors is  
16 before this jury; the issue of malpractice insurance  
17 is now before the jury.

18 THE COURT: Mr. Altman, do you believe  
19 that the eight people sitting in this jury room right  
20 now, none of them is aware of the existence of  
21 insurance in this type of context?

22 MR. ALTMAN: The answer to that question



1 is I can't say a hundred percent that these eight  
2 people have no knowledge of malpractice insurance. I  
3 know we go to great lengths to keep it out. I know  
4 that there are certain people who may not know who may  
5 not be thinking about malpractice insurance.

6 I have had the occasion, in specific  
7 answer to your question, to do one of those mock jury  
8 things where we had a little trial and that I'm able  
9 to look at jurors through one way mirrors, I guess it  
10 is. And I know there are people who don't mention it  
11 at all, malpractice insurance, but they will say, Gee,  
12 the doctor has probably got a nice car and nice house,  
13 but they don't mention medical malpractice insurance.

14 The fact of the matter is, whether it was  
15 in the back of their mind or not, it's now been  
16 brought to the forefront.

17 THE COURT: Do you have any basis to  
18 contend that the plaintiff, through counsel,  
19 intentionally interjected the issue of malpractice  
20 insurance?

21 MR. ALTMAN: On the contrary, Mr. Malone  
22 was very careful.

1           THE COURT: I agree Mr. Malone's question  
2 did not seek to elicit that information. Do you agree  
3 that what the witness said was that when he first  
4 started doing this, which was some years ago, St. Paul  
5 had asked him to become involved in some situations?

6           MR. ALTMAN: I would agree with His Honor  
7 on that point.

8           THE COURT: So there hasn't been anything  
9 specifically mentioned about insurance of your client  
10 under the circumstances of this particular case.

11          MR. ALTMAN: I would have to agree with  
12 His Honor's analysis as you just stated.

13          THE COURT: Your contention is it's out  
14 there and that there's nothing the Court can do at  
15 this point.

16          MR. ALTMAN: I don't know what.

17          THE COURT: If I instructed the jury right  
18 now that the existence or lack of existence of  
19 insurance either for the plaintiff or the defendant in  
20 this case is totally irrelevant to any of the issues  
21 for them to decide in this case and that they are not  
22 to discuss it, consider it or do anything else with it

1 in deciding the issues involved in this case, would  
2 that take care of your concern?

3 MR. ALTMAN: No, and I'll tell you why.  
4 At this point in time the jury has heard about  
5 malpractice insurance and is the Court going to allow  
6 me to make sure that the jury knows that all the  
7 medical bills have been paid by insurance?

8 THE COURT: That's why my proposed  
9 question, if I wind up doing that, is the existence of  
10 insurance or lack of existence of insurance -- and I  
11 said either for the plaintiff or for the defendant --  
12 is totally irrelevant to their decision-making  
13 processes in this case.

14 MR. ALTMAN: I would agree that would  
15 probably be fair if at some point it comes out that  
16 the plaintiff has health insurance, because as of  
17 right now, the jury doesn't know that he has health  
18 insurance.

19 THE COURT: Other than a mistrial, is  
20 there anything else short of a mistrial that would be  
21 acceptable to you at this point, Mr. Altman, either by  
22 a curative instruction, and if the proposed curative

1 instruction that I just mentioned to you would not  
2 satisfy you, is there any other curative instruction  
3 that you believe would be sufficient for the concern  
4 that you are expressing to the Court?

5 I'm not belittling your position. This is  
6 a very important case to both sides, this is an  
7 expensive case for both sides and for the judicial  
8 system, and you have raised the point.

9 There's Virginia Supreme Court authority  
10 that would support your position and I'm exploring any  
11 and all positions to both sides before I determine  
12 what I'm going to do.

13 MR. ALTMAN: The way I'm answering the  
14 question you have asked me, 'Is there anything short  
15 of that,' assuming that His Honor wants me to say  
16 something besides mistrial, then I think the best  
17 thing would probably be what you have just suggested,  
18 that is, a cautionary instruction to the jury that it  
19 is totally irrelevant and it is not to be considered,  
20 they are not to consider it. However His Honor wants  
21 to phrase it.

22 My concern is I don't think that you can

1 unring these bells. I think the Court can say "Forget  
2 about it," but I don't know that they forget about it,  
3 and in a close call, I don't know that this is not  
4 going to be the thing that tips their hand one way --  
5 and I think it can only tip their hand one way: 'Gee,  
6 we can't agree whether Dr. Choi did anything wrong,  
7 but what the hell, insurance company.'

8 THE COURT: Okay. Let me hear from  
9 plaintiff.

10 I deny your motion based upon the fact  
11 that Dr. Mackintosh intentionally interjected the  
12 issue of insurance. After watching and listening to  
13 the witness, I don't believe he intentionally did it,  
14 and clearly the plaintiff did not intentionally intend  
15 to do it, so the only motion before the Court is  
16 mistrial because insurance has been mentioned.

17 I want you to respond. Do you agree that  
18 I should declare a mistrial?

19 MR. MALONE: I disagree.

20 THE COURT: Articulate for me why you  
21 disagree and what you contend that I ought to do to  
22 correct the error by the the witness.

1 MR. MALONE: I think where he was going  
2 was he was starting to say that he used to almost  
3 always review cases on behalf of doctors but more  
4 recently it's been 50/50. That was the context of the  
5 remark. And I will be happy to bring that out with  
6 the doctor if you feel it's important. But in any  
7 event, clearly an innocent remark by him.

8 More critical is there's no suggestion  
9 whatsoever in this case that this defendant has a  
10 malpractice insurance policy.

11 Third, these are sophisticated people.  
12 The issue of doctors having malpractice insurance is  
13 not going to come as any great shock or surprise to  
14 people. That is a general concept out there.

15 Fourth, the fact that my client has health  
16 insurance has in fact come up in the case because it's  
17 been mentioned -- actually it came up in his video  
18 last night, which you haven't seen, and it will come  
19 up with the plaintiff's father's testimony, the reason  
20 he switched from one doctor to another. And the  
21 reason he got to Dr. Choi rather than going back to  
22 the doctor he had been with before, Dr. Pappas, was

1 that his insurance changed. So insurance, as in any  
2 matter, which is common knowledge in the world, is out  
3 there in this case.

4 It would be a tremendous prejudice to us  
5 in declaring a mistrial at the point in terms of both  
6 expense and also the timing of the matter. I have a  
7 very sick client who is trying to get better now but  
8 he's also trying to put this case behind him. The  
9 case has been pending for a long time.

10 We have a strong liability case here. I  
11 can't imagine that this would have any impact on the  
12 jury one way or another anyway, and I'm trying to  
13 present an ethical case.

14 THE COURT: Okay, sir. I don't believe  
15 for a moment that Mr. Altman thought that this was  
16 something that was done intentionally by you. I  
17 surely don't believe it was. You were aware that  
18 there's Virginia Supreme Court precedent that says  
19 that if the "insurance" word comes out, that the  
20 proper remedy is to declare a mistrial, although it's  
21 been approximately 20 years since a Trial Court has  
22 been reversed for not granting a mistrial under

1 circumstances when the insurance was mentioned in an  
2 inadvertent way.

3 MR. MALONE: If I could make one other  
4 little point. I think the curative instruction is an  
5 ample way to handle it, especially in the even-handed  
6 way that you're talking about. It doesn't draw  
7 attention necessarily to what he just said. It casts  
8 it in terms of the entire case. I think that's the  
9 way to go.

10 THE COURT: Well, I was part of a panel  
11 back about a week ago where I talked about this issue,  
12 not exactly the context coming up in this trial, and I  
13 said that there would be trial judges who would be  
14 willing to do it. I won't say what my position was,  
15 but I'm going to say what my position is right now. I  
16 decline to declare a mistrial under the circumstances  
17 of the case. In my seven-and-a-half years on this  
18 bench I have presided over numerous personal injury  
19 cases. The issue of insurance has come out of the  
20 jury room by way of questions on a frequent basis.

21 In my discussions with jurors at the end  
22 of their service, it is almost uniformly discussed.



1 Questions are asked why the insurance issues weren't  
2 discussed during the course of the trial, why the jury  
3 didn't know if the defendant was insured or the  
4 plaintiff was insured. It's consistently discussed.

5 In the 1970s when the Virginia Supreme  
6 Court rendered the decision saying that a mistrial was  
7 appropriate, the world was very different and the  
8 knowledge of insurance was very different.

9 To say at this point in the year 2000 that  
10 eight citizens of Fairfax County who are in the jury  
11 room, that none of them is aware of the existence of  
12 malpractice insurance I believe does not give  
13 appropriate credit to the people who sit on juries.  
14 In addition, it's absolutely inconsistent with my  
15 experience having had contact with jurors.

16 The Virginia Supreme Court has repeatedly  
17 stated in its opinions that jurors are presumed to  
18 follow the instructions of the Court and what I'm  
19 going to do is basically instruct them at this point,  
20 consistent with what I posed to Mr. Altman, that the  
21 existence or lack of existence of insurance either for  
22 the plaintiff or the defendant in this case is totally

1 irrelevant, it shouldn't be considered in any way, it  
2 shouldn't enter into their deliberative process in any  
3 way, and that all issues in this case should be  
4 decided without anything being considered about the  
5 existence or lack of existence of insurance for either  
6 of the parties.

7 I believe that that better informs jurors  
8 who otherwise don't know whether or not they should or  
9 should not be discussing the issue and makes it clear  
10 to them, consistent with Virginia law, that the  
11 existence or lack of existence of insurance should not  
12 at all be factored into the decisions and the  
13 important decisions that they're going to be making in  
14 this case.

15 MR. MALONE: Only one tiny caveat in that  
16 the existence of insurance does have a slight bit of  
17 relevance to a juror who wonders why did this patient  
18 switch doctors rather than going back to the same  
19 doctor, so I'm not sure it's a sweeping instruction  
20 that has absolutely no relevance whatsoever. Do you  
21 follow me on that?

22 I guess what I suggest is that the

1 existence of insurance in terms of it paying a  
2 patient's medical bills is of no relevance. It might  
3 have some slight relevance to someone switching  
4 doctors but it doesn't have any other relevance and  
5 you're not to consider it.

6 THE COURT: Mr. Altman, without waiving  
7 your position that I should declare a mistrial, we're  
8 going to have that conversation without you waiving  
9 that position. I understand that you have asked me to  
10 declare a mistrial and that you continue to ask me to  
11 trial a mistrial.

12 I'll make sure I do as good a job as I can  
13 to instruct the jury. I wasn't there for the video  
14 deposition discussion. What if I put that caveat in  
15 that the sole purpose that they may consider any issue  
16 of insurance is for purposes of what may come out  
17 during the plaintiff's videotaped deposition as far as  
18 what they're going to say as far as switching  
19 doctors?

20 MR. ALTMAN: I guess I'm not understanding  
21 how His Honor is going to say this. Are you going to  
22 say forget about insurance except for the very limited

1 incident that you may hear it referenced by the  
2 plaintiff as to why Mr. Ponirakis changed doctors?

3 THE COURT: That's what Mr. Malone wants  
4 me to do. I could either do that or give them what I  
5 basically have recited to counsel without waiving your  
6 position and then let things fall where they may with  
7 the plaintiff's testimony.

8 Not having seen or heard it, I don't know  
9 if that would be potentially misleading to this jury.

10 MR. ALTMAN: I don't think anybody has  
11 made an issue as to why Mr. Ponirakis has changed  
12 doctors, so I guess I'm inclined to go along with the  
13 Court.

14 THE COURT: Which question is that? Do  
15 you need to have that? Does that need to be part of  
16 testimony? Can it be taken out?

17 MR. MALONE: It could. My only experience  
18 is that when there's a narrow contrib defense raised,  
19 people tend to discuss it in more broad terms in the  
20 jury room and they want to know answers to questions  
21 that might not seem terribly important to you and I.

22 THE COURT: If I let contrib go to the

1 jury in this case, I'm going to ask counsel to pose an  
2 instruction that talks about what the contrib issue is  
3 in this case, and if I understand Mr. Altman  
4 correctly, the contrib issue that he contends should  
5 be considered by the jury is the failure of the  
6 plaintiff to notify Dr. Choi about the past history  
7 and his discussions with Dr. Horton.

8 MR. ALTMAN: That's correct

9 THE COURT: And if contrib goes to the  
10 jury and you want me to, Mr. Malone, I'll limit the  
11 contrib issues to those issues, one or both of those  
12 issues, if you want me to do it, if that's your  
13 concern.

14 But my concern is this: What I'm  
15 proposing to do is not entirely consistent with  
16 Virginia Supreme Court precedent, but I also believe  
17 that the times have changed and the only way that the  
18 Trial Court will ever have the opportunity to address  
19 whether it believes that 1970 cases should still be  
20 the law is if a trial judge does what I'm doing right  
21 now and I don't believe that the Virginia Supreme  
22 Court would say that what I'm proposing to do is in

1 error because I believe it's consistent with their  
2 decision and it's consistent with the realities in the  
3 year 2000.

4 But the more that I get away from a  
5 completely neutral instruction that basically tells  
6 the jury that insurance is a non-factor, the more apt  
7 we are for me to create error, and the last thing I  
8 want to do with the cost, financial and emotional, for  
9 both sides in this case is to create error where the  
10 case has to come back and be heard again.

11 MR. MALONE: Let me withdraw the situation  
12 with the caveat, but it would be totally harmless to  
13 let him answer that question in the videotape in case  
14 anyone has curiosity.

15 THE COURT: I'll ask you and Mr. Altman to  
16 discuss that issue before we get to it and if there's  
17 a disagreement, before we play the videotape I will  
18 rule and I will tell you what should or should not be  
19 played with regard to that issue.

20 Mr. Altman, what I'm going to propose to  
21 do is to say that Dr. Mackintosh mentioned the fact  
22 that at an earlier period of time he was requested by

1 an insurance company to look into a claim and then go  
2 into the situation so it's clear that I'm talking  
3 about Dr. Mackintosh in an earlier period of time, and  
4 then go on to tell them that the existence or lack of  
5 existence of insurance has nothing to do with this  
6 case.

7 MR. ALTMAN: Without waiving my position,  
8 I appreciate that.

9 THE COURT: I recognize that you disagree  
10 with that situation but I want to make sure that it's  
11 acceptable to you.

12 MR. MALONE: May I discuss with the  
13 witness that he's not to mention --

14 THE COURT: I'm going to bring him back in  
15 and I am going to tell him that, and I am going to  
16 bring the jury in.

17 The preface is acceptable to you?

18 MR. MALONE: Yes, sir.

19 THE COURT: Let's bring Dr. Mackintosh  
20 back into the courtroom.

21 (Witness returning to stand.)

22 THE COURT: Dr. Mackintosh, you can come

1 up back to the witness stand.

2 Dr. Mackintosh, for purposes of the rest  
3 of your testimony in this case, do not mention  
4 anything that relates to insurance for either the  
5 plaintiff, the defendant or anyone else. And for  
6 future reference, unless the judge tells you to the  
7 contrary, you shouldn't mention anything about the  
8 existence of insurance during the course of any  
9 testimony you may give in any future cases.

10 THE WITNESS: Your Honor, I have rethought  
11 my answer to Mr. Altman and I've been asked that  
12 question innumerable times, especially in deposition:  
13 How did you get started in this business.

14 THE COURT: Doctor, it doesn't really  
15 matter. For purposes of the remainder of your  
16 testimony, don't mention anything else about insurance  
17 or the lack thereof.

18 We're going forward with the trial. Let's  
19 bring the jury in, please.

20 (Jury returning to courtroom.)

21 THE COURT: Ladies and gentlemen, thank  
22 you for your patience. A few minutes ago Dr.



1 Mackintosh mentioned that in the past he had been  
2 asked by St. Paul Insurance Company to look into some  
3 alleged claims of malpractice. The existence or lack  
4 of existence of insurance for either the plaintiff or  
5 the defendant in this case is totally irrelevant to  
6 the issues that you're going to be asked to decide and  
7 you shouldn't think about insurance or lack of  
8 insurance, you shouldn't discuss anything related to  
9 the existence or lack of existence of insurance.

10 Under the law, it's simply something that  
11 can not be and should not be considered.

12 Do each of you agree not to allow anything  
13 relating to the existence or lack of existence of  
14 insurance for either the plaintiff or defendant in  
15 this case -- do you agree that that will not enter  
16 into any of the discussions or your personal  
17 deliberations in regard to this case?

18 Do all of you agree to that?

19 (Jurors answering in the affirmative.)

20 THE COURT: Continue with your  
21 questioning, Mr. Malone.

22 MR. MALONE: Your Honor, at this time I

1 offer into evidence Dr. Mackintosh's curriculum vitae  
2 which has been previously marked as 68D.

3 THE COURT: Is there any objection to  
4 68D?

5 MR. ALTMAN: No.

6 THE COURT: It's received in evidence.

7 (Dr. Mackintosh's curriculum vitae,  
8 previously marked as Plaintiff's 68D  
9 for identification, was received in  
10 evidence.)

11 THE COURT: I offer Dr. Mackintosh to the  
12 Court as an expert in the field of family medicine.

13 THE COURT: Is there any objection?

14 MR. ALTMAN: No.

15 THE COURT: Dr. Mackintosh will be  
16 received as an expert in the field of family medicine.

17 His credibility will be determined by the eight of  
18 you. You may continue with your examination.

19 BY MR. MALONE:

20 Q I want to ask you a few preliminary  
21 questions about your familiarity with the standard of  
22 care for approaching a patient like Sotiri Ponirakis

1 when he first came to Dr. Choi in November 1996, Dr.  
2 Mackintosh, and the preface is that Dr. Choi has held  
3 himself out as family medicine and internal medicine.

4 Is there any practical difference between  
5 the way those two groups of doctors would approach a  
6 patient such as this in your experience?

7 A No, there's none by definition. Doctor  
8 Choi is internal medicine. That means he's primarily  
9 with adults.

10 Family physicians, as I mentioned earlier,  
11 go from the younger people all the way into adults.

12 But as far as being a primary physician,  
13 by definition, he and I are held to the same  
14 standards.

15 Q How is it that you're familiar with the  
16 standards of care for a doctor in Dr. Choi's shoes in  
17 terms of his treatment of a patient like my client  
18 Sotiri Ponirakis back in late '96 and early '97?

19 A The organization that I belong to and the  
20 Board certification that I belong to, that is, the  
21 American Academy of Family Physicians and the American  
22 Board of Family Practice, issue regulations and

1 statements concerning the standards of care in the  
2 management of various disease entities. They publish  
3 these in the American Family Physician.

4 MR. ALTMAN: Objection, Your Honor. This  
5 is hearsay. He's trying to set up some literature as  
6 the standard of care.

7 MR. MALONE: No, I'm just asking him a  
8 general question about how he's familiar with the  
9 standard of care.

10 THE COURT: Anything further, Mr. Altman?

11 MR. ALTMAN: That's not what the standard  
12 of care is based upon.

13 THE COURT: Come on up to the bench,  
14 Counsel.

15 (Whereupon, there was a bench conference  
16 held without the hearing of the jury and reported as  
17 follows:)

18 THE COURT: What do you expect the rest of  
19 his answer to be?

20 MR. MALONE: Just to talk in general about  
21 how he's familiar with the standards of care. I mean,  
22 I'm not looking for any specific publication. What

1 the literature is and what other doctors like himself  
2 practice.

3 I think maybe what I can do is hone in  
4 with more specifics questions, if you would like me  
5 to.

6 MR. ALTMAN: The standard of care is what  
7 a reasonably prudent physician would do. He should  
8 say "I talk to Y, I know what they do." Bingo.

9 THE COURT: I overrule the objection at  
10 this point, but I'm going to take you up on your  
11 offer: I want you to be more specific with your  
12 question so that we don't have Dr. Mackintosh going  
13 into areas that may not be appropriate.

14 MR. MALONE: Let me try to be more  
15 specific.

16 (End of bench conference.)

17 BY MR. MALONE:

18 Q Dr. Mackintosh, are you familiar with the  
19 way that Virginia-based family practitioners approach  
20 a patient like Sotiri Ponirakis in terms of the  
21 standard of care that's expected of them?

22 A Yes, I am.

1           Q     How are you familiar with the way that  
2 other doctors such as yourself do this?

3           A     Well, in part, as I mentioned earlier, my  
4 service in the innumerable committees, both in the  
5 medical societies and the Virginia Academy of Family  
6 Physicians and at Fairfax Hospital. I was also an  
7 Associate Professor in the Department of Family  
8 Practice in the 70s at the Medical College of Virginia  
9 in Richmond where I taught both medical students and  
10 residents.

11          Q     Did you teach them standards of care in  
12 terms of how they should approach a new patient?

13          A     That's correct.

14          Q     Okay. Have you gone to medical meetings  
15 where that issue has been discussed?

16          A     Yes, I have, both with internal medicine,  
17 family practice and pediatrics; all of the disciplines  
18 in primary care.

19          Q     I would like you to take a look at a chart  
20 that we prepared with your help. It's right here and  
21 I'm going to show it to the jury in a minute.

22                Do you see that chart that tells us about

1 the primary care doctor's duty?

2 A "Evaluate the Whole Patient"?

3 Q Is that a chart that you helped me prepare  
4 in order to illustrate your testimony about the  
5 standards of care for the general approach to the  
6 patient?

7 A That's right, yes.

8 Q I would like to show this to the jury and  
9 ask you to come up and explain what this chart  
10 involves.

11 THE COURT: Any objection?

12 MR. ALTMAN: It's already been shown to  
13 the jury.

14 THE COURT: Do we have smaller copies of  
15 those charts so that they can be marked and made a  
16 part of the record?

17 MR. MALONE: I do.

18 THE COURT: At the appropriate time --  
19 maybe co-counsel can make a note because I would like  
20 them to be made a parte of the record.

21 Dr. Mackintosh, you may step down.

22 Mr. Altman, you and your co-counsel can

1 move around so you can see, and before the questioning  
2 begins, I want to make sure that seven are set and you  
3 can see what needs to be seen.

4 Dr. Mackintosh, especially now that you're  
5 going to have your back to the court reporter, please  
6 make sure that you keep your voice up because she  
7 needs to take down your testimony.

8 BY MR. MALONE:

9 Q Tell us what you meant by these items in  
10 the chart. Start with item 1.

11 A. That involves a review of past history,  
12 surgical and medical. Family history, involving  
13 illnesses that his parents, grandparents might have  
14 had that would be of an hereditary nature,  
15 particularly, say, in reference to premature deaths in  
16 the family. That will give a clue as to prevention in  
17 the future for this particular patient.

18 A social history, asking about smoking,  
19 alcohol consumption, coffee consumption, drugs, other  
20 medications.

21 Then proceeding on into a review of  
22 systems, which you start at the top and work on down,



1 you ask about headaches, you ask about sore throats,  
2 ear problems, neck problems, eye problems, lung  
3 problems, stomach problems, bowel problems, urinary  
4 tract problems, joint, and finally skin and rashes,  
5 and that can be done rather rapidly. It's called a  
6 "review of systems." And then --

7 Q Before you go on from that, why does the  
8 standard of care require a doctor, when he first sees  
9 a new patient, to do a review of systems?

10 A The requirement is that it's helpful,  
11 first of all, to get an overall picture of the  
12 patient's past. It's also helpful for -- there are  
13 many patients who edit news, if you will, and if they  
14 have an adequate explanation for something that  
15 occurred in their past, they don't feel the need to  
16 mention it. And then there's the blockers and deniers  
17 who don't want to talk about the possibility of  
18 serious illnesses, and this is a major problem for  
19 primary physicians, to cut through and be more  
20 specific in situations where -- and this is very  
21 common situation where in these situations you have to  
22 be very specific with them and pin them down.

1           Q     Do you as a primary care doctor ever use a  
2 patient questionnaire form to help you do this initial  
3 review of systems?

4           A     My chart includes a two-page questionnaire  
5 that requires the patient, the first visit of a new  
6 patient, to complete this. It's a yes/no type, very  
7 specific, and you can sit and review it with the  
8 patient. It takes two to three minutes usually to  
9 review it with them and check off the significant  
10 features in their past history.

11          Q     I don't want to go specifically into our  
12 case too much yet, but I want to ask you whether or  
13 not things like blood in the urine would be a question  
14 that a doctor practicing according to the standard of  
15 care would ask of a new patient in a history?

16          A     Yes, he would.

17          Q     How about on the patient questionnaire  
18 form; would that be something that you would expect to  
19 see?

20          A     Yes. That's always there.

21          Q     Why is that always there either in written  
22 questionnaire or as part of the oral history that the

1 doctor takes in a review of systems?

2 A Well, there's a urinary tract section of  
3 questions and there are only three or four questions  
4 total; back pain, blood in the urine, discharge and  
5 fever probably would be included. But that would  
6 cover the vast majority of the kidney-type diseases  
7 and would trigger the doctor often to go into more  
8 detail.

9 Q Now, the next thing you said is to  
10 consider all the patient's symptoms, and what do you  
11 mean by that in this context?

12 A Particularly from the standpoint of trying  
13 to piece together past information with the present  
14 illness and what you already know about the patient.  
15 It is helpful to try and consider one disease entity  
16 that would explain all of the patient's present  
17 symptoms coupled with anything that occurred in the  
18 past.

19 I know that people are entitled to have  
20 two separate disease entities, but the one thing that  
21 we all put, number one, in our rule in or out  
22 differential-type problem listing that we do is to try

1 and see if we're not missing some major serious  
2 illness, or secondly, could I explain all of this  
3 person's symptoms and findings with one disease  
4 entity, be it rare or common.

5 Q Now, you have actually started to talk  
6 about item 2 here, but what do you mean specifically  
7 by this "Differential History List" that you're  
8 talking about?

9 A Differential diagnosis refers to a working  
10 diagnosis, numbered 1 through 3 and 4, looking  
11 particularly at the most likely thing, and in some  
12 instances the most serious thing that can be wrong  
13 with the person. You list them in that order.

14 And when you get further down and when  
15 you're getting to the assessment, if your physical  
16 examination and history-taking hasn't given a  
17 diagnosis clear-cut, then you go into additional  
18 testing, and particularly in primary care and family  
19 practice it's well-recognized that when you sit and  
20 listen to the patient described his symptoms, you have  
21 a very good idea of what is going on in 70 percent of  
22 instances.

1 Q Before you even --

2 A Before you even lay hands on them. And  
3 then when you would go ahead with your examination,  
4 you pull that number up to about 90 percent. You pull  
5 it up another 15 percent. And so by the end of the  
6 examination portion of your evaluation, you have a 90  
7 percent good working diagnosis, and only after that  
8 then you would go into additional testing to complete  
9 your 100 percent.

10 Q Now, let's go to the next item where we  
11 talk about -- or you talk about referring to a  
12 specialist as needed to help the internist figure out  
13 what is wrong.

14 What are the kinds of situations where a  
15 primary care doctor would refer out to the patient as  
16 opposed to doing the tests himself?

17 Just give a brief answer on that, if you  
18 would.

19 A Well, there are several situations, but  
20 the two common ones would be if you need to do  
21 specific tests that are outside your background and  
22 experience, and the second would be confirmation.

1                   If you are going to label your patient  
2 with a very serious disease, it would be best if you  
3 got someone who is an expert in that field to confirm  
4 your suspicions.

5                   Q     Now, what is the role of the specialist in  
6 working with the primary care doctor? That gets us to  
7 point 4, which is "Evaluate Data from Specialist" and  
8 "Primary Doctor's Testing"

9                   A.    The specialist, particularly a medical  
10 specialist who specializes in one organ system of the  
11 body -- the cardiologist deals with the heart and  
12 heart alone; pulmonologist deals with the lungs, and  
13 so on. When you have chosen the specialist that  
14 you're sending the patient to, you work closely with  
15 that physician; you get feedback from him but you  
16 don't take his word for it entirely because you alone  
17 are the captain of the ship and you're looking over  
18 the entire patient's body and looking for reasons for  
19 the symptoms.

20                   What will often happen is that the  
21 subspecialist will communicate back to you either by  
22 writing or by telephone that what you're looking for

1 is not in his disease specialty, so he may make  
2 suggestions about where to go next. But his job is  
3 finished at that juncture.

4 If, on the other hand, he finds a  
5 significant disease in his specialty, then obviously  
6 in the case of a cardiologist where you would need to  
7 do invasive tests, he would undertake to do those and  
8 report them back to you.

9 Q You just said now "captain of the ship."  
10 What do you mean by the primary care doctor being the  
11 "captain of the ship"?

12 A When a patient asks you to become his  
13 family physician, you undertake his total body care  
14 and certainly psychiatric as well, and you determine  
15 not only his diagnosis and what medications he needs,  
16 but if he ever does need a referral, he controls --  
17 yes, controls the entire patient management.

18 Q Okay. I would like you to now go -- and  
19 we have done another chart. I would like you to now  
20 go into the issue of your opinions about Dr. Choi  
21 specifically in this case and I'll pull the chart out  
22 in a second, but I want to ask you a preliminary

1 question.

2 Have you had a chance to review all of Dr.  
3 Choi's records?

4 A Yes.

5 Q Did you get a chance to review the records  
6 of doctors and laboratories that he sent the patient  
7 to for various types of testing?

8 A Yes, I have.

9 Q Do you have an opinion within a reasonable  
10 degree of medical probability about whether or not Dr.  
11 Choi met the appropriate standard of care for a  
12 Virginia family practitioner in his treatment of my  
13 client, Sotiri Ponirakis?

14 A Yes. I have an opinion that he did not.

15 Q And did you help me prepare a chart that  
16 we can use in summarizing your opinions?

17 A Yes.

18 THE COURT: Any objection?

19 MR. ALTMAN: Yes.

20 THE COURT: Let do this. What is the last  
21 plaintiff's exhibit that we have, please? We're going  
22 to make the one that Dr. Mackintosh was just utilizing



1 73. The one that has just been put up there now will  
2 be 74.

3 BY MR. MALONE:

4 Q First off, let's focus on the left side of  
5 the chart and not about Dr. Choi for a minute.

6 Based on the signs and symptoms that  
7 Sotiri Ponirakis was presenting to Dr. Choi in  
8 November '96 and based on what happened to him in  
9 December 1996 and January 1997, how would a reasonably  
10 competent Virginia family practitioner have handled  
11 his case under the standard of care?

12 A He should take an adequate history. We  
13 have gone over that pretty carefully. He should get  
14 old records from former physicians. He should review  
15 any documents that come in from specialists and act  
16 upon them.

17 So looking at his symptom complex here,  
18 prior blood in the urine --

19 Q Did you see that when you looked at his  
20 prior medical records?

21 A It refers back to '94. Showed blood in  
22 the urine.

1           Q     Right. Did you see that he had an  
2 abnormal sedimentation that was reported to Dr. Choi  
3 in December 1996?

4           A     Yes. That came from communications from  
5 Dr. Horton, and he, of course, knew that he had chest  
6 pain.

7           Q     The dehydration episode, does that refer  
8 to the episode that took him to the Fairfax Emergency  
9 Room in December '96?

10          A     Yes. December 13, '96, he was seen in  
11 Fairfax Emergency Room following an episode of  
12 vomiting and dehydration and he was given intravenous  
13 to top up his fluid balance and Mr. Ponirakis had some  
14 lab tests done at that time.

15          Q     How routine is that for a patient going in  
16 to an emergency room with dehydration so bad that they  
17 faint and then they need IV fluids to resuscitate  
18 their volume -- how common is it for them to get that  
19 kind of lab work?

20          A     That's standard and basic to do a  
21 chemistry profile to look at the potassium and sodium  
22 and chloride level and the kidney function level. It

1 also looks at the sugar as well.

2 Q We'll go into that in a little more detail  
3 later. But what would a doctor practicing under the  
4 standards of care have done with this information in  
5 terms of putting together a differential diagnosis?

6 A He would, first of all, be thinking, Can I  
7 come up with one disease entity that would fit all of  
8 these characteristics.

9 Then he would secondly be thinking, Let me  
10 make sure there's nothing serious going on here, not  
11 just a flu bug or not just a virus of some kind.

12 And essentially those are the two thoughts  
13 that would be going on in his mind at that time.

14 Q What would be in the differential  
15 diagnosis for this patient based on what he had going  
16 on with him in November and December 1996?

17 A He would be thinking of a systemic  
18 illness, a generalized illness, what might be termed a  
19 connective tissue disease, a disease that causes  
20 inflammation. The sedimentation would measure  
21 inflammation. It doesn't tell you what is wrong, but  
22 if it's elevated, you start your search to see could

1 it be an infection, could it be an inflammation, could  
2 it be a malignancy that's causing this amount of  
3 elevation. If you couple it with the dehydration and  
4 chest pain, you have to be thinking of a  
5 musculoskeletal type of disease, one of the  
6 arthritises or one of the musculature-type illnesses  
7 of a generalized nature involving many organs of the  
8 body.

9 Q So what kind of tests would have been  
10 appropriate for a doctor according to the standard of  
11 of care?

12 A The first one would be to repeat the  
13 sedimentation again. Ironically, one of the common  
14 faults of the lab is lab error, so rather than just  
15 take the gospel of the lab report that Dr. Horton sent  
16 him, that would be repeated again.

17 The other tests that would be repeated  
18 again would be the one that was done in the emergency  
19 room.

20 Q You're talking about this Chem 7 test?

21 A. The Chem 7 that was done in the emergency  
22 room, that would need to be repeated again for no

1 other reason necessarily than to make sure that the  
2 dehydration had gone away.

3 Q Now, I want to make it clear here. Are we  
4 talking about what Dr. Choi should have done in terms  
5 of following up with the sedimentation?

6 A Getting the records, of course, for two  
7 reasons.

8 Q Focus on the sedimentation for a second.  
9 You just mentioned repeating the sedimentation and  
10 following up on the laboratories that were done in the  
11 hospital. Are you saying those are things that Dr.  
12 Choi should have done?

13 A Yes.

14 Q Why should he have done them since he  
15 didn't do the initial tests that came out abnormal?

16 A Well, to make sure, hopefully, that the  
17 lab tests had returned to normal and the patient had  
18 made a recovery. That would be my first wish for the  
19 patient.

20 Secondly, if they were elevated, to  
21 confirm again one's thinking that some systemic  
22 disease, some serious disease, is ongoing and

1 progressing.

2 Q Okay. Now, let's go on and talk about  
3 this side of the chart. You have talked about some of  
4 these problems, but in terms of the patient's prior  
5 history of urine problems, I want you to assume that  
6 Dr. Choi testified that what he asked the patient on  
7 the first visit was whether or not he had had any  
8 serious diseases or operations.

9 Would you expect the patient to have  
10 revealed just in answer to those questions that he had  
11 had prior episodes of blood in his urine?

12 A Yes. Frankly, I would. However, I can  
13 understand why a young man --

14 MR. ALTMAN: Objection, Your Honor.  
15 Non-responsive at this point. The question was "Would  
16 you expect it" and he answered it, yes, he would.

17 THE COURT: I sustain the objection. Next  
18 question.

19 BY MR. MALONE:

20 Q You remember starting to qualify your  
21 answer, it sounded like?

22 MR. ALTMAN: Objection.

1 THE COURT: I sustain the objection.

2 BY MR. MALONE:

3 Q Would it be adequate for a doctor  
4 practicing according to the standard of care to rely  
5 on that question alone, "Have you had any prior  
6 serious diseases" to elicit a history like this of  
7 prior blood in the urine?

8 MR. ALTMAN: Objection. The doctor  
9 already stated that the question would be sufficient.

10 THE COURT: I object to the speaking  
11 objections by both sides. I want the legal basis and  
12 I want the response. I would appreciate you  
13 addressing yourself to me and not to each other,  
14 especially in an argumentative way.

15 I overrule the objection. It's an  
16 appropriate question in light of the last answer.

17 BY MR. MALONE:

18 Q Please answer.

19 A Innumerable times in my career I've been  
20 burned severely by people not telling me information  
21 that would be helpful. I don't want to go into a long  
22 anecdote, but I have had many, many situations, and we

1 all know that you cannot rely on the patient to give  
2 you the absolute total truth and/or give you all of  
3 the facts. I mentioned earlier the two ploys, the  
4 blocking and denying, as a possibility, and the other  
5 one is that a young man, having been told by a prior  
6 physician that the blood had gone away, could very  
7 well edit the news and decide it's not worth  
8 mentioning since it has gone.

9 MR. ALTMAN: Objection. Calls for  
10 speculation.

11 MR. MALONE: I don't think he's done any  
12 speculating. He's telling you about how patients in  
13 general respond and why the doctor has to take a  
14 careful history.

15 THE COURT: I'm going to allow his answer  
16 to stand for his experience. I'm not going to allow  
17 his answer to stand for what in general may happen,  
18 because that would be speculation. For what his  
19 experience has been, the objection is overruled, but  
20 ladies and gentlemen, you can only consider it for  
21 that limited purpose.

22 Next question.



1 BY MR. MALONE:

2 Q How well-known is it in medicine that  
3 patients, as you say, tend to edit the news or block  
4 and deny if they're just asked global questions such  
5 as "Have you had serious diseases"?

6 A My medical journals, the American Family  
7 Physicians, are replete with articles --

8 MR. ALTMAN: Objection.

9 MR. MALONE: Under rule 702 in Virginia  
10 he's allowed to -- without mentioning a specific one,  
11 he's allowed to state the basis for his opinion.

12 THE COURT: Okay. Well, we're not talking  
13 about the basis for his opinion and we don't have to  
14 reach the issue of whether he can give non-opinion  
15 hearsay to explain his opinion. Your question wasn't  
16 in response to an opinion that's been elicited, so the  
17 objection is sustained.

18 BY MR. MALONE:

19 Q Well, without referring to a specific  
20 medical journal, just tell me how commonly is it known  
21 in your field of family practice that this is a  
22 phenomenon where patients don't always answer

1 correctly to a general question such as "Have you ever  
2 had serious diseases?"

3 MR. ALTMAN: Objection. You have ruled on  
4 this. It goes to his experience.

5 THE COURT: I thought the question just  
6 related to that.

7 MR. MALONE: We're getting to the standard  
8 of care here. We're getting to how commonly is it  
9 known. And the next question is to explain what the  
10 standard of care --

11 THE COURT: Why don't you combine the two  
12 together, because if it's not related to the standard  
13 of care, the objection is proper. If it is related to  
14 the standard of care, the objection is improper.

15 And I want you to relate it to the  
16 standard of care before I rule.

17 MR. MALONE: That's what I'm trying to  
18 do.

19 BY MR. MALONE:

20 Q In terms of standard of care, you  
21 mentioned doing a complete review of systems and you  
22 mentioned obtaining prior medical records.

1           Why is that the standard of care in terms  
2 of your opinion about the patients in your experience  
3 not always answering correctly when you just ask them  
4 the general question about serious diseases?

5           A       Why is --. This is a very long question.

6           Q       Why is it that you do the review of  
7 systems? Why is it that you get a patient's prior  
8 medical records? Why don't you just rely on the  
9 general question, "Have you ever had any serious  
10 diseases"?

11                 Why is that standard of care not to rely  
12 on that?

13                 That's my question.

14           A       Our teaching not only comes from internal  
15 medicine and pediatric, whatever the subspecialty  
16 would be, but also from risk management seminars that  
17 we're required to attend and they all recommend  
18 that --

19                 MR. ALTMAN: Objection. Hearsay.

20                 MR. MALONE: Isn't he allowed to give the  
21 basis of his understanding, Your Honor?

22                 THE COURT: He is, but he's not allowed to

1 state opinions that others may have rendered that led  
2 to that conclusion unless that information is going to  
3 be otherwise admissible in evidence with prior notice  
4 having been given to the other side.

5 BY MR. MALONE:

6 Q Don't refer specifically to risk  
7 management seminars but just tell us what is the  
8 reason why the standard of care requires the review of  
9 systems and obtaining prior medical records.

10 In fact, let me back up. We haven't  
11 talked to much about obtaining prior medical records.

12 How simple is it to obtain prior medical  
13 records from a previous doctor who has seen a patient,  
14 in your experience?

15 A Well, with the advent of fax machines, you  
16 can get them the same day. So a two or three hundred  
17 dollar purchase of a small machine would be  
18 sufficient.

19 A phone call would be sufficient. You  
20 have your secretary or nurse call the former  
21 physician's office to get a hard copy.

22 Of course, the patient, in an urgent

1 situation, can drive over to that office if it's  
2 nearby and hand-carry it back.

3 Again, all of these ploys are being used,  
4 but the easiest one is the fax machine. You can just  
5 get it the same day.

6 Q And do you have the patient sign a form  
7 authorizing that?

8 A We have a little tear-off sheet that gives  
9 them a receipt and gives a release that the former  
10 physician can put in the empty folder to indicate that  
11 his records are gone. Now, if he's wise, he will just  
12 photocopy and keep the originals.

13 Q In any event, why is it required as part  
14 of the standard of care for a doctor to obtain on a  
15 new patient the records from his old physician?

16 A Because of this danger of the patient not  
17 giving him full information, and also, as I mentioned  
18 earlier, the one of using them for comparison for any  
19 studies that you might originate, that it would be to  
20 look at former lab reports or X-rays to see if any  
21 changed had occurred in the meantime.

22 Q Now, I want you to assume that we have put

1 into evidence Dr. Pappas' records which contain within  
2 them the reports of prior blood in the urine in 1994.  
3 Did you see those records yourself?

4 A Yes, I did.

5 Q Had Dr. Choi followed the standard of care  
6 and received those records, what in your opinion would  
7 he have been required to do at that point?

8 A He would have said, Let's get another  
9 urine specimen to see if the blood has gone out of the  
10 urine.

11 Just because it wasn't visible back in  
12 1994 doesn't mean it wasn't there microscopically. So  
13 a spun specimen under the centrifuge, looking at the  
14 sediment under the microscope, would have met the  
15 standard of care if he had repeated that at the time  
16 of the first visit to his office as a new patient.

17 Q Okay. Now, let's go on and talk about the  
18 dehydration episode of December 13, 1996, and then  
19 we'll come back to chest pain because that will go to  
20 the cardiac catheterization.

21 Have you had experience when you've had a  
22 patient go to the emergency room without your

1 knowledge about receiving communications back from the  
2 Fairfax Hospital Emergency Room?

3 A Yes I have, on hundreds of occasions.

4 Q What has been your experience? What do  
5 you as a Virginia family practitioner expect of  
6 yourself in terms of finding out information from the  
7 emergency room doctor who is calling you up and saying  
8 "I have your patient here"?

9 MR. ALTMAN: Objection, Your Honor,  
10 relevance, and this is also a related case objection.

11 THE COURT: Come up to the bench for a  
12 minute, please, Counsel.

13 (Whereupon, there was a bench conference  
14 held without the hearing of the jury and reported as  
15 follows:)

16 (Mr. Altman handing documents to judge.)

17 MR. MALONE: This doesn't relate to that  
18 case, Your Honor.

19 THE COURT: Let's take it one at a time,  
20 and then I'm going to try and make a ruling and try to  
21 explain where I'm going to draw the lines so I can  
22 obviate further objections.

1                   Why is it relevant what he and his peers  
2 would expect to do? Is it what the standard of care  
3 requires?

4                   MR. MALONE: That's what I was trying to  
5 ask.

6                   THE COURT: The question as phrased,  
7 objection is sustained.

8                   While we're up here, why do you contend  
9 that this is a related question?

10                  MR. MALONE: I know from the doctor's  
11 testimony what's going to be expected. He's going to  
12 say he's sure the doctor had passed along the  
13 creatinine and BUN elevated labs from his previous  
14 experience with him, and that's a related problem.

15                  The hypothetical question would be, don't  
16 tell me what you expect the Fairfax Hospital would  
17 have communicated to you, but let's assume for a  
18 minute that the Fairfax Hospital Emergency Room doctor  
19 has called you, what would the standard of care  
20 require of a Virginia Family practitioner. That's  
21 what I was trying to ask in terms of eliciting  
22 information from the emergency room doctor.



1 THE COURT: Would you object to that  
2 question?

3 MR. ALTMAN: I would, because this is not  
4 an opinion that he gave previously.

5 THE COURT: Gentlemen, I'm pretty easy to  
6 get along with. I don't want you two arguing with  
7 each other.

8 You're saying the opinion he previously  
9 gave. In what context?

10 MR. ALTMAN: In his deposition testimony.  
11 We asked him what opinions he had on standard of care  
12 and we're about to hear a new standard of care  
13 opinion.

14 MR. MALONE: That's not the case.

15 THE COURT: How much longer are you going  
16 with him on direct? Because when we get to these  
17 issues, I need to see the deposition or designation of  
18 experts pursuant to the status conference order before  
19 I'm going to be able to rule one way or the other and  
20 where I draw the line is whether or not the other side  
21 has been put on reasonable notice that that is a  
22 subject matter for which an opinion is going to be

1 elicited and basically what the opinion is.

2 MR. ALTMAN: I have to withdraw. Mr.  
3 Brown took that deposition and it was mentioned.

4 THE COURT: Mr. Brown, I appreciate your  
5 candor. So that's not an issue. In general terms I  
6 don't believe that -- with your rephrasing of the  
7 question, I don't think it's a limiting situation as  
8 long as it's posed in terms of what the standard of  
9 care required. I think your question needs to be  
10 posed in terms of what the standard of care requires  
11 rather than what he may expect or what he would have  
12 done, because that's not relevant. It's what the  
13 standard of care requires.

14 Here's your copy.

15 I sustain the objection to the last  
16 question. You can rephrase it.

17 (End of bench conference.)

18 BY MR. MALONE:

19 Q I'm going to put this to you in a  
20 hypothetical way and I don't want you to get into any  
21 speculation about what the emergency room doctors  
22 might have said on their own since neither of us was

1   there.   Okay?

2                   I just want to ask you to assume that the  
3   emergency room doctor has called Dr. Choi about the  
4   fact that he has a patient in there with dehydration.  
5   Is there a standard of care required of Dr. Choi in  
6   terms of what information he should have tried to find  
7   out from that emergency room doctor?

8                   Do you understand my question?

9           A       I believe so.   I think it's a two-way  
10   street.   It's an intercommunication.   It's not just  
11   one doctor talking down to another.   The doctor of  
12   course who was present and there at the time starts  
13   off the conversation.   He'll say, Your patient  
14   such-and-such is here in the emergency room.   And he  
15   will describe what his symptoms are.

16           Q       Don't give us his end of the conversation.  
17   Let's assume he's done all that and is silent.   What  
18   should Dr. Choi try to find out from that doctor by  
19   the end of the conversation without reference to what  
20   the doctor has told him?

21           A       If the doctor hasn't told him about lab  
22   reports, he would ask about them:   Did you do any

1 blood work? What were your numbers?

2 And then he would take a piece of paper  
3 and jot them down.

4 Q When you say "he," are you talking about  
5 Dr. Choi asking questions?

6 A Yes.

7 Q Now, does the standard of care require Dr.  
8 Choi to ask a question about whether or not the  
9 emergency room did labs?

10 A Yes.

11 Q Why?

12 A Because if he has to do a follow-up -- and  
13 that's the reason they're calling is that he has to do  
14 a follow-up visit -- he needs to know what was done  
15 and what their findings are and needs to know what  
16 that lab or X-ray or whatever it would be would be so  
17 that if he repeats them again, he can use them for  
18 comparison.

19 Q Is a dehydration episode that is serious  
20 enough that it caused fainting in a 20-year-old man,  
21 took him to the hospital, had intravenous, is that  
22 serious enough that it ordinarily does require

1 follow-up in a primary care doctor's office after the  
2 patient has been revived?

3 A Yes. The fainting is due to low volume.  
4 You have lost so much fluid in your vomiting or  
5 diarrhea that you're low volume and you're not getting  
6 enough blood up to your brain and the Good Lord gets  
7 you horizontal so you can get oxygen up to your  
8 brain.

9 When that amount of dehydration occurs  
10 that the person needs intravenous, you need a  
11 follow-up in the next few days in the doctor's office  
12 to recheck him again, make sure the symptoms have gone  
13 away and repeat the blood work again to make sure that  
14 that's also returned to normal.

15 Q Why is it routine for the initial  
16 dehydration episode -- why is it routine that they get  
17 that blood work with the creatinine and the BUN? What  
18 does that tell you about dehydration?

19 A That tells you the extent of dehydration.  
20 Particularly the potassium levels would be markedly  
21 low in a severe vomiting or diarrhea episode, and if  
22 prolonged, that could lead to rhythm disturbances in

1 the heart and serious muscle weakness. The kidney  
2 function tests, if they return to normal, are all a  
3 matter of dehydration and not underlying kidney  
4 disease.

5 But on the other hand, if the lab results  
6 are repeated and the kidney function tests haven't  
7 returned to normal, then you know very well that  
8 there's an underlying kidney disease in addition to  
9 the dehydration.

10 Q If Dr. Choi had been informed of these  
11 abnormal lab results -- .

12 Did you see the lab results from Fairfax  
13 on that day?

14 A Yes. The creatinine and the BUN were  
15 elevated.

16 Q The creatinine of 1.9 and the BUN was 23,  
17 something like that?

18 A Yes.

19 Q Assuming he followed the standard of care  
20 and had gotten that information from the emergency  
21 room when they called him, what should he have done by  
22 way of follow-up?

1           A     He would ask for his staff to bring the  
2 patient's chart to his desk and --

3           THE COURT:   Standard of care question now.

4           A     Standard of care would be to ask that the  
5 chart be brought from the file room and placed on his  
6 desk, preferably while he's still on the phone, and  
7 make notations on the chart at that time so that he  
8 doesn't rely purely on his memory. This would be a  
9 tickler system, if you will, and that would be left  
10 there to be available to refresh his memory when the  
11 patient came in.

12                   And furthermore, even if the patient  
13 didn't come in, it would refresh his memory to call  
14 the patient at home and ask him to come in, because it  
15 would be a good idea to reevaluate him in a few days  
16 time after he got home from the emergency room since  
17 he wasn't hospitalized.

18           BY MR. MALONE:

19           Q     Now, I want you to plug that into your  
20 opinions and move forward in time to the January 2,  
21 1997 visit. You're aware that was the patient's next  
22 visit with Dr. Choi?

1           A     Yes.

2           Q     The patient told Dr. Choi at that time,  
3 according to Dr. Choi's own records, about this  
4 emergency room visit at that time?

5           A     That's right.

6           Q     Okay. I want to show you one other thing  
7 that relates to the January 2nd visit.

8                     MR. MALONE: And we haven't had this  
9 marked yet and I'll try to get a reduced version of  
10 it, but this is what I'm going to call the timeline  
11 chart, Your Honor.

12                    THE COURT: Is 74 next, Ms. Ralph?

13                    MS. RALPH: 75.

14                    THE COURT: When it's reduced, we're going  
15 to mark it for identification as Plaintiff's 75.

16                    BY MR. MALONE:

17           Q     By January 2, 1997, how many contacts had  
18 Dr. Choi had concerning this patient, either the  
19 patient being in his office or Dr. Choi hearing about  
20 the patient from other healthcare providers, by  
21 January 2nd?

22           A     By January 2nd, working backwards, he was



1 aware of an urgent care visit on November 13th. He  
2 had an office visit with Dr. Choi the following day.  
3 Dr. Choi got a report of a rib X-ray ordered on the  
4 15th of November. Another office visit to Dr. Choi on  
5 the 23rd of November. A communication from Dr.  
6 Horton, the cardiologist, of a visit he had with him  
7 on December 4, 1996. Another communication concerning  
8 a follow-up cardiogram and blood work by Dr. Horton on  
9 the 5th of December. The information that he had been  
10 to the emergency room on December 13, 1996.

11 So he had one, two, three, four, five, six  
12 seven interactions, some by telephone, some by  
13 writing, some by office visit, when he finally saw Dr.  
14 Choi on the 2nd of January of 1997.

15 Q What is the significance in a 20-year-old  
16 new patient -- having this number of interactions with  
17 the patient in this roughly six-week interval?

18 A Normally-speaking, a 20-year-old seldom  
19 visits the doctor, and by the time you've got past the  
20 third interaction, the doctor would be thinking of  
21 what serious condition would fit this pattern of  
22 frequent visits to urgent care, radiologist,

1 cardiologist and his office.

2 Q What would the standard of care have  
3 required Dr. Choi to do on January 2, 1997, that he  
4 didn't do given all of this background and given  
5 everything he did know about the patient that day?

6 Let's assume he didn't get that Fairfax  
7 Emergency Room lab slip. What should he have done on  
8 January 2nd to meet the Virginia standard of care?

9 A Well, he knew that the patient had an  
10 intravenous and he knew the patient had fainted and he  
11 knew the patient had been in the emergency room. So  
12 he knew that dehydration was a factor in his  
13 management at that time. And even without the  
14 records, he should be beginning to start thinking of a  
15 systemic disease that would cover all of these symptom  
16 complexes that were arriving in his chart. He then  
17 most likely should be drawing blood to make sure the  
18 dehydration is gone, rechecking sedimentation to see  
19 if the inflammation was still there.

20 Q Would that blood test on January 2nd that  
21 he should have done have included a creatinine?

22 A That would include a creatinine for two

1 reasons. One is that that would be one that he would  
2 order, but as a general rule we normally order what  
3 would be called a "health profile." Most labs offer a  
4 combination blood test at a very economical rate that  
5 gives information about many different systems of the  
6 body for the same price as the Chem 7 that we talked  
7 about earlier would do and in trying to cut back on  
8 health care costs, that's the logical way to do it.  
9 It would include a blood count to make sure that he's  
10 not anemic, white cells are normal, and the chemistry  
11 would actually include a Chem 7. It's called a Chem  
12 24 by the American Medical Labs and they actually do  
13 the Chem 24 on their multi-system analysis channel and  
14 throw away the record and just keep the seven out of  
15 24. That's been our experience.

16 MR. ALTMAN: Objection. Relevance.

17 THE COURT: Hold on for one second,  
18 please. Do you want to respond?

19 BY MR. MALONE:

20 Q What is the point of getting the  
21 additional information besides just the Chem 7? Why  
22 would it be helpful to get the Chem 24?

1           A       The Chem 24 looks at the calcium, looks at  
2 the liver function as well as the kidney function. It  
3 looks at the protein levels in a person who is  
4 dehydrated and it looks at the cholesterol.

5           THE COURT: Do you stand by your  
6 objection?

7           MR. ALTMAN: I do.

8           THE COURT: Is there relevance to that?

9           MR. MALONE: Well, I think he just  
10 explained the relevance.

11          THE COURT: I'm not sure that anything  
12 that he just explained would be relevant to this case  
13 unless there's something that I'm missing, so I  
14 sustain the objection. I'm not sure that the  
15 difference between the 7 and the 24 has anything to do  
16 with the issues involved in this case.

17               If you believe I'm wrong, you can ask him  
18 another question to explain it to me and maybe I'll  
19 reverse my ruling.

20          BY MR. MALONE:

21           Q       Would it have been helpful in this case to  
22 get the additional information from a Chem 24?

1 MR. ALTMAN: Objection. Relevance.

2 THE COURT: Because of the way the  
3 question is phrased, rather than being by way of  
4 standard of care?

5 MR. ALTMAN: That's correct.

6 THE COURT: Rephrase your question.

7 MR. MALONE: It's not important, so let's  
8 just move on.

9 BY MR. MALONE:

10 Q Dr. Choi on that day had a report that the  
11 patient had vomiting, headache, midsubsternal pain and  
12 epigastric pain for three days. You saw that?

13 A Yes.

14 Q Dr. Choi put on his diagnosis about  
15 potential ulcer disease. Did you see that?

16 A Yes.

17 Q Was there any additional reason for him at  
18 that time to obtain the patient's old ulcer records  
19 from the prior ulcer that Dr. Choi had been informed  
20 about on the first visit?

21 A Yes. That would have been helpful again  
22 for comparison if he was going to go ahead and get

1 these additional studies.

2 Q Would the standard of care have required  
3 him to obtain Dr. Pappas' records at the time if he  
4 hadn't already done it?

5 A Yes, it would.

6 Q I think you have talked about blood in the  
7 urine. Have you talked about urine testing on January  
8 2, 1997?

9 I know you talked about blood testing.  
10 Should he have done any urine testing on  
11 that day?

12 A We're presupposing that an adequate  
13 history would have revealed that he had blood in the  
14 urine. We're also presupposing that he would have the  
15 report from Fairfax Hospital. So a urinalysis looking  
16 for protein would indicate a generalized kidney  
17 disease as opposed to a kidney stone as a cause of the  
18 blood in the urine.

19 Q Let's move ahead to January 15th and I  
20 want to go back to the chart here where we're talking  
21 about the chest pain that Dr. Horton evaluated. Did  
22 you see Dr. Horton's cardiac catheterization report

1 from January 10th of 1997?

2 A Yes, I did.

3 Q And you saw that the patient was back in  
4 Dr. Choi's office five days later?

5 A Yes.

6 Q And at that time he had a cardiac  
7 catheterization, and have you seen that Dr. Choi had  
8 authorized that one day before it was done?

9 A Yes.

10 Q How common in family practice type  
11 patients is it for a young man of 20 years old to have  
12 to have a cardiac catheterization test?

13 A It is extremely rare to see coronary  
14 artery disease in that age group. When you're  
15 catheterizing the heart, you're putting dye into the  
16 four major blood vessels that supply the heart muscle.

17 To be looking for a blockage in one of  
18 those arteries at the age of 20 is extremely rare.

19 Q Let me plug into the question here Dr.  
20 Choi's testimony that on January 15th the patient told  
21 him that he had had the cardiac catheterization and  
22 that it was normal. Did the standard of care for a

1 Virginia family practice doctor require him to do  
2 anything more about that cardiac catheterization  
3 report?

4 Also I want you to assume he didn't have  
5 the report then. Does the standard of care require  
6 him to do anything to seek out the report if the  
7 patient told him as far as the patient knew it was  
8 normal?

9 A Yes. The report would be very important.  
10 In a communication between the cardiologist with the  
11 patient right after the procedure is over, the danger  
12 would be that the patient --

13 MR. ALTMAN: Objection. Calls for  
14 speculation, Your Honor.

15 THE COURT: He's saying why it's important  
16 for the doctor to get the report.

17 MR. ALTMAN: May I respond?

18 THE COURT: Yes.

19 MR. ALTMAN: He's talking about what the  
20 cardiologist would say. That's speculation.

21 THE COURT: I overrule the objection. I  
22 think he's explaining why he believes the standard of



1 care required that the report be obtained. I overrule  
2 the objection.

3 A At that juncture the verbal report and the  
4 communication from the patient that all was well was  
5 not completely accurate in light of the evidence that  
6 we know. But in the general picture of things, many  
7 times the cardiologist would have suggestions to make  
8 about where to go from here even if the cardiac  
9 catheterization is normal and in his summary he will  
10 make suggestions many times or give you an explanation  
11 of what the chest pain was due to.

12 So just getting a blanket response that  
13 everything turned out okay meant that he could assume  
14 that the coronary arteries were wide open but it still  
15 wouldn't explain to the physician what the original  
16 cause of the chest pain was and that's where getting  
17 the report and the cover letter from the cardiologist  
18 is extremely important.

19 BY MR. MALONE:

20 Q Why can't you, the family practitioner,  
21 just let it go at that point -- let's assume that the  
22 chest pain has gone away -- and not worry about it

1 anymore, despite the fact that he's having these  
2 episodes of chest pain over the least two or three  
3 months. Why would you want to follow up on it?

4 A Because you don't have a good explanation  
5 of what was going on, and if you go back to the  
6 original thesis that one should be looking for a  
7 generalized systemic disease which would involve, say,  
8 the heart, the stomach, the joints, you know, you're  
9 still looking for some reason why a 20-year-old would  
10 be coming into the doctor's office as frequently as  
11 seven or eight interactions with the doctor over a  
12 period of 60 days.

13 Q Now, did you see in the Arlington Hospital  
14 laboratory testing they had a creatinine of 2.7, a low  
15 hematocrit of 37 and a sedimentation of 115? Are  
16 these all abnormal findings?

17 A. The sedimentation --

18 MR. ALTMAN: Let me object. I think Mr.  
19 Malone simply misquoted. I think the creatinine was  
20 2.1.

21 MR. MALONE: I meant to say creatinine  
22 2.1. Hematocrit of 37, sed rate of 115.

1           A     The sedimentation has gone from 51 to  
2     115. The normal is 0 to 20. When you see that amount  
3     of elevation, you know that there's some significant  
4     thing going on. We're not talking just about ordinary  
5     strep throat or a flu bug. We're talking about some  
6     major illness is going on.

7           Q     Would these values have been available to  
8     Dr. Choi if he had asked for them?

9           A     Yes, they would. You can have them faxed  
10    over from Arlington Hospital the same day. You could  
11    go over and see another patient, come back in 15  
12    minutes and it would be on your desk.

13          Q     Even if they weren't given to him  
14    directly, did he have any independent obligation  
15    during this mid-January period to do testing like  
16    hematocrit, sedimentation and creatinine?

17          A     Yes. The creatinine is a kidney function  
18    test and by now the reports from the 13th of December  
19    should be in the chart. Knowing that that was  
20    elevated, then also knowing that he was having a dye  
21    put in his blood stream which can affect the kidney  
22    function, it would be important to know if that dye

1 had influenced the kidney function in some way.

2           The sedimentation, as I say, is extremely  
3 important because it means that he's got an ongoing  
4 illness that hasn't resolved, and the hematocrit is a  
5 measure of red cell count. In a young healthy man, it  
6 should be around 40 to 45, and when you see it to be  
7 36 you say what chronic illness could cause this young  
8 man -- mildly anemic. Why would a healthy man have a  
9 low blood count like that, and one of the reasons is  
10 some generalized disease is taking it down.

11           Q       What about the fact that on January 15th  
12 when Sotiri came to Dr. Choi's office he had a  
13 completely unrelated symptom of right knee pain? Did  
14 you see that in the record?

15           A       Yes. I saw that he had some warmth and  
16 swelling in the knee without any evidence of an  
17 injury.

18           Q       Did Dr. Choi handle that appropriately  
19 according to the standard of care?

20           A       The patient was referred to an orthopedic  
21 surgeon and it would have been better if he had been  
22 referred to a rheumatologist.

1 MR. ALTMAN: Objection as to relevance,  
2 Your Honor.

3 THE COURT: Rephrase the question, please.  
4 I think you asked the right question. I'm not sure  
5 the answer was responsive.

6 BY MR. MALONE:

7 Q Let's stick with standard of care and let  
8 me plug into the question. In Dr. Choi's record he  
9 writes down a diagnosis of arthritis but refers him to  
10 an orthopedic surgeon. Which specialty handles  
11 arthritis typically?

12 A Rheumatologists handle arthritis and  
13 inflammation of joints. Orthopedic surgeons handle  
14 potential future surgical conditions.

15 Q In terms of connective tissue diseases  
16 like lupus, which specialty handles connective  
17 diseases, rheumatologists or orthopedic surgeons?

18 A Rheumatologists exclusively. Not a  
19 orthopedic surgeon whatsoever.

20 Q Except a nephrologist would handle the  
21 kidney aspect of lupus?

22 A I was just referring to whether you would

1 send him to an orthopedist or a rheumatologist, and an  
2 orthopedic surgeon would not wish that upon himself.  
3 If he got that patient in his office, he would refer  
4 to a rheumatologist. If he was looking at a renal  
5 part of lupus, he would be sending him to a  
6 nephrologist; a medical, not a surgical.

7 Q Just following Virginia standards of care  
8 now, did he send him to the right kind of doctor on  
9 January 15, 1997, the orthopedist? He sent him to Dr.  
10 Theiss.

11 A No. He should have sent him to a  
12 rheumatologist.

13 Q If Dr. Choi sent him for blood work and  
14 urinalysis on July 1st --.

15 A That's appropriate.

16 Q Assume that he found in there -- and I  
17 think you pointed out to me -- that there were casts  
18 in the urine at that time. What is the significance  
19 of casts in the urine?

20 A. Casts are actually impressions taken from  
21 the tubules that constitute microscopically the  
22 kidneys. There are probably several million of these

1 tubules and a cast is an impression taken from the  
2 inside. It usually consists of some cells and  
3 hyaline-type material and it's always indicative of  
4 kidney disease, generalized kidney disease.

5 We're not talking blockage, we're not  
6 talking kidney stones. We're talking an inflammation  
7 of the kidneys.

8 Q Now, explain a little bit the distinction  
9 between a urologist and a nephrologist. Which types  
10 of kidney problems do they handle?

11 A A urologist is a subspecialty that deals  
12 with tumors of the kidney, deals with kidney stones.  
13 He deals with any disease that would involve surgical  
14 intervention. He deals with the prostate gland in  
15 man. He deals with bladder weakness in the bladder  
16 with woman. But he does not care for medical  
17 conditions such as nephritis or any other inflammation  
18 of the kidneys.

19 Q What kind of doctor should Sotiri have  
20 been referred to as soon as the casts were found in  
21 the urine on July 1, 1997.

22 A A nephrologist. He's a medical

1 specialist.

2 Q Dr. Choi referred him to a urologist?

3 A And then he sent him to a nephrologist.

4 Q That's all I have. Thank you.

5 MR. MALONE: Should I take these down?

6 THE COURT: Do you want him to return to  
7 the witness stand or to stay there during your  
8 cross-examination?

9 MR. ALTMAN: For right now the witness  
10 stand, Your Honor.

11 THE COURT: Okay.

12 Do you think you can finish with him in 15  
13 to 20 minutes? I would like to send the jury to lunch  
14 right at 1. If there's a couple minutes' worth of  
15 things that you can take care, we'll break in five  
16 five minutes.

17 CROSS-EXAMINATION

18 BY MR. ALTMAN:

19 Q Doctor, this is not the first time you've  
20 been an expert witness in a medical malpractice case,  
21 is it, sir?

22 A That's correct.



1           Q     This is not the first time that you've  
2 been an expert witness on behalf of Mr. Malone or  
3 someone from his law firm; is that correct?

4           A.     Not Mr. Malone, but someone from his law  
5 firm.

6           Q     I think you told us earlier that three or  
7 four times you served as an expert witness for either  
8 Mr. Malone or someone from his law firm?

9           A     I think it was two other times.

10          Q     You will agree that you have previously  
11 acted as an expert witness for either Mr. Malone or  
12 someone from his office?

13          A     Yes.

14          Q     What about Mr. Glass; have you ever been  
15 an expert witness for Mr. Glass?

16          A     No.

17          Q     How about his previous law firm, Brian  
18 Shevlin?

19                 MR. MALONE: What is the relevance of  
20 that, Your Honor? I object

21                 THE COURT: The objection is overruled.

22                 BY MR. ALTMAN:

1 Q Doctor?

2 A Yes.

3 Q On maybe three occasions, in fact, haven't  
4 you, sir?

5 A About three times.

6 Q Now, Doctor, you told the ladies and  
7 gentlemen, based upon your curriculum vitae that  
8 you're familiar with the Virginia standard of care and  
9 based upon your experience as a teacher; is that  
10 correct, sir?

11 A That was part of the answer, yes.

12 Q And in fact, so the ladies and gentlemen  
13 are clear, you haven't done any teaching since 1975 as  
14 an Associate Professor of Family Practice at the  
15 Medical College of Virginia?

16 A That's not true.

17 Q I have your curriculum vitae. You did not  
18 see this when you were asked by Mr. Malone to  
19 authenticate it?

20 A That doesn't include everything.

21 Q Oh, I see. So you're curriculum vitae,  
22 which is supposed to be a representation of your

1 credentials, is not accurately representing your  
2 credentials; is that what you're telling us, sir?

3 A Shall I go into the chronology of it  
4 then?

5 Q No, sir. Could you answer my question  
6 rather than the ones that you would like to answer,  
7 sir?

8 MR. MALONE: I object to the form.

9 THE COURT: I sustain the objection.  
10 That's argumentative. But listen to the question, Dr.  
11 Mackintosh, and answer only the specific questions  
12 that are posed to you.

13 BY MR. ALTMAN:

14 Q The last time you were an Associate  
15 Professor of Family Practice at the Medical College of  
16 Virginia was in 1975; is that correct, sir?

17 A Yes. However, there are a lot -- there  
18 are other medical schools.

19 Q So let me make sure that the ladies and  
20 gentlemen and I understand that. You put down your  
21 teaching experience at the Medical College of Virginia  
22 on the curriculum vitae, but now you're telling us

1 that there were other medical schools and you just  
2 decided not to list them?

3 A They were honorary positions; they weren't  
4 on faculty.

5 Q They weren't real teaching positions?

6 A I had several medical schools visit me on  
7 many occasions and I taught them.

8 Q But they weren't real teaching position  
9 like your '72 to '75 teaching at the Medical College  
10 of Virginia, were they, sir?

11 A They spent a week in our office.

12 Q They spent a week in your office. That  
13 was the period of time that you did the teaching?

14 A Many of them. More than one.

15 Q Now, you also told us that you were active  
16 in various positions in the Virginia chapter of the  
17 Board of Family Practice; is that correct?

18 A The American Academy of Family Practice.

19 Q Okay. So you were in the Virginia chapter  
20 of the American Academy?

21 A Yes.

22 Q When is the last time you held a position

1 in the Virginia Academy of Family Practice?

2 A. I have served on committees all the way up  
3 until about in the early 90s.

4 Q When were you President, sir, of the  
5 Fairfax County Medical Society? Late 60s?

6 A 1972.

7 Q And you were President of the Virginia  
8 Academy of Family Practice from '72 to '73; is that  
9 correct, sir?

10 A Yes.

11 Q In fact, at this time you're not in the  
12 full-time practice of medicine, are you, sir?

13 A Not since the fall of 1999.

14 Q Since the fall of 1999?

15 A Yes.

16 Q Well, you used to be a full-time family  
17 practitioner in Northern Virginia; is that correct?

18 A Yes. Until June of 1997.

19 Q So in June of '97 you moved to the  
20 Tidewater area; is that correct?

21 A Yes.

22 Q Did you open a practice?

1           A       No. I worked full-time for an urgent care  
2 organization called Patient First until the fall of  
3 last year.

4           Q       Now, Doctor, are you being compensated for  
5 your time appearing at trial?

6           A       Yes.

7           Q       Would you tell us the rate at which you're  
8 being compensated?

9           A       It's divided into three parts. For  
10 reading this case and communicating with the  
11 attorneys, it's \$200 per hour. Doing the deposition  
12 that occurred last week, \$300 an hour. And going to  
13 court, it's \$400 per hour.

14          Q       And you arrived here yesterday?

15          A       Yes.

16          Q       I take it you've been charging Mr. Malone  
17 or the Ponirakis family from the time you left the  
18 Tidewater area yesterday all the time yesterday and  
19 the time you're here today; is that correct, sir?

20          A       Not at \$400 an hour. That would be  
21 unconscionable. I haven't given it complete thought  
22 but it would not be a function of the number of hours

1 I've been gone from home.

2 MR. ALTMAN: Would His Honor like to  
3 break?

4 THE COURT: If you still have another 10  
5 or 15 minutes.

6 If you have five minutes or less ...

7 MR. ALTMAN: I think it's going to go 15  
8 minutes.

9 THE COURT: Let's go ahead and take the  
10 luncheon recess right now, ladies and gentlemen.  
11 Please leave your notepads and don't discuss any thing  
12 during lunch. Meet Deputy Royal outside of room 4D a  
13 minute to two before, and as soon as all eight of you  
14 are back, we'll resume the testimony.

15 Can I see counsel at the bench for a  
16 moment, please.

17 Doctor, you may step down, sir.

18

19 (Whereupon, the luncheon recess was taken at  
20 1:00 p.m.)

21

22

1 A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

2 THE COURT: I apologize for the delay.

3 There were some phone calls that I had to make.

4 You may continue your cross-examination,  
5 Mr. Altman.

6 BY MR. ALTMAN:

7 Q Dr. Mackintosh, the standard of care  
8 opinions that you have told the ladies and gentlemen  
9 about today, those are not actually written down  
10 anywhere, are they, sir?

11 A In a way, some of them are. They're  
12 developed by various organizations for the management  
13 of disease entities.

14 Q I'm asking you about the standard of care  
15 opinions that you gave today and that is that Dr. Choi  
16 deviated here or did not deviated there. Those aren't  
17 written down anyplace, are they, sir?

18 A As I say, yes, they are, and --

19 Q Tell me a publication where it is written  
20 down that Dr. Choi deviated from the standard of care  
21 by failing to get an adequate history. Where this is  
22 that written down?



1           A     Well, I referred to it before. It's the  
2 American Family Physicians Journal.

3           Q     It mentions Dr. Choi in there?

4                     Well, that's my question. Listen to my  
5 question, if you would.

6           Q     The opinions that you gave here today, the  
7 standard of care opinions that Dr. Choi deviated,  
8 those are not written down anywhere, are they?

9           A.    On this specific case, no.

10          Q     And you would agree with me that the  
11 medicine, the standard of care that doctors have to  
12 abide by, will vary from patient-to-patient? You  
13 would agree with that, wouldn't you, sir?

14          A     Could you clarify that, please?

15          Q     Sure. If you're dealing with an old  
16 patient, you might consider one disease entity. When  
17 you're dealing with a young patient, you might  
18 consider a different entity?

19                     When you're dealing with an infant, you  
20 wouldn't be asking that infant for a history; right?  
21 It varies as to the patient; wouldn't you agree with  
22 that, sir?

1           A     You wouldn't be asking the infant but you  
2 would be asking the infant's parent.

3           Q     Doctor, would you please try and answer my  
4 question. Does the standard of care that a doctor  
5 must abide by -- is it based upon the circumstances  
6 presenting with that individual patient?

7           A     Yes.

8           Q     Thank you, sir. Now, the opinions that  
9 you have expressed here today are your opinions on the  
10 standard of care; correct?

11          A     Yes.

12          Q     And you would agree with me that  
13 reasonably prudent doctors might disagree in their  
14 opinion? You would agree with that, wouldn't you,  
15 sir?

16          A     Yes.

17          Q     Now, you told the ladies and gentlemen in  
18 response to a question from Mr. Malone that you would  
19 not expect a cardiologist -- and I'm paraphrasing so  
20 correct me if I misquote your testimony -- you would  
21 expect a cardiologist to concentrate just on  
22 cardiologic issues and not be involved in other issues

1 that are outside his area of specialization; is that  
2 correct?

3 A Yes.

4 Q Now, you would agree with me that before a  
5 cardiologist becomes a cardiologist, that individual  
6 is first an internal medicine specialist; right?

7 A Yes.

8 Q In fact, before you can become Board  
9 certified in cardiology, don't you have to be Board  
10 certified in internal medicine?

11 A Yes.

12 Q That's the same specialty that Dr. Choi  
13 practices; right?

14 A Yes.

15 Q You would expect any doctor, a  
16 cardiologist, to have the same information that Dr.  
17 Choi would have because they're gone through the same  
18 training; right?

19 The cardiologist has gone through more,  
20 but the internal medicine training is the same; you  
21 would agree with that, wouldn't you, sir?

22 A Not entirely.

1           Q       Well, let me find out why. You are here  
2     testifying on the standard of care --

3           MR. MALONE: Did he finish his answer? I  
4     thought he wasn't finished.

5           MA: Apparently I interrupted the doctor.  
6     I apologize if I did.

7           THE COURT: Go ahead, Doctor.

8           A       I said not entirely. When a cardiologist  
9     subspecializes, he moves away from the practice of  
10    internal medicine primary care, and Dr. Horton in  
11    particular has been out of internal medicine for 20  
12    years and doesn't keep up with the various  
13    ramifications of internal medicine primary care.

14          Q       Are you telling the ladies and gentlemen  
15    that in all of that education, the taking of that  
16    Board certification examination that you have made a  
17    great deal about earlier, Dr. Horton just forgets all  
18    that; is that what you're telling us?

19          A       No. That the material that he studied to  
20    pass the exam 20 year ago is all obsolete now.

21          Q       So you agree that things that happened 20  
22    years ago is obsolete now; is that what you're telling

1 us?

2 A. Not everything, but some things.

3 Q Okay. Now, the sedimentation of 51 that  
4 was found in Dr. Horton's examination and testing and  
5 that he reported in his letter of December 6, would  
6 you agree with me, sir, that that sedimentation rate  
7 was attributed to pericarditis or myocarditis by Dr.  
8 Horton in that report?

9 A He postulated that, yes.

10 Q And would you agree with me that his  
11 impression as of December 6, the second time that he  
12 issued a report to Dr. Choi, was that the patient had  
13 pericarditis or myocarditis?

14 A He wasn't that concrete. He was saying  
15 that that was one of the diagnostic possibilities.

16 Q What else did he say in his letter? We  
17 went through this morning with Dr. Horton. What else  
18 did he say?

19 Would you like a copy of it, sir? Would  
20 you like a copy?

21 MR. MALONE: Page 16 of Choi.

22 MR. ALTMAN: This is Exhibit 7, pages 16

1 and 17.

2 May I approach the witness, Your Honor?

3 THE COURT: Yes, sir.

4 BY MR. ALTMAN:

5 Q As you can see, that is the December 6,  
6 1996 letter from Dr. Horton to Dr. Choi.

7 Now, as I said, we have already been  
8 through this morning with Dr. Horton. Would you agree  
9 that the only things that he postulates in there are  
10 pericarditis or myocarditis and that he says it's  
11 atypical for a heart attack?

12 A Yes.

13 Q Now, you would also agree, wouldn't you,  
14 that any type of inflammatory process going on in the  
15 body would explain an elevated sedimentation rate?

16 A Yes.

17 Q Clearly the pericarditis and myocarditis  
18 fit that description; right?

19 A Yes.

20 Q Now, let's go, if we could, to the 1994  
21 period of time. As you're aware, sir, and as you  
22 discussed already with Mr. Malone, there were some

1 abnormal urine studies done; am I correct?

2 A Yes.

3 Q In 1994, July and October, he was found to  
4 have 4+ protein in his urine and 4+ blood in his  
5 urine; is that correct?

6 A Yes.

7 Q Okay. That's a significant amount of  
8 blood and protein in his urine; isn't that correct?

9 A Yes.

10 Q In those studies they also tried to count  
11 the number of red blood cells. Do you remember that?

12 A Yes.

13 Q Okay. They put a notation other "TNTC."  
14 Do you see that?

15 A Yes.

16 Q That means that there was so much blood  
17 and so many blood cells, it was "too numerous to  
18 count"; right?

19 A Yes.

20 Q That, you would agree with me, is a fairly  
21 significant finding; right?.

22 A Yes.

1           Q       Now, what is your understanding of what  
2 happened with Mr. Ponirakis after having those studies  
3 undergone until he came to Dr. Choi regarding those  
4 lab values?

5           MR. MALONE: I object to the relevance.  
6 This doesn't have anything to do with Dr. Choi's  
7 standard of care, Your Honor.

8           MR. ALTMAN: Right now it's his  
9 understanding of the information. He relied on this  
10 information in giving standard of care opinions.

11          THE COURT: Come on up to the bench,  
12 please, Counsel.

13          (Whereupon, there was a bench conference  
14 held without the hearing of the jury and reported as  
15 follows:)

16          MR. ALTMAN: In response to questions from  
17 Mr. Malone, he testified that this condition went away  
18 and it would have been easy for him to forget about  
19 it. I think I'm entitled to explore what information  
20 this doctor is basing that statement on. Specifically  
21 last night Mr. Ponirakis testified --

22          THE COURT: Who said he would have thought



1 it had gone away?

2 MR. ALTMAN: Oh, I'm sorry. On direct  
3 testimony, Dr. Mackintosh said it would have been easy  
4 for Mr. Ponirakis not to have discussed it with Dr.  
5 Choi because the condition went away, as if to say he  
6 had blood in his urine and that it just went away. I  
7 think I'm entitled to explore with this doctor that  
8 there was more significant treatment.

9 Indeed, last night Mr. Ponirakis testified  
10 that he never really got an answer as to what  
11 happened. I think it makes it that much more  
12 important if he would have discussed it with Dr. Choi.

13 I'm not calculating contrib for failing to  
14 discuss it with and for not seeking treatment. I'm  
15 talking about it whether or not this would have been  
16 that much more important to discuss with Dr. Choi.

17 He testified in direct examination and he  
18 said, I understand how Mr. Ponirakis might have  
19 forgotten to tell Dr. Choi about it. And I'm trying  
20 to prove that it was a bigger deal than just, gee, he  
21 had blood in his urine and that he got better.

22 MR. MALONE: From a medical standpoint

1 that may be true, but from the patient's standpoint,  
2 the records show that the gross blood in the urine did  
3 not come back after 1994, and what Dr. Mackintosh is  
4 talking about is the patient not seeing blood in his  
5 urine and thinking the problem had gone away.

6 THE COURT: I'm not sure I understand what  
7 you mean by " it did not come back," Mr. Malone.

8 MR. MALONE: The patient will testify, I  
9 believe without contradiction, that he saw blood in  
10 his urine in 1994 and never again until July 1997 when  
11 the diagnosis was made.

12 All that Dr. Mackintosh said in passing on  
13 his direct examination was you could understand why a  
14 patient would think that it had gone away because the  
15 patient is no longer seeing it there. What Mr. Altman  
16 is now trying to do is to turn the patient into the  
17 doctor and say, Look at these lab reports and  
18 shouldn't Mr. Ponirakis have known, since the cells  
19 were too numerous to count, that he had a more  
20 significant problem.

21 He's trying to put --. I just think it's  
22 an incredible stretch to put Dr. Mackintosh back into

1 this patient's shoes back in 1994.

2 THE COURT: We're not going to have any  
3 testimony about what the plaintiff may have discussed  
4 with the doctor back in 1994 from either side.

5 MR. ALTMAN: Well, I think I can ask this  
6 witness -- I'm not calling any of those witnesses, but  
7 this doctor has reviewed those records from the 1995  
8 doctors, and I presume he's reviewed the depositions  
9 from the '94 and '95 doctors who have been deposed.

10 MR. MALONE: Well, that also is something  
11 you should do with the patient, not with some  
12 third-hand witness who has reviewed --

13 THE COURT: This is where I'm drawing the  
14 line. Absent something else linking it to the only  
15 relevant issue -- the only relevant issue is the  
16 contributory negligence issue -- I sustain the  
17 objection.

18 You can ask him if there's anything in the  
19 records that he has reviewed in light of what he  
20 testified to on direct which would tend to belie what  
21 he testified to on direct, and you can cross-examine  
22 him about that, and that's where I'm drawing the line.

1 MR. ALTMAN: This is not going to the  
2 issue of contrib. This is going to his direct  
3 testimony on deviation from the standard of care. He  
4 says it was a deviation of Dr. Choi not to explore  
5 this issue and he can understand how the patient might  
6 have forgotten about it.

7 THE COURT: The patient forgetting about  
8 it really isn't an issue. When he eventually found  
9 out has nothing, in my opinion, to do with whether the  
10 doctor breached the standard of care by not finding  
11 out to begin with. It's 20/20 hindsight one way or  
12 the other. I don't believe that goes to whether Dr.  
13 Choi deviated from the applicable standard of care.  
14 I've drawn the line and that's the way I think it  
15 should be dealt with.

16 (End of bench conference).

17 THE COURT: I sustain the objection.

18 BY MR. ALTMAN:

19 Q Did you review the medical records of Dr.  
20 Salbert in your review.

21 A Yes.

22 Q Did you review the records of Dr. Pappas?

1 A Yes.

2 Q Did you review the records of a urologist  
3 by the name of Dr. Abramson?

4 A Yes.

5 Q Did you review Dr. Abramson's deposition?

6 A I'm not sure.

7 Q He's the urologist who took care of Mr.  
8 Ponirakis in 1995?

9 A I'm not sure I did.

10 Q Did you review Dr. Salbert's deposition?  
11 He was the doctor who actually had the studies  
12 performed, the urine studies, in 1994.

13 A I'm not sure I did that either.

14 Q Did you read Mr. Ponirakis' deposition?

15 A Yes.

16 Q Did you read in Mr. Ponirakis' deposition  
17 that he was aware in 1994 of the blood and protein in  
18 his urine?

19 A Yes.

20 Q Were you aware from reading Mr. Ponirakis'  
21 deposition that he was sent to a urologist?

22 A Yes.

1           Q       Were you aware that the urologist referred  
2 him back to Dr. Salbert with instructions for  
3 additional testing?

4           MR. MALONE: I object to that because that  
5 misstates the record.

6           THE COURT: I sustain the objection to the  
7 question phrased. It assumes facts not in evidence at  
8 this point.

9           BY MR. ALTMAN:

10          Q       Did you review Dr. Abramson's records,  
11 sir?

12          A       No, I don't have that.

13          Q       You never reviewed them?

14          A       I'm not sure. Dr. Rhames.

15          Q       Oh, it may be Dr. Rhames. I think the  
16 plaintiff was under possibly a misunderstanding as to  
17 whose records they are. Do you have Dr. Rhames'  
18 records there?

19          A.       That may be more familiar to me. Yes.

20          Q       You do have those there? Do you have  
21 those, sir?

22          A       Yes.

1           Q     Can you read for the ladies and  
2 gentlemen -- .

3           MR. ALTMAN: This is Plaintiff's Exhibit  
4 Number 4, Your Honor. It's page number 160002.

5           BY MR. ALTMAN:

6           Q     Can you read what is written at the bottom  
7 of there by Dr. Abramson?

8           MR. MALONE: May I approach the bench,  
9 Your Honor?

10          THE COURT: Yes.

11          (Whereupon, there was a bench conference  
12 held without the hearing of the jury and reported as  
13 follows:)

14          MR. MALONE: This is a note that Dr.  
15 Abramson wrote to himself. There's nothing in the  
16 record that this was conveyed expressly to the  
17 patient.

18          And in his deposition, Dr. Abramson  
19 testified -- let me show you what he says.

20          THE COURT: Do you agree or disagree with  
21 that assertion?

22          MR. ALTMAN: My recollection is that he

1 says he called Dr. Salbert. In fact, it says "Spoke  
2 with Dr. Salbert." I can just hand it up.

3 THE COURT: What I let you go into --  
4 that's why I need the direct -- is anything that can  
5 belie the Doctor's assertion that the patient may have  
6 forgotten about that, because he did say that.

7 In light of you opening that door, I'm  
8 letting you go just for these things that had to belay  
9 his complaint during the time.

10 The doctor's notes can reflect serious  
11 difficulties for something else, but unless there's  
12 evidence that it was related to the plaintiff --

13 MR. ALTMAN: I'm trying to take it  
14 logically, because this information, it's my  
15 understanding, once it went back to Dr. Salbert, Mr.  
16 Ponirakis was advised of this information.

17 MR. MALONE: That's not what his client  
18 testified to.

19 THE COURT: Which?

20 MR. ALTMAN: Mr. Ponirakis, the plaintiff.

21 THE COURT: Mr. Ponirakis testified to  
22 that last night?



1           MR. ALTMAN: Mr. Ponirakis testified to  
2 that at the time of his deposition, that he was aware  
3 that --.

4           As a matter of fact, he did testify to  
5 that last night. I specifically asked him, You knew  
6 there were problems and you never had an answer to it,  
7 and he answered yes. I have his deposition transcript  
8 if you want me to get it.

9           MR. MALONE: Well, he can cross --

10          THE COURT: If that's true, why he needs  
11 to go into this, if it's from doctor one to doctor two  
12 potentially to the plaintiff and the plaintiff himself  
13 acknowledges that in 1994 he knew about the situation  
14 and that it may have been of a serious nature, then  
15 why do we need to go into all of this?

16          MR. MALONE: Because it refutes his  
17 earlier testimony as to, gee, it's something he might  
18 have easily forgotten.

19          THE COURT: Why can't you just  
20 cross-examine then him about --.

21          MR. ALTMAN: I'll approach it that way.

22          THE COURT: Because, again, I don't want

1 -- unless he is linked to this, Mr. Altman, I don't  
2 want to through this link-to-link and eventually link  
3 it to the party. If you can link it to the plaintiff,  
4 I'm going to let you do it. If you can't link it to  
5 the plaintiff, I don't want you starting down the  
6 road.

7 MR. ALTMAN: Yes, sir.

8 (End of bench conference.)

9 BY MR. ALTMAN:

10 Q Dr. Mackintosh, you have reviewed Mr.  
11 Ponirakis' deposition; is that correct, sir?

12 A Yes.

13 Q And you are aware that following these  
14 abnormal urine studies, he never received an answer as  
15 to why those studies were abnormal. You would agree  
16 with that?

17 A Yes.

18 Q You would also agree with me that because  
19 he had gone through this period of time when these  
20 studies were abnormal -- . Well, let me go back.

21 Is it your understanding that the October  
22 urine study was a follow-up to the July study?

1           A     October of what year?

2           Q     October of 1994, was the urine study done  
3 then a follow-up to the July 1994 urine study?

4           A     I would believe so, yes.

5           Q     And in fact do you have an understanding,  
6 sir, from anything you have reviewed as to whether or  
7 not Mr. Ponirakis was referred to another doctor  
8 following the urologist? Well, did he testify to that  
9 in his deposition?

10          A     I'd have to check.

11               MR. MALONE: I object to that. That  
12 assumes something that I'm not aware of.

13               MR. ALTMAN: I'm asking him the question.

14               THE COURT: Well, are you sure there was  
15 such testimony at deposition?

16               MR. ALTMAN: That's my recollection.  
17 That's the reason I'm asking the question.

18               THE COURT: I have one attorney who is  
19 telling me that he thinks but he's not a hundred  
20 percent sure and the other attorney doesn't believe it  
21 was gone over.

22               I need you to take a moment and review his

1 deposition transcript. If it's in there, then it's an  
2 appropriate question. If it's not, then I don't want  
3 the jury to be unintentionally misled.

4 MR. ALTMAN: I'll go on and I'll have Mr.  
5 Brown look.

6 THE COURT: Thank you.

7 BY MR. ALTMAN:

8 Q Doctor, have you ever seen the term in a  
9 medical report before that a test is "pending"?

10 A Yes.

11 Q Does that mean typically that the test has  
12 been done and the results are -- you're waiting for  
13 the result to come through?

14 A Yes.

15 Q Now, what is your understanding, Dr.  
16 Mackintosh, of what information was communicated by  
17 Dr. Horton to Mr. Ponirakis on January 10, 1997, the  
18 day of the cardiac catheterization about the cath or  
19 any other abnormal findings that day?

20 A My understanding was that Dr. Horton told  
21 the patient in the presence of his father that there  
22 were abnormalities in the blood test that needed

1 further evaluation by his primary physician.

2 Q Did he mention that they may be suggestive  
3 of kidney disease?

4 A I'd need to review that again. I'm not  
5 sure that I could answer that question.

6 Q Let me ask you to assume -- I'll ask you  
7 to assume that Dr. Horton has already testified and  
8 that he said that he mentioned the abnormalities and  
9 that they may be suggestive of kidney disease.

10 Would you agree with me that it would be  
11 important for Mr. Ponirakis to pass that information  
12 along to Dr. Choi?

13 A Yes.

14 Q Would you agree that having passed along  
15 that information, that is abnormal laboratory studies,  
16 and the fact that the abnormal laboratory studies  
17 might be evidence of a kidney problem, that that would  
18 lead a reasonably prudent family practitioner,  
19 internal medicine specialist to do further testing on  
20 those laboratory values?

21 A Further kidney function tests?

22 Q Yes.

1 A Yes.

2 Q Either repeating the creatinine and urine  
3 studies or other kidney studies. You would agree with  
4 that, wouldn't you?

5 A Yes.

6 Q Now, you told the ladies and gentlemen  
7 earlier that you believe that it was a deviation of  
8 the standard of care for Dr. Choi to refer the patient  
9 to be a urologist on July 1, 1997. Was that your  
10 testimony, sir?

11 A Yes.

12 Q Do you remember just giving your  
13 deposition this week, sir?

14 A Yes.

15 Q This past week. Let me read you a section  
16 and ask if you remember it.

17 I'll get the page and reference number,  
18 Your Honor.

19 You were just deposed this past week,  
20 April 4; right?

21 A Yes.

22 Q Do you remember being asked a question

1 along these lines?

2 A Yes.

3 Q Page 45, line 4. Question by Mr. Brown.

4 " Okay, just so I can pose it, just so the  
5 record is clear, I would like to pose a yes or no  
6 question: So it is fair to say, although you would  
7 have done it different -- is it fair to say that you  
8 don't believe Dr. Choi violated the standard of care  
9 by referring Mr. Ponirakis to a urologist on 7/1/97?"

10 "Yes. That's correct."

11 Do you remember giving that testimony  
12 under oath?

13 A Yes.

14 Q Would you like to see it to confirm that  
15 that's what it says?

16 A No.

17 Q Doctor, you also said that it was a  
18 deviation of the standard of care for Dr. Choi to  
19 refer Mr. Ponirakis to an orthopedic surgeon on  
20 January 15th. To refresh your recollection, that's  
21 the date that he came in with complains of the knee.

22 A Yes.

1           Q     Is it your understanding that Dr. Choi  
2     made a diagnosis of arthritis or that was his initial  
3     impression?

4           A     Initial impression.

5           Q     Would you agree with me that some  
6     arthritic conditions do require surgery?

7           A     Yes.

8           Q     And that surgery on a joint would be done  
9     by an orthopedic surgeon; is that correct?

10          A     Yes.

11          Q     Would you also agree with me, sir, that  
12     Dr. Theiss found not a rheumatologic condition but an  
13     orthopedic condition when he saw the patient on  
14     January 15th?

15          A     That was his diagnosis.

16          Q     So the ladies and gentlemen are clear, his  
17     diagnosis was a subluxation of the patella: right?

18          A     Yes.

19          Q     Now, that's an orthopedic condition;  
20     right?

21          A     Right.

22          Q     Orthopedic surgical condition; right?



1           A     Right.

2           Q     You wouldn't send a patient to a  
3     rheumatologist for subluxation of a patella, would  
4     you, sir?

5           A     No.

6           Q     Subluxation of the patella, so the ladies  
7     and gentlemen know, that means the kneecap -- patella  
8     is the kneecap; am I correct?

9           A     Yes.

10          Q     Subluxation means that it's moved back and  
11     down; isn't that correct?

12          A     Or sideways.

13          Q     Okay. Let me rephrase the question.  
14     Subluxation of the patella means that the kneecap has  
15     moved; right?

16          A     Yes.

17          Q     You wouldn't expect to find a moving  
18     kneecap just because of lupus, would you, sir?

19          A     No.

20          Q     You wouldn't expect to find a moving  
21     kneecap because of renal disease, would you, sir?

22          A     No.

1           Q     These were actual orthopedic problems that  
2 could not have been explained by anyone other than a  
3 orthopedic surgeon; right?

4           A     Not quite.

5           Q     Well, it was best explained; the specialty  
6 that would best deal with it would be an orthopedic  
7 surgeon?

8           A     I don't agree with that.

9           Q     Sorry?

10          A     I don't agree with that.

11          Q     Who would you suggest would be best deal  
12 with subluxation of the patella?

13          A.     The diagnosis of subluxation wasn't there  
14 the day that Dr. Theiss saw him. He made that  
15 diagnosis based on the history and his negative  
16 examination and it wasn't dislocating at the time that  
17 he saw him.

18          Q     So you now know what Dr. Theiss saw on  
19 January 15, 1997?

20          A.     His examination doesn't elicit that. He  
21 said he believed, because of the pain being in the  
22 front of the knee and the tenderness to touch, the

1 quadriceps tendon was involved, it was tendinitis,  
2 which is usually brought on by subluxation. But it  
3 wasn't there the day of examination.

4 Q So you're saying that Dr. Theiss was  
5 wrong?

6 A No, I'm saying that Dr. Theiss postulated  
7 also.

8 Q Now, Doctor, would you agree with me, sir,  
9 that the finding of blood and protein in the urine two  
10 times in 1994 was a significant finding?

11 A Yes.

12 Q And would you also agree with me, sir,  
13 that you would have expected Mr. Ponirakis to inform  
14 Dr. Choi of that?

15 A Yes.

16 Q And you would have expected him to inform  
17 him of it in response to the question, Have you had  
18 any serious or significant illnesses or diseases;  
19 right?

20 A I believe I dealt with this before, but  
21 yes. The simple answer is yes.

22 MR. ALTMAN: The Court's indulgence for

1 quadriceps tendon was involved, it was tendinitis,  
2 which is usually brought on by subluxation.. But it  
3 wasn't there the day of examination.

4 Q So you're saying that Dr. Theiss was  
5 wrong?

6 A No, I'm saying that Dr. Theiss postulated  
7 also.

8 Q Now, Doctor, would you agree with me, sir,  
9 that the finding of blood and protein in the urine two  
10 times in 1994 was a significant finding?

11 A Yes.

12 Q And would you also agree with me, sir,  
13 that you would have expected Mr. Ponirakis to inform  
14 Dr. Choi of that?

15 A Yes.

16 Q And you would have expected him to inform  
17 him of it in response to the question, Have you had  
18 any serious or significant illnesses or diseases;  
19 right?

20 A I believe I dealt with this before, but  
21 yes. The simple answer is yes.

22 MR. ALTMAN: The Court's indulgence for

1 one minute, please.

2 THE COURT: Yes, sir.

3 MR. ALTMAN: Your Honor, may we approach  
4 on that issue previously, the one that I was going to  
5 find the testimony on?

6 THE COURT: Yes.

7 Why don't the two of you discuss it first  
8 and find out if there's a disagreement between  
9 counsel, and if there is, you can approach.

10 Ladies and gentlemen, while they're doing  
11 that, I may want to go a little bit past five o'clock  
12 this afternoon to try to complete the testimony of one  
13 of the witnesses that will be testifying. Will that  
14 cause a problem for any of you, a little bit after  
15 five?

16 (Whereupon, there was a bench conference  
17 held without the hearing of the jury and reported as  
18 follows:)

19 MR. ALTMAN: Your Honor, I have found  
20 where he clearly says that he was aware --

21 THE COURT: Do you agree that he so  
22 testified in his deposition?

1 MR. MALONE: Yes.

2 MR. ALTMAN: Well, the point that I wanted  
3 to get at is that Mr. Ponirakis never received a  
4 reason or an explanation and that's the point to which  
5 Mr. Malone objected, saying it assumes facts not in  
6 evidence.

7 THE COURT: Just give me one second. Let  
8 me see if I'm confusing the two.

9 My notes reflect that after you asked him  
10 about referring him to a urologist, your next question  
11 is, plaintiff, in his deposition testimony, testified  
12 he never got an answer. You already asked him that.

13 MR. ALTMAN: Thank you, sir.

14 (End of bench conference.)

15 MR. ALTMAN: I have no further questions,  
16 Your Honor.

17 REDIRECT EXAMINATION

18 BY MR. MALONE:

19 Q Dr. Mackintosh, you said that if Mr.  
20 Ponirakis had been aware after the January 10th  
21 conversation with Dr. Horton about a kidney problem,  
22 that he should have relayed that to Dr. Choi.

1           In follow-up I want to add into that to  
2 put that into context is why do you say nonetheless  
3 that Dr. Choi should have sought out a copy of the  
4 report and not simply relied on what the patient was  
5 telling him?

6           MR. ALTMAN: Objection. Asked and  
7 answered.

8           THE COURT: Is he going to tell us  
9 anything different in redirect than what he told us in  
10 response to the same question on direct? I think he's  
11 already told us that.

12           BY MR. MALONE:

13           Q     Doctor, do you remember having given a  
14 response on direct examination?

15           A     Is this in response to Dr. Horton's  
16 interaction with Dr. Choi?

17           Q     We're talking about the patient coming  
18 back to Dr. Choi on January 15th.

19           A     January 15th? And having had the reports  
20 from Dr. Horton on his desk?

21           Q     No. Dr. Choi not having had the reports  
22 on his desk. Was it safe at that point for Dr. Choi

1 to rely on the patient not telling him about the  
2 kidney problem. That's my question.

3 A No, it wouldn't be wise to ever rely  
4 entirely on the patient about what to tell the doctor  
5 ever. That's my opinion.

6 Q One other thing. Mr. Altman asked you if  
7 the standard of care as to Dr. Choi was written down  
8 anywhere. Have you seen this panel decision,  
9 Plaintiff's Exhibit 1 --

10 MR. ALTMAN: Objection, Your Honor.

11 THE COURT: Mr. Altman.

12 MR. ALTMAN: My question to the doctor was  
13 clearly standard of care opinions, not someone else's  
14 finding on the standard of care opinion. I was  
15 talking about literature.

16 We're about to go into the review panel  
17 and that's not what was asked of the doctor.

18 THE COURT: I overrule the objection based  
19 upon the cross.

20 BY MR. MALONE:

21 Q He had asked you whether there was  
22 anything in writing that said Dr. Choi's conduct had



1 violated the standard of care.

2 Let me show you this finding of the  
3 Virginia Medical Malpractice Review Panel concerning  
4 Dr. David Choi.

5 Have you seen this finding that states  
6 that the evidence supports a conclusion that the  
7 health care provider failed to comply with the  
8 appropriate standard of care and that such failure is  
9 a proximate cause in the alleged damages.

10 Have you seen this document?

11 A No, I hadn't seen that particular  
12 document, but I knew --.

13 MR. ALTMAN: Objection. Unresponsive to  
14 the question.

15 BY MR. MALONE:

16 Q You knew about the panel findings?

17 A Yes.

18 Q Are these two physicians, Charles Penrick  
19 and Dr. Jeffrey Vial, on this panel?

20 A Yes.

21 MR. MALONE: I will go ahead and off this  
22 into evidence as Exhibit 71.

1 THE COURT: Any objection?

2 MR. ALTMAN: I think it's been offered and  
3 received.

4 MR. MALONE: I don't think so.

5 THE COURT: Unless it's included in some  
6 other document --

7 MR. ALTMAN: I have no objection.

8 THE COURT: If you find it's included in  
9 another exhibit that's already in evidence, you can  
10 bring this to my attention and it will be in evidence  
11 only one time.

12 (The Medical Malpractice Review  
13 Panel decision, previously marked as  
14 Exhibit No. 71 for identification,  
15 was received in evidence.)

16 MR. MALONE: Nothing further.

17 THE COURT: Is Dr. Mackintosh free to go?

18 MR. MALONE: Yes, sir.

19 MR. ALTMAN: Yes, sir.

20 THE COURT: Thank you very much. You're  
21 free to go.

22 (Witness excused.)

1 THE COURT: Plaintiff's next witness.

2 I'm not sure I have heard you mention the  
3 next witness' name.

4 MR. MALONE: Here he is. His name is  
5 David Mahoney, M.D.

6 (Witness sworn.)

7 THE COURT: Good afternoon, sir. Have a  
8 seat and make yourself comfortable. Keep your voice  
9 up so we can hear. Answer only the specific questions  
10 that the attorneys are asking.

11 THE WITNESS: Yes, sir.

12 THE COURT: You may proceed.

13 Whereupon,

14 DAVID MAHONEY, M.D.,  
15 witness, was called for examination by counsel for  
16 plaintiff, and, after having been first duly sworn,  
17 was examined and testified as follows:

18 DIRECT EXAMINATION

19 BY MR. MALONE:

20 Q Dr. Mahoney, are you the doctor who  
21 diagnosed Sotiri Ponirakis?

22 MR. ALTMAN: Objection. Leading, Your

1 Honor.

2 THE COURT: Is there some controversy in  
3 the case?

4 MR. ALTMAN: Well, except it's been going  
5 on and I don't want it to go on.

6 THE COURT: I understand, and for  
7 everyone's sake, when it's something that's not in  
8 contest and preliminary, especially with the time  
9 estimate, I would appreciate if there weren't  
10 objections to the leading basis. When we get into the  
11 substance, I would ask counsel not to lead the  
12 witness.

13 That objection is overruled. It's clearly  
14 preliminary and you can ask the question.

15 BY MR. MALONE:

16 Q Are you the doctor who diagnosed in July  
17 1997 that my client Sotiri Ponirakis had lupus  
18 nephritis?

19 A Yes, I am.

20 Q Describe a little bit of your background  
21 in medicine and how you got into the specialty of  
22 nephrology.

1           A       I specialized in internal medicine prior  
2 to entering nephrology and did that training at Walter  
3 Reed Army Medical Center.

4                   Following that I was a general internist  
5 for three years and after that period chose to enter  
6 nephrology, which is a two-year training program. I  
7 completed that training at Walter Reed.

8                   And following that I had practiced for two  
9 years in the Army prior to the entering practice in  
10 which I saw the Mr. Ponirakis.

11           Q       Are you Board certified in nephrology?

12           A       Yes, I am.

13           Q       How long have you been seeing kidney  
14 patients?

15           A       Initially since 1991 when I started my  
16 fellowship, and then after being fully trained since  
17 1993.

18           Q       The group that -- you're a part of a  
19 nephrology group practice?

20           A       Yes.

21           Q       Do you guys pretty much cover the entire  
22 Northern Virginia area?

1           A     Our practice involves Loudoun, Fairfax and  
2 Prince William Counties.

3           Q     How many doctors are in the group?

4           A     Currently five.

5           Q     Do you collaborate on patients?

6           A     Yes, we do.

7           Q     Describe your experience with lupus  
8 nephritis.

9           A     I have seen patients with lupus nephritis  
10 since starting my fellowship in '91. I would estimate  
11 I have treated about 75 patients with lupus nephritis.

12          Q     Have you been also involved in other  
13 aspects of the care of patients who have had lupus  
14 nephritis?

15          A     Yes. Somewhat indirectly. Many times  
16 patients who have the kidney complications of lupus  
17 will have other manifestations of the disease and I  
18 will work in concert with the rheumatologist and have  
19 often decided upon treatment regimens in concert with  
20 the rheumatologist.

21                   MR. MALONE: I'm offering Dr. Mahoney to  
22 the Court as an expert in nephrology.

1 THE COURT: Any objection?

2 MR. ALTMAN: No, sir.

3 THE COURT: Ladies and gentlemen, he will  
4 be received as an expert in the field of nephrology,  
5 and the credibility of his testimony will be  
6 determined by the eight of you.

7 You may proceed, Mr. Malone.

8 BY MR. MALONE:

9 Q By the way, are you charging anything for  
10 your time in court?

11 A No, I'm not.

12 Q How did Sotiri become your patient?

13 A In July of 1997, if I have the date  
14 correct, he was referred to me I believe by Dr. Choi  
15 for evaluation of an elevated creatinine level.

16 Q You first saw him on July 10, 1997?

17 A. I believe that's correct.

18 Q What was his physical appearance when you  
19 first saw him?

20 A He was a rather healthy looking young man,  
21 although he appeared somewhat tired. Overall to  
22 qualify, that he was a rather musculature, developed,

1 athletic young man but appeared as if someone who had  
2 the flu. He looked tired and slightly ill.

3 Q You hospitalized him immediately?

4 A That day, yes.

5 Q Why did you do that?

6 A Couple reasons. Number one, I was very  
7 impressed by the elevated creatinine level which I had  
8 seen. He had brought some paperwork with him with  
9 some recent laboratory tests. And the second was that  
10 he appeared to have a systemic disease, meaning one  
11 that affected many different organs, not just the  
12 kidneys and appeared ill enough to put in the  
13 hospital. But it was primarily the laboratory test  
14 that impressed me.

15 Q Did you do a kidney biopsy the next day?

16 A Yes.

17 Q Did that confirm the diagnosis of lupus  
18 nephritis?

19 A Yes.

20 Q Did you try to treat him for the disease?

21 A Yes, I did.

22 Q And how did the treatment -- was the



1 treatment successful?

2 A I had some optimism. Initially he was  
3 first treated with steroids, pending the results of  
4 biopsy. Following that, he received I believe two,  
5 perhaps three, doses of Cytosan, and although there  
6 was a brief period of some minor improvement, he went  
7 on to worsen over the ensuing months.

8 Q And eventually went on dialysis in March  
9 1998?

10 A I believe that's correct.

11 Q Did he have a transplant after that?

12 A He did.

13 Q Did the transplant work?

14 A. The transplant never worked, is my  
15 understanding.

16 Q Transplant was ultimately removed in  
17 October 1998?

18 A That sounds correct.

19 Q And he has had a lot of complications  
20 since then?

21 A Many.

22 Q Can you describe that briefly?

1           A.    I think it's fair to say that he has spent  
2 more time in the hospital than out, although I would  
3 have to look at the calendar.

4                   His complications have been primarily due  
5 to a disease called TTP, which stands for thrombotic  
6 thrombocytopenic purpura, and that is a disease where  
7 the patient's immune system attacks a number of  
8 different cells, organs, within the body.

9                   His complications have been that his  
10 platelet count has been extremely low because of his  
11 disease which causes him to be bleeding. He has had  
12 many episodes of gastrointestinal bleeding and I can't  
13 give you have a number but it's in excess of 10,  
14 requiring multiple surgeries, removing multiple  
15 segments of his intestines.

16                   He has had one period of time where he has  
17 been on a mechanical ventilator.

18                   He has required countless transfusions and  
19 again is not the same person I met that July day in  
20 1997.

21           Q    You looked into his prior medical  
22 condition when you first saw him; is that true?

1           A     You would have to clarify what you mean by  
2     that.

3           Q     Did you look up in the Fairfax Hospital  
4     computer and find out the results of his creatinine  
5     values seven months previously?

6           A     Yes.

7           Q     December 1996

8           A     Yes, I did.

9           Q     Subsequent to that, after you did that,  
10    have you had a chance to look back at his old medical  
11    records?

12          A     Yes, a number of them.

13          Q     Do you have an opinion within a reasonable  
14    degree of medical probability about whether or not you  
15    could have saved this young man's kidneys if he had  
16    been referred to you in December 1996 or January '97?

17          A     I would quote to you a likelihood of 80  
18    percent or greater of having salvaged his kidney  
19    function.

20          Q     Let's look at the creatinine chart that I  
21    have done earlier. It may be more clear if you used  
22    the enlargement.

1                   You know, what I might do is -- let me  
2 show you -- you're familiar with his creatinine values  
3 over time?

4                   A       I have seen a number of reports.

5                   Q       Let me give you the reduced version of  
6 this chart and let me leave the other one there for  
7 the ladies and gentlemen to look at.

8                   THE COURT: Let's do this. It will be  
9 marked for purposes of identification as Plaintiff's  
10 Exhibit 76.

11                   MR. MALONE: Thank you, Your Honor.

12                             (The creatinine chart was marked as  
13 Exhibit No. 76 for identification.)

14                   BY MR. MALONE:

15                   Q       Now, you found out that his creatinine  
16 values were normal in the 1994-1995 timeframe?

17                   A       Yes.

18                   Q       And then in the period when you first saw  
19 him, they fluctuated a good bit, did they?

20                   A       They fluctuated between -- when I met him  
21 it was 5.3. I believe it may have fluctuated between  
22 that value and 7. So somewhere inbetween those two.

1           Q     I guess my question is, he had some  
2 fluctuating creatinine values in the July and August  
3 timeframe; is that correct?

4           A     Yes.

5           Q     How was the creatinine and how was kidney  
6 function different when you first saw him compared to  
7 what you learned in hindsight was his kidney function  
8 back in December 1996 and January of '97?

9           A     When I met him, I estimated that his  
10 kidney function was about 20 percent of normal. If  
11 you look at the values back in -- did you say 1995?

12          Q     No. December 1996 and January '97.

13          A     Okay. December '96 and January '97, I  
14 would estimate that his kidney function was about 50  
15 percent of normal.

16          Q     By the way, do you derive that by doing  
17 what they call the reciprocal of the creatinine value?

18          A     Yes.

19          Q     So if he's got a creatinine of 2, 1 over 2  
20 is 50 percent?

21          A     Yes.

22          Q     And then he went on to dialysis in March

1     '98. We show that his creatinines were drifting down  
2 during that time.

3             A. His creatinine would be drifting up.

4             Q But the function was drifting down.

5             A Yes.

6             Q Why weren't you able to salvage his  
7 kidneys at that point?

8             A He appeared not to respond to the  
9 treatment that he was given, which was at that time  
10 initially steroids and then Cytosan.

11            Q Why was it too late to help him compared  
12 to the earlier point in time?

13                     MR. ALTMAN: Objection. Assumes facts not  
14 in evidence, as least as of yet.

15                     THE COURT: Do you want to respond?

16                     MR. MALONE: No.

17                     THE COURT: I sustain the objection.  
18 Rephrase your question.

19                     BY MR. MALONE:

20             Q You testified earlier a couple minutes ago  
21 that you thought -- let me put it this way -- that  
22 there would be an 80 percent chance you could have

1 saved this young man's kidneys if he had been referred  
2 to you in lay 1996 or early 1997. What is your basis  
3 for saying that?

4 A The treatment of the disease follows a  
5 standard treatment protocol which was devised at the  
6 NIH about 15 years ago and the recommendations for  
7 treatment also, as published in that article, describe  
8 what the success rate is, and given that initial level  
9 of kidney function, he was in the group that likely  
10 would respond.

11 Q Why is it that you can go down to about 50  
12 percent of your kidney function but still respond to  
13 treatment?

14 A Response and successful therapy was given  
15 in several ways. Those included freedom from  
16 dialysis.

17 Q You're talking about this study now?

18 A The study. And failure to double your  
19 creatinine value. So even though the kidney function  
20 may not have returned completely to normal -- and of  
21 course we'll never know -- it may well have been  
22 perfectly adequate to sustain normal health without

1 dialysis and without transplant.

2 Q Now, do you have that opinion within a  
3 reasonable degree of medical probability that you  
4 could have saved him from dialysis and transplant if  
5 you had gotten to him in December of 1996 or January  
6 '97?

7 A I would say with at least a 60 percent and  
8 probably 80 percent level of confidence I could say  
9 that.

10 Q Do you have an opinion about the effect of  
11 the Cytoxan treatment on his overall wellbeing it had  
12 been administered at that earlier point in time as  
13 compared to the later point in time?

14 MR. ALTMAN: Objection. I don't know that  
15 this witness has been qualified to give an answer to  
16 give an answer to this opinion. He was qualified as a  
17 nephrologist, a kidney specialist.

18 MR. MALONE: He says he has worked with  
19 the various manifestations of lupus.

20 THE COURT: I think you need to tie that  
21 in and I'm not sure what else you're talking about  
22 besides the kidney function.



1                   Why don't you rephrase your question, sir.  
2   That may obviate the objection.

3                   BY MR. MALONE:

4                   Q     You're familiar with the other aspects of  
5   and you have worked with other doctors working on the  
6   other aspects of lupus besides the kidney aspect of  
7   lupus; is that right?

8                   A.    That's right.

9                   Q     And in this young man, he developed TTP?

10                  A     Yes.

11                  Q     Do you have an opinion within reasonable  
12   probability about whether earlier treatment with  
13   Cytosan would have helped his situation with the TTP?

14                  MR. ALTMAN:  Objection.  Same objection.  
15   There's no foundation.

16                  THE COURT:  No foundation for him having  
17   sufficient expertise to answer that?

18                  MR. ALTMAN:  To answer this question.

19                  THE COURT:  Do you want to respond?

20                  BY MR. MALONE:

21                  Q     What is your foundation of knowledge in  
22   this respect?  Don't give the opinion but give the

1 foundation for your knowledge about this.

2           A       I think, as I mentioned earlier, that  
3 patients who have lupus may have any of a number of  
4 manifestations and I have worked with rheumatologists  
5 who are managing the extra-renal, meaning the  
6 non-kidney manifestations of the disease, and will  
7 often discuss with them the appropriate therapy  
8 overall for both the kidney disease and the other  
9 manifestations and take a team approach to managing  
10 these patients.

11                   THE COURT: I overrule the objection  
12 pursuant to Virginia Code Section 8.01-401.3.

13                   BY MR. MALONE:

14           Q       You can answer the question. Do you have  
15 an opinion about whether earlier treatment with the  
16 Cytoxan -- and by the way, what is Cytoxan?

17           A       Cytoxan is the trade name for a drug  
18 called cyclophosphamide. It is a chemotherapeutic  
19 agent that works to control certain white blood cell  
20 populations within the body and it's those white blood  
21 cells that cause this course of events leading to the  
22 problems associated with lupus.

1           Q     And what is your opinion about earlier  
2 treatment with that?

3           A     I think there are a couple things to  
4 consider in answering that question. One of them is  
5 what is the source of the TTP.

6                     Patients who have been transplanted and  
7 are treated with immunosuppressant drugs may develop  
8 TTP by virtue of the immunosuppressant drug. There  
9 can be a reaction to cyclosporin or triple 02  
10 tacrolimus, which are the two drugs most commonly  
11 used in kidney transplantation.

12                    So if the patient had received Cytoxan and  
13 had never been transplanted, if the TTP was related to  
14 the transplant medications, again, that would have  
15 been obviated. If it was TTP related to the lupus  
16 itself, which is a well-described entity, then early  
17 treatment when the lupus seemed to have been less  
18 active globally may certainly have quieted the disease  
19 down to the point that the TTP may not have occurred.

20           Q     Is that an opinion that you hold with a  
21 reasonable degree of medical probability?

22           A     I believe so.

1           Q     Now, you've gotten close to Sotiri and his  
2 family over last couple-three years?

3           A     Definitely.

4           Q     What are their qualities as -- or what is  
5 his quality as a patient in terms of compliance,  
6 giving you good history, that kind of thing?

7           MR. ALTMAN:  Objection.  Relevance.

8           MR. MALONE:  This goes to the defense of  
9 the alleged negligence of my client.

10          MR. ALTMAN:  May we approach?

11          THE COURT:  Yes.

12          (Whereupon, there was a bench conference  
13 held without the hearing of the jury and reported as  
14 follows:)

15          THE COURT:  Mr. Altman.

16          MR. ALTMAN:  What he does not when he's  
17 very, very ill is totally irrelevant.  It's  
18 essentially a legal argument.  It has absolutely no  
19 relevance to what he did at that point.

20          MR. MALONE:  Well, I should probably limit  
21 the question to the first visit:  Did you have any  
22 trouble getting a history from him.

1 THE COURT: Let's assume he asks that  
2 question. Do you object to that?

3 MR. ALTMAN: Yes. It's still irrelevant.

4 THE COURT: You object?

5 MR. ALTMAN: Oh, I do object. It's still  
6 irrelevant.

7 THE COURT: What is the relevance of  
8 whether he got a good history from him in July of  
9 1997?

10 MR. MALONE: Whether he had any problems  
11 getting a good history by asking my question: Did you  
12 find that this patient was --.

13 They're claiming that this is a young man  
14 who withheld information from his doctors and I'll ask  
15 him: Did he ever withhold anything from you when you  
16 asked him questions.

17 MR. ALTMAN: May I respond, sir?

18 THE COURT: Yes.

19 MR. ALTMAN: The question "Did he have any  
20 trouble getting information" borders on a standard of  
21 care question, and this doctor specifically said,  
22 third page of his deposition, he will not be giving

1 standard of care opinions.

2 THE COURT: No, no. I don't think that's  
3 where he's going. The question is, is he entitled to  
4 elicit information about was the plaintiff responsive  
5 to him in regard to the questions that he asked on the  
6 first visit.

7 If you object to that --

8 MR. ALTMAN: I continue to object to  
9 that. It is also irrelevant. By the time he sees  
10 this doc, he has now been seen by Dr. Choi, he's been  
11 sent for further studies, he's now complaining of  
12 flank pain, he's seen by a urologist, he's told again  
13 he's got blood in his urine and he's told that he goes  
14 to see a nephrologist and he finally does. It's a  
15 completely different circumstance.

16 THE COURT: I'll exercise my discretion to  
17 allow that, but that's as far as you'll go.

18 MR. MALONE: Okay.

19 THE COURT: The first visit and the first  
20 question, and the reason I'm exercising my discretion  
21 to allow it is because you have testimony in the  
22 cross-examination and the inference is that the jury

1 is being asked to accept both the plaintiff and the  
2 defendant on how responsive or how unresponsive the  
3 plaintiff was, and the questioning from doctors,  
4 specifically from Dr. Choi, with regard to history,  
5 the cardiologist making that phone call, and I'm going  
6 to allow you to ask that one question and then I'm  
7 going to ask you to move on.

8 MR. MALONE: Let me make sure I  
9 understand. The question is going to be: When you  
10 first met with him on July 10, 1997, did you have  
11 difficulty obtaining relevant information?

12 THE COURT: "What, if any, difficulties  
13 did you have in obtaining any information?" And I'm  
14 going to let him answer that question and you're to  
15 move on.

16 MR. MALONE: And the only other question  
17 is: Describe how the patient has handled this over  
18 the last few years, how has he done.

19 THE COURT: That goes to damages, wouldn't  
20 it?

21 MR. MALONE: Yes.

22 MR. ALTMAN: I'm going to object. We've

1 got Mr. Ponirakis testifying, we've got the father  
2 coming in and testifying and we've got the mother  
3 coming in.

4 MR. MALONE: He's a treating doctor.

5 MR. ALTMAN: I don't know if the treating  
6 doctor is going to be in a better position to describe  
7 it. If you allow the treating doctor to describe it,  
8 then if dad comes in and mom comes in and brother  
9 comes in and friends come in, that's cumulative.

10 THE COURT: Well, there's going to come a  
11 time when we're not going to have all of them testify  
12 to it. The treating physician says he's grown close  
13 to the family in the last few years. That's his first  
14 witness. If he wants to elicit it from him, elicit it  
15 from him. There may come a time when I agree with Mr.  
16 Altman that it's cumulative.

17 MR. MALONE: That's fine.

18 THE COURT: If you make that objection,  
19 I'll rule on it at the time.

20 MR. ALTMAN: Note my exception to the  
21 ruling on the other question.

22 THE COURT: All right.



1 MR. ALTMAN: Thank you.

2 (End of bench conference.)

3 THE COURT: I sustain the objection to the  
4 question as phrased. If you will rephrase your  
5 question.

6 BY MR. MALONE:

7 Q When Sotiri first came to you on July 10,  
8 1997, what problems, if any, did you have obtaining  
9 relevant information when you asked him questions?

10 A None.

11 Q Now, let me ask you a little bit about his  
12 situation. From a psychological point of view, have  
13 you seen how this young man has handled this problem?

14 A I have seen him through the course of his  
15 illness and I think he has been amazingly strong. I  
16 think there are a few people who would show the  
17 strength that he has. I have seen him go from being a  
18 very vital, athletic, socially-active young man to  
19 being an invalid.

20 Q And from the emotional level, how has he  
21 handled that?

22 A There has been time when he has appeared

1 extremely withdrawn and he may have thought of giving  
2 up. There are times when he seems to cope well, and  
3 there's everything inbetween. It's been a  
4 rollercoaster for him.

5 Q Let's me show you Plaintiff's Exhibit 54,  
6 which is a photograph of Sotiri getting dialysis. I  
7 would like you to just tell us a little bit about what  
8 dialysis involves, if you could.

9 THE COURT: Any objection to 54?

10 MR. ALTMAN: No, sir.

11 THE COURT: Plaintiff's 54 is received in  
12 evidence.

13 (The photograph, previously marked  
14 Plaintiff's Exhibit No. 54 for  
15 identification, was received in  
16 evidence.)

17 BY MR. MALONE:

18 Q Do you see a copy of the picture there?

19 A Yes.

20 Q Can you point out to all of us what is  
21 going on with him, what is the machine, and tell us  
22 what the dialysis process involves.

1           A       Should I physically point or just describe  
2 it.

3           Q       It wouldn't hurt for you to come right  
4 over here, if you would, and you can see how my  
5 fingers can move it around and you can move the photo  
6 around.

7                   Is dialysis a complete substitute for the  
8 body's kidney function?

9           A       No. It's the best we have.

10          Q       What doesn't the dialysis take care of?

11          A       Dialysis does not control phosphorus and  
12 so the patient has to take medication to lower the  
13 phosphorus level and they have to adapt their diet.  
14 It doesn't take care of magnesium. Its deficits seem  
15 to be in managing certain things in the body chemistry  
16 and the patients have to adjust their intake and  
17 medications.

18          Q       Does the kidney also control blood  
19 pressure?

20          A       The kidney may produce hormones that will  
21 drive the blood pressure up and so typically people  
22 who have kidney failure, while there's still some

1 functioning although it may not clean the blood  
2 properly, it may release these compounds into the  
3 blood stream and then drive the blood pressure up.

4 Q And there's another thing that the kidney  
5 produces I wanted to ask you about and ask you if  
6 dialysis patients have a problem with it, and there's  
7 a substance called erythropoietin.

8 A Erythropoietin..

9 Q What is that for?

10 A Normally for those with healthy kidneys,  
11 the body will sense when your blood levels are at the  
12 appropriate level, meaning are you anemic or not, and  
13 the sensor that does that in your body is the kidneys  
14 and when the kidneys sense that the blood levels are  
15 low, they release this compound erythropoietin, that  
16 stimulates the bone marrow to produce new cells. The  
17 kidney releases this compound into the circulation and  
18 it goes to the bone marrow and causes new cells to be  
19 released.

20 Q Does Sotiri have to take artificial  
21 erythropoietin?

22 A He receives supplemental injections with

1 the dialysis.

2 Q Explain dialysis, if you would.

3 A This is a hospital dialysis unit, which  
4 differs from the outpatient units. This is Fairfax  
5 Hospital, the inpatient dialysis.

6 (Indicating) This here is the dialysis  
7 machine and it essentially is a number of pumps with  
8 pressures sensors that circulate the blood through the  
9 machine.

10 Over here -- it's a little bit hidden,  
11 kind of hard to see, but this red plastic thing that  
12 you see is the actual artificial kidney. Blood passes  
13 through that in one chamber and the dialcyte or  
14 cleansing fluid passes through a separate chamber and  
15 the constituents of the blood will pass into the fluid  
16 and be removed as the blood passes in one direction  
17 and through another.

18 It requires a blood flow rate of ten  
19 ounces per minute and people don't have adequate veins  
20 to support that kind of blood flow, so there's some  
21 artificial access into the blood steam and it's  
22 covered with a dressing, but you can see the tubing

1 leading up, and underneath this dressing is a  
2 permanent catheter. This is a permanent indwelling  
3 plastic catheter that goes over the collarbone into  
4 one of the large veins at the base of the neck and  
5 then down through the vena cava, the large central  
6 vein in your chest and it's just before the heart, and  
7 that catheter has to stay in permanently to provide  
8 adequate blood flow on the treatment.

9           The typical treatment will be between  
10 three and four hours in length and the patients don't  
11 typically sense anything with regard to the blood  
12 flowing through the machine or the catheter.

13           One of the things that the machine will do  
14 is to remove fluid from the system if we program it to  
15 do that.

16           People who have kidney failure often  
17 cannot handle a fluid load. If you or I go and have a  
18 quart of something to drink, if we drink two large  
19 glasses of water, we'll eliminate that in the urine.

20           Many patients with kidney failure can't do  
21 that and what we do is establish a point where we feel  
22 that the fluid balance is appropriate and we weigh

1    them.  If he comes into dialysis four pounds over what  
2    we have assessed to be his proper weight, we'll know  
3    to remove four pounds off with the machine.

4               Not all patients tolerate this fluid  
5    removal well.  Some will have low blood pressure.  
6    Some will faint.  It's usually that aspect of dialysis  
7    that's tolerated least well.

8               Q     Tie that into Sotiri specifically.  What  
9    kind of problems does he have?

10              A     Some of the difficulties that he has had  
11    have include very rapid heart rates which would be  
12    subject to some of these volume shifts; he will have  
13    high blood pressure then coupled with very low blood  
14    pressure as fluid comes off.

15              Another issue is that if you simply pass  
16    fluid through this tubing and through the dialyzer,  
17    which is here, it tends to clot.  The plastic will  
18    stimulate our clotting system and cause the blood to  
19    clot.

20              We have to give the patient heparin, which  
21    is a substance that prevents the blood from clotting.

22              In his case that is difficult because he

1 has had many episodes of severe intestinal bleeding  
2 and we don't want to give him something that will  
3 promote the bleeding and we have to walk a very fine  
4 line.

5 Q Sotiri has reported that after a dialysis  
6 treatment he feels -- I think he said something to the  
7 effect of being "wiped out" on that day. Is that  
8 atypical?

9 A That's a very common phenomenon.

10 Q Why do dialysis patients --. And they get  
11 this three times a week?

12 A Typically?

13 Q Why is it after four hours in dialysis  
14 they might feel wiped out?

15 A I think no one knows for sure, but the  
16 belief is that --

17 MR. ALTMAN: Objection. Calls for  
18 speculation, Your Honor.

19 BY MR. MALONE:

20 THE COURT:

21 Q What do doctors understand the process  
22 involves --



1           A     The teaching is --

2           THE COURT:   Do you object to that  
3 question?

4           MR. ALTMAN:   No.

5           THE COURT:   You may answer it.   What is  
6 the medical understanding of what is involved?

7           A     The teaching is that these symptoms are  
8 due to the number of chemical shifts that go on.  
9 There are a large number of nitrogen waste molecules  
10 that are removed during the course of dialysis and the  
11 belief is that it's that shift in the body.

12          BY MR. MALONE:

13          Q     Does he urinate at all?

14          A     He may make a small amount.   I don't  
15 believe he makes much.

16          Q     That's all.   Thank you.   Your witness.

17          MR. MALONE:   I'll offer Exhibit 54.

18          MR. ALTMAN:   I think it's the one that was  
19 just offered and admitted.

20          THE COURT:   It's received in evidence.

21          Mr. Altman, you may cross-examine.

22                   CROSS-EXAMINATION

1 BY MR. ALTMAN:

2 Q Doctor, let's see if we can get an  
3 understanding of what Mr. Ponirakis is going through,  
4 okay?

5 He has a disease called lupus; right?

6 A Yes.

7 Q It is the lupus that caused the kidney  
8 disease; right?

9 A Yes.

10 Q I mean, we know that if he has lupus  
11 nephritis, that eman the lupus affected the kidneys.

12 A Correct.

13 Q And the lupus in Mr. Ponirakis has also  
14 involved other body organs; right?

15 A Probably, yes.

16 Q Well, you do agree with me that Mr.  
17 Ponirakis has systemic lupus? Would you agree with  
18 that?

19 A Yes.

20 Q By "systemic," his entire system has been  
21 involved in lupus?

22 A Systemic lupus would describe that more

1 than one organ system is involved, so it may be the  
2 bone marrow, it may be the lungs. More than one  
3 system.

4 Q Well, in fact he has been admitted to  
5 Fairfax Hospital for bleeding into the lungs; right?

6 A He has been admitted for intestinal  
7 bleeding. I'm not aware of lung bleeding.

8 Q Isn't your partner Dr. Museo?

9 A Yes.

10 Q Hasn't he, in 1998, issued a discharge  
11 summary that talks about intraalveolar bleeding due to  
12 lupus pneumonitis?

13 A He may have.

14 Q Let me ask you to assume that. That would  
15 mean that Mr. Ponirakis has lupus in the lungs?

16 A Yes, it would.

17 Q Now, we also know and you have told the  
18 ladies and gentlemen that he has had very significant  
19 colon problems, bleeding into the colon; is that  
20 correct?

21 A Yes, that's correct. Not necessarily the  
22 colon. It may be small bowel as well. He has had

1 intestinal bleeding.

2 Q You're aware that Dr. Museo, your partner,  
3 wrote a discharge summary in September 1999 following  
4 almost a five-month admission to Fairfax Hospital?  
5 Are you aware of that?

6 A It sounds correct. I have not seen it.

7 Q Okay. Let me break the question down.  
8 You're aware that in the middle of 1999  
9 Mr. Ponirakis was in the hospital for a very extended  
10 period of time --

11 a Yes.

12 Q -- due to bleeding? In other words, he  
13 was passing blood through his rectum, wasn't he?

14 A. That's right.

15 Q During that period of time he had a fairly  
16 significant portion of his colon removed, didn't he?

17 A He has had multiple surgeries. Again,  
18 whether it's colon or small bowel, I would have to see  
19 the records.

20 Q But we definitely have, would you agree  
21 with me, GI problems, gastrointestinal problems?

22 A. Are they from the lupus? I can't say

1 that.

2 Q Are you aware that in fact pathology was  
3 done on the sections of colon removed?

4 A Yes.

5 Q You're aware that he was found to have  
6 vasculitis of the colon?

7 A That sounds correct.

8 Q Would you agree with me, sir, that  
9 vasculitis of the colon is something that's seen in  
10 patients who have lupus?

11 A Not commonly.

12 Q Where did you get that from?

13 A I spoke with a gastroenterologist at one  
14 point because I was curious about that question and he  
15 said that typically lupus in the colon or lupus in the  
16 intestines is not a common finding.

17 Q Have you discussed that with any of your  
18 rheumatology colleagues?

19 A No, I have not.

20 Q By the way, your specialty is the kidneys;  
21 right?

22 A. That's correct.

1           Q     Not just treating patient with lupus in  
2 the kidney but all diseases that require medical  
3 management of the kidneys?

4           A     That's correct.

5           Q     You're not an expert in the lungs,  
6 gastrointestinal system or in the autoimmune?

7           A     I'm not.

8           Q     You would agree with me that in the 75  
9 cases where you have treated -- and I think that's the  
10 number you gave at your deposition; am I right?

11          A     That's correct.

12          Q     -- 75 cases where you've been involved in  
13 patients with lupus, those are the cases where you  
14 have worked with a specialist in the diagnosis and  
15 treatment of lupus; right?

16          A     Not all of them.

17          Q     Well, have some of those patients only had  
18 lupus nephritis?

19          A     Yes.

20          Q     How frequently is that seen when a patient  
21 only has lupus nephritis?

22          A     Not the majority, certainly. There are

1 also patients who may have other minor manifestations  
2 of lupus for which they don't see a rheumatologist.  
3 For example, they have some arthritis.

4 Q But patients who have multiple sites of  
5 lupus, those are the cases that you worked with a  
6 rheumatologist?

7 A I may work with a rheumatologist.

8 Q And it's the rheumatologist,. It's that  
9 specialty of medicine that specializes in the  
10 diagnosis and treatment of patients with lupus?

11 A That's correct.

12 Q Would you, sir, defer to the opinion of a  
13 rheumatologist regarding what is caused by lupus and  
14 whether or not it would be treated by Cytosan?

15 A Yes, I would.

16 Q Now, you told the ladies and gentlemen  
17 that you believe that had Mr. Ponirakis been treated  
18 in late 1996-1997 -- late 96/early '97 -- and I tried  
19 to write it down -- that he would have had a 60 to 80  
20 percent chance of not having kidney problems.

21 Did I say that correctly?

22 A No.

1           Q     Okay. Tell me what I said wrong, or  
2 repeat your answer for the ladies and gentlemen, if  
3 you would.

4           A     He would have adequate kidney function to  
5 keep him independent of dialysis, and, in fact, I  
6 believe I stated that he may not have normal kidney  
7 function after that, which I guess you would have to  
8 define what you mean by kidney problems, the broad  
9 term.

10          Q     I want you to define it. You just told us  
11 that he would have had adequate kidney function to not  
12 go on dialysis; is that correct?

13          A     Yes.

14          Q     Now, do you hold the opinion, sir, to  
15 reasonable degree of medical probability that he may  
16 have required some kidney treatment in the future?

17          A     Define "some kidney treatment."

18          Q     I'll ask you to define it. I don't know  
19 the treatment for kidney disease. You said dialysis.  
20 Would he have required --.

21                     Well, let me ask the question a different  
22 way.



1                   Would he have maintained adequate kidney  
2 function for the rest of his life?

3                   THE COURT: If he had been referred during  
4 the late '96/early '97 timeframe.

5                   MR. ALTMAN:

6                   Q     Please answer His Honor's question. Had  
7 he been treated in late '96/early '97, would he have  
8 maintained adequate kidney function throughout the  
9 rest of his life?

10                  A     There's no good data to answer that  
11 question. If he were 60 years old, I could give a  
12 definitive answer.

13                  Q     And that would be what?

14                  A     Yes, he would maintain adequate kidney  
15 function.

16                  Q     I guess what you're telling us is the  
17 longer period of time he lives with the disease, the  
18 more chance there is that he might at some time  
19 develop inadequate kidney function?

20                  A     No.

21                  Q     Then what does age have to do with it?

22                  A     The data that are available for these

1 patients typically will follow them out 20 to 25 years  
2 from treatment. We have no data on patients longer  
3 than that. Therefore I can't answer you how someone  
4 would do greater than 20 years out from treatment.

5 But presumably in someone who is 65 at the  
6 time of treatment, I know where he's going to be 20  
7 years from now.

8 Q Would you agree that Mr. Ponirakis had  
9 unusual symptoms?

10 A When?

11 Q Well, during the time period prior to your  
12 treating him.

13 A Define "unusual."

14 Q Didn't you say that at the time of your  
15 deposition, sir? I will be glad to show you the  
16 reference. I thought I was using your term.

17 Page 21 of your deposition. I'll read up  
18 a couple lines before.

19 Question: Did it involve the heart in  
20 your opinion?

21 Answer: I don't know. I'm not a  
22 cardiologist.

1                   Next question -- and it was interrupted by  
2 your answer so it may sound funny.

3                   Do you see? Then you interrupted with an  
4 answer:

5                   "He certainly had some unusual symptoms.  
6 It may have. I can't say."

7                   Page 21, line 13.

8                   THE COURT: Can you show him the context,  
9 please?

10                  MR. ALTMAN: Sure. I will be glad to.

11                  BY MR. ALTMAN:

12                  Q     Would you like to see the language? I  
13 thought I was using your words.

14                  MR. MALONE: The timeframe?

15                  THE COURT: Well, if there's no objection,  
16 give the deposition transcript to the doctor and he  
17 can take a look at what he needs to take a look at and  
18 let us know if he can answer question.

19                  BY MR. ALTMAN:

20                  Q     It's page 21, so if you need to go back  
21 farther --

22                  A.     This wasn't so long ago. I actually

1 remember this reasonably well. The "unusual symptoms"  
2 described symptoms that may have been attributed to  
3 heart disease or heart difficulties.

4 Q When we're talking about heart disease or  
5 heart difficulties, these were some of the symptoms  
6 that he had; right?

7 A "These" being?

8 Q The heart problems that you just  
9 referenced.

10 A I was able to review some of the records  
11 from that time and what was described was chest pain.  
12 The patient claimed to have chest pain at that time  
13 and that is an unusual symptom for a 21-year-old.

14 Q Well, is that not an unusual symptom for  
15 anyone with lupus?

16 A Well, you're looking at two different  
17 populations here. A patient who has lupus may well  
18 have a number of thoracic involvements. They can have  
19 lung involvement, they can have heart involvement and  
20 may have some symptoms of chest pain from either one.

21 Q Would you agree with me that Mr.  
22 Ponirakis' lupus is very severe and unrelenting?

1           A       When?

2           Q       Now.

3           A       Yes.

4           Q       Would you agree with me that he's very  
5 unusual because his disease now is so severe and  
6 unrelenting?

7           A       In terms of lupus patients, yes. Again, I  
8 would have to qualify that. With not knowing exactly  
9 why he developed the TPP, if it was secondary to some  
10 of his medications, TPP can be an unrelenting disease  
11 regardless of the source.

12          Q       And again, you would rely upon a  
13 rheumatologist to give testimony or you would rely  
14 upon the opinion of a rheumatologist as to whether or  
15 not the TPP was related to the lupus or the treatment?

16          A       I would consult a hematologist and in fact  
17 I have spoken at length with a hematologist and they  
18 don't have a good answer.

19          Q       So I take it you aren't in a position to  
20 state one way or the other whether or not the TPP and  
21 other problems that he is having would have been  
22 lessened by earlier treatment?

1           A     If they're -- again, I have to back up.  
2     If they're related to the medications that he received  
3     at the time of transplant, he likely would not have  
4     had the transplant and that would have obviated that.

5           The other would be -- and, again, I would  
6     have it base this on my experience working with the  
7     rheumatologist who is treating the extra-renal  
8     manifestations of lupus, they will use essentially the  
9     same treatment protocol: Monthly intravenous infusion  
10    of Cytosan to treat their patient.

11           Would the lupus have relented? We'll  
12    never know.

13           Q     I take it you would defer to the opinion  
14    of a rheumatologist on that point as well?

15           A     Definitely.

16           Q     You have talked a lot about the standard  
17    treatment to lupus nephritis. Am I correct that the  
18    standard treatment is a combination of steroids and  
19    Cytosan for six months, followed by maintenance  
20    treatment for another 18 months?

21           A     No.

22           Q     What is the standard treatment?

1           A     You're correct about the Cytosan. The  
2     steroids are typically given for the extra-renal  
3     manifestations.

4           Q     So let me go back. As far as the Cytosan,  
5     one of the drugs that you would use to treat lupus  
6     nephritis, that's given for six months; right?

7           A     Monthly for six months.

8           Q     And then for an 18-month period of time  
9     after that he gets a maintenance dose, given less  
10    frequently; is that correct?

11          A     Yes. Assuming that he's stabilized and  
12    shows improvement. I have treated patients who did  
13    not respond in the initial six months and they  
14    continued on the monthly treatment until we reassessed  
15    and adapted.

16          Q     Are you in a position to tell us what a  
17    lupus flare is?

18          A     I believe so.

19          Q     If you would.

20          A     I think that's relatively generic. Lupus  
21    is a disease that may wax and wane. By that I mean  
22    when the body's immune system flares up. I would

1 compare it to somebody who has flares of arthritis:  
 2 Some days it doesn't bother them at all and some days  
 3 they can't get out of bed.

4 Some days the lupus flare would be  
 5 associated with high fevers, etc.

6 THE COURT: How much longer on  
 7 cross-examination?

8 MR. ALTMAN: This is my final question  
 9 coming up right now.

10 BY MR. ALTMAN:

11 Q Doctor, would you agree with me, sir, that  
 12 just considering Mr. Ponirakis' lupus that this is one  
 13 of the worst cases that you have ever seen?

14 A I would.

15 Q I have nothing further.

16 MR. MALONE: Just to clarify one thing.

17 THE COURT: Before you get started --

18 MR. MALONE: Just one.

19 THE COURT: One or two questions before we  
 20 take the recess. Go ahead.

21 REDIRECT EXAMINATION

22 BY MR. MALONE:



1           Q     Just to clarify one thing. On the earlier  
2 treatment of lupus you mentioned a 60-80 percent  
3 probability of saving his kidneys and Mr. Altman was  
4 asking you about how long it would have lasted and you  
5 said we have statistics for 20 years.

6                     The question then is, how long is it your  
7 opinion you could have preserved his kidney function  
8 without dialysis, without transplant, if you had  
9 gotten to him six or seven months earlier?

10           A     Yes.

11           Q     I mean, how long though in terms of  
12 statistics?

13           A     At least 25 years.

14           Q     Okay. Thank you.

15                     MR. MALONE: That's all I have.

16                     THE COURT: Is Dr. Mahoney free to go?

17                     MR. MALONE: Yes, sir.

18                     THE COURT: Thank you very much. You're  
19 free to go.

20                     We'll take the afternoon recess for 15  
21 minutes. Do not discuss the case.

22                     (Whereupon, a recess was taken.)

\* \* \*

\* \* \*

1           Q     And have you written book chapters about  
2 lupus?

3           A     Yes, I have. I have written several book  
4 chapters in different medical textbooks, including one  
5 called "Lupus."

6           Q     Have you expertise in aspects of lupus  
7 besides just the kidney aspect of lupus?

8           A     Yes. I have participated in a variety of  
9 studies, both clinical studies and basic studies,  
10 including examination of the mechanisms by which lupus  
11 can occur in patients looking at managed models of  
12 lupus.

13          Q     Are you just a scientist or are you  
14 involved in patient care?

15          A.    I'm directly involved in patient care in  
16 that I review biopsied material from patients with  
17 kidney disease and other diseases as well.

18          Q     In fact, you first got involved in this  
19 case because you reviewed the colon microscopically  
20 back in July '97?

21          A     That's correct. I received from the  
22 Alexandria Hospital a specimen for examination by

1 electron microscopy through a biopsy that had been  
2 performed.

3 Q What is the relationship between you and  
4 Alexandria Hospital?

5 A Well, most community hospitals do not have  
6 facilities to do electron microscopy. All kidney  
7 biopsies must be asked with an ordinary microscope to  
8 analyze whether antibodies are deposited in the  
9 tissues, and by electron microscopy we are able to  
10 assess the very fine structural changes which occur in  
11 kidney disease, and Alexandria Hospital has routinely  
12 sent me all of their kidney biopsies for examination  
13 by electron microscopy.

14 Q So you got his kidney biopsy in July '97  
15 as just part of the ordinary course?

16 A That's correct.

17 Q And do you get referrals from other  
18 hospitals around the country to look at specimens of  
19 lupus patients?

20 A Yes, I do. I receive biopsies from most  
21 of the hospitals in the State of Connecticut, the  
22 State of Massachusetts, some from the State of New

1 York and as far away as Nairobi, Kenya.

2 Q Okay. Are you part of team that works  
3 with patients with lupus at Yale?

4 A Yes, indeed I am. I'm an integral part of  
5 team, both in the nephrology group and in the  
6 rheumatology group, who see patients with lupus  
7 because I'm in charge of both looking at the tissues  
8 they have and also involved in some aspects of the  
9 chemical diagnosis of lupus.

10 Q You actually see the patients in person?  
11 I know you see tissues; you see them under the  
12 microscope. But do you see their face?

13 A Only very rarely. I normally do not have  
14 direct patient contact. But if the patient asks for  
15 additional information, for additional education, I do  
16 see them.

17 Q You do work directly with the patients'  
18 doctors?

19 A I work directly with the patients'  
20 doctors.

21 MR. MALONE: I offer Dr. Kashgarian to the  
22 Court as an expert in lupus, also in lupus nephritis.

1 THE COURT: Any objection?

2 MR. ALTMAN: I would like to voir dire, if  
3 I may.

4 THE COURT: You may.

5 VOIR DIRE EXAMINATION

6 BY MR. ALTMAN:

7 Q Doctor, you told the ladies and gentlemen  
8 that you have written some articles other lupus; is  
9 that correct?

10 A. That's correct.

11 Q Haven't more of them been on lupus  
12 nephritis?

13 A Yes, most of them have been on lupus  
14 nephritis.

15 Q In fact, so the ladies and gentlemen have  
16 an understanding, your role as a pathologist for the  
17 most part is to examine tissue, whether it's the  
18 entire body during an autopsy or individual pieces of  
19 tissue?

20 A Yes. And also to -- as I mentioned  
21 earlier, I'm director of a lab. It's a specialty lab  
22 at Yale University of Medicine, so I'm responsible for

1 the maintenance of those laboratory accreditations,  
2 etc.

3 I also mentioned that I'm director of a  
4 lab which specializes in the serological diagnosis of  
5 lupus and lyme disease.

6 Q Okay. But all of the medical functions  
7 you have mentioned -- I know you've got some  
8 administrative functions -- but the functions that you  
9 have mentioned all have to do with either pathology or  
10 pathology of kidneys; am I correct?

11 A. That's correct.

12 Q And in fact, that's your area of  
13 specialization, is pathology, general heading, and  
14 then your subspecialty is really pathology of the  
15 kidney?

16 A Correct.

17 Q If, in fact, a patient had, for instance,  
18 TTP as a result of lupus, that would not necessarily  
19 be something that you would get involved.

20 A Yes, it would be.

21 Q How is that?

22 A It's likely that the TTP is a generalized

1 systemic disease which is the result of an abnormality  
2 that occurs within the coagulation mechanism so that  
3 some of the chemicals which are responsible to  
4 initiate blood clotting or becoming aggravated and  
5 remain very active and so blood clotting occurs in all  
6 the tissues of the body. I would be involved if  
7 biopsy material were done; for example, kin can be  
8 skin biopsy where TTP would be involved.

9 I would be involved if a kidney biopsy  
10 were done, because the kidney is frequently involved  
11 in TTP and often the diagnosis is made because of  
12 kidney involvement in TTP.

13 And I would be indirectly involved or  
14 might be directly involved in the analysis of the  
15 results of tests which have been done on that patient  
16 to analyze whether or not they have changes in the  
17 blood which precipitate TTP.

18 Q All of those involvements would be in the  
19 form of pathological involvement?

20 A. They're consultations to the physicians  
21 who are directly in care of the patients.

22 Q Go ahead, sir.

1           A       So if a physician who was taking care of a  
2 patient has a question about interpreting test results  
3 of tests or interpreting tests results of my  
4 examination of tissues, they would consult with me.

5           Q       And if a physician, let's say a  
6 rheumatologist, doesn't have a question about a  
7 patient that he's treating for lupus, then he would  
8 not discuss it with you?

9           A       No. If he has no question about the  
10 treatment of lupus that he's seeing, if he's certain  
11 of it and all the tests fit into a particular pattern,  
12 he would not necessarily call me.

13          Q       And in fact, would you agree with me, sir,  
14 that rheumatologists are primarily involved in the  
15 direct patient care of patients with lupus and some of  
16 its complications?

17          A       Rheumatologists are only one of the  
18 specialists involved in the care of patients with  
19 lupus. Lupus is a disease which affects many many  
20 different organ systems. Rheumatologists are involved  
21 primarily when it involves a joint and they come to  
22 the physician because they have joint problems.



1           If they have problem involving other organ  
2 systems, they might see other specialists. The two  
3 organ systems which are more frequently involved by  
4 lupus other than the joints are the kidney and the  
5 brain. And so the kidney doctor, the nephrologist, is  
6 almost as frequently involved in the treatment of the  
7 patient as a rheumatologist.

8           Q     But they're only involved in treatment of  
9 kidney problems; right?

10          A     When the patient has systemic lupus  
11 involving the kidneys, they also have involvement of  
12 other organ systems, and since the kidney is the one  
13 which is at greatest risk, they usually take charge of  
14 the entire management of that patient.

15          Q     Doctor, you're not answering my question.

16          A     A nephrologist is a kidney specialist.

17          Q     A kidney specialist is going to primarily  
18 be involved in the renal aspects of a patient's kidney  
19 disease?

20          A     Yes and no. What I'm trying to say is  
21 that lupus is a systemic disease that involves  
22 multiple organ systems. If it's involving the

1 kidneys, the nephrologist sees that patient, and if  
2 the nephrologist sees that patient, he then takes the  
3 responsibility for the management of that patient and  
4 therefore the management of lupus.

5 MR. ALTMAN: I have no further questions.

6 I would object to his expertise in the  
7 field of lupus. Lupus nephritis is a different  
8 subject.

9 THE COURT: Hasn't he testified to matters  
10 that would qualify him under 8.01-401.3?

11 MR. ALTMAN: I don't believe he has, sir.

12 THE COURT: Do you want to respond?

13 MR. MALONE: He's certainly testified that  
14 he's an expert in all aspects of lupus, including  
15 lupus nephritis. That's how I heard his testimony.

16 THE COURT: Well, the fact that he may  
17 have claimed that he is is not a sufficient basis  
18 under Virginia law.

19 The Court finds that there has been  
20 sufficient testimony that he has knowledge above the  
21 knowledge of a typical person and it may assist the  
22 jury and therefore under 8.01-401.3 of the Virginia

1 Code, I will allow him to testify as an expert in the  
2 field of lupus -- and nephrology? Or just lupus?

3 MR. MALONE: Lupus and lupus nephritis.

4 THE COURT: He will be received as an  
5 expert in those field.

6 Again, the credibility of his testimony  
7 will be determined by the eight of you.

8 You may proceed.

9 BY MR. MALONE:

10 Q Just very quickly, I gave the court  
11 reporter a copy of the curriculum vitae. 68C.

12 Does that include a whole bunch of your  
13 credentials and articles, book chapters and stuff like  
14 that that we haven't discussed?

15 A Yes, it does.

16 MR. MALONE: I'll offer that into  
17 evidence.

18 THE COURT: What is the number again?

19 MR. MALONE: 68C.

20 MR. ALTMAN: No objection.

21 THE COURT: It's received in evidence.

22 (The Kashgarian curriculum vitae,

1                   previously marked as Plaintiff's  
2                   Exhibit No. 68C for identification,  
3                   was received in evidence.)

4           THE COURT: You may proceed.

5           BY MR. MALONE:

6           Q     If I could, I would like to pick up on a  
7 point that was just made by opposing counsel.

8                   When you said that lupus will frequently  
9 hit the kidneys primarily, why is that?

10          A     The kidneys are an organ which is  
11 particularly susceptible to systemic diseases. Reason  
12 is that the kidneys receive 25 percent of our blood  
13 flow, 25 percent of our flood flow every minute. Our  
14 heart pumps out approximately four liters a minute or  
15 a gallon a minute of blood.

16                   Twenty-five percent of that, or one liter,  
17 goes to the kidneys. Another 25 percent goes to the  
18 brain. The other 50 percent goes to the rest of the  
19 body to do everything else.

20                   But the kidneys and the brain receive half  
21 of the blood flow. The brain receives 25 percent of  
22 the blood flow because it requires constant

1   nourishment and constant energy for all the activity  
2   that the brain is responsible for.

3               The kidneys receive 25 percent of blood  
4   flow because the kidneys are responsible for  
5   maintaining the internal characteristics of our blood,  
6   making sure that the amount of salt and water within  
7   our body is maintained within very, very narrow limits  
8   and it does so by two processes. One is it does it by  
9   filtering that blood and then processing that  
10   filtrate, so that what happens is the kidneys have a  
11   very large responsibility, therefore they have this  
12   one liter a minute of blood.

13              Of that, 40 percent is red blood cells, so  
14   it's getting 600 ccs of fluid or plasma.

15              The filters that are present in the kidney  
16   -- and I should back up a little bit and say that the  
17   kidney is not a single organ but actually a collection  
18   of little organs called nephrons, and each kidney has  
19   approximately one million of those nephrons.

20              Q     Let's illustrate that a little bit as  
21   you're going along. I want to show first a general  
22   view of the kidneys.

1 THE COURT: Excuse me. There was an  
2 objection to this. Take it off the screen for a  
3 minute, please.

4 May we approach.

5 (Whereupon, there was a bench conference  
6 held without hearing of the jury.)

7 THE COURT: The objection is overruled.  
8 You may proceed. Go ahead, sir.

9 BY MR. MALONE:

10 Q As I was starting to say, let's just do a  
11 very quick anatomy lesson for us, please.

12 Is this a cut-away section of a normal  
13 kidney, Dr. Kashgarian?

14 A Yes. We have two bean-shaped organs in  
15 our back.

16 MR. ALTMAN: Objection. Non-responsive to  
17 the question, Your Honor.

18 A Yes. This is a cut-away of the normal  
19 kidney.

20 BY MR. MALONE:

21 Q And explain what is the relevant anatomy  
22 here.

1           A       Very quickly, the relevant anatomy is that  
2 you see that there's a large blood vessel which is  
3 present which is divided into very, very many smaller  
4 blood vessels as it goes to the outside of the kidney,  
5 called the "cortex" of the kidney.

6           Q       That's all of this in here?

7           A       Yes. Outside.

8           Q       And then you mentioned that the kidney is  
9 formed of approximately how many --

10          A       There are approximately one million of  
11 these individual nephrons.

12          Q       What are the components of a nephron?

13          A       The components of the nephron are  
14 filtering units which are called a glomerulus and the  
15 glomerulus is a specialized blood vessel which is  
16 restricted to filtering the blood and it's a round --  
17 on this illustration it's the round ball-shaped  
18 structure in the middle one.

19          Q       I'm showing you now 51C. You're talking  
20 about this squiggley --

21          A       No. The round ball-shaped thing in  
22 between the orange and the green.

1           Q     Let me zoom in on that a little bit.  
2     Where we see the blood vessel coming in.

3           A.     That's where the filtering occurs. So  
4     that's where urine is first formed, and, as I said, we  
5     have one million in each kidney so we have two million  
6     in normal individuals, two million of these individual  
7     nephrons.

8                     The filtration process that occurs is one  
9     in which the red blood cells are kept within the blood  
10    stream and the serum protein, the plasma, is the only  
11    part which is filtered so that what comes out on the  
12    other side is a solution of salt water and waste  
13    material. That solution of salt water and waste  
14    material is then filtered into the tubes that are  
15    illustrated here in the blue and the orange for  
16    processing.

17           Q     The ones that start out kind of squiggley?

18           A     That's correct.

19           Q     Okay.

20           A     So that the urine, which is the primary  
21    urine which is formed, is just a solution of salt and  
22    water and contains no protein in it.



1           What happens, as it goes through this  
2 squiggley area and then down through that sort of gray  
3 tube is complicated set of processes where salt and  
4 water are reabsorbed back into our body and if we  
5 could not do that -- the amount which is filtered is  
6 about 170 liters a day and we only urinate about a  
7 liter-and-a-half so a great deal of processing  
8 concentration goes on during the passage of that  
9 primary urine through that tubular system.

10           What happens in --.   So one of the  
11 reasons that the kidney is particularly susceptible is  
12 that we have this filtration unit, this nephron, which  
13 is seeing this very large amount of fluid.

14           In lupus, the primary problem in lupus is  
15 that there's a renegade immuno response, a renegade  
16 response to allergy, if you will.

17           Normally, for example, when we talk about  
18 immunity, if we give you a vaccine, what happens to  
19 you is that your immune system white blood cells,  
20 called T cells and B cells, produce antibodies and  
21 those antibodies are directed against the product of  
22 that vaccine.

1           What happens in lupus is that our -- the  
2 immune system of a patient with lupus is disturbed and  
3 it now recognizes proteins which belong to that  
4 patient as being foreign so that the immune system  
5 creates antibodies for the individual's own proteins  
6 and so that's called autoimmune.

7           Since those proteins exist that we have  
8 those proteins floating around in our body, if we have  
9 antibodies directed against those proteins, what  
10 happens is the antibody will link up and form what we  
11 call an antigen-antibody complex. Those complexes  
12 circulate throughout the body and they circulate into  
13 all the blood vessels in the body.

14           These complexes are large, larger than  
15 ordinary serum protein, and so under certain  
16 circumstances they can clog that filter and stay in  
17 the glomerulus. If they clog that filter and stay in  
18 the glomerulus, what happens is that they initiate a  
19 series of events by interacting with other components  
20 of our plasma protein to attract inflammatory cells,  
21 white blood cells, to the site and called causes  
22 inflammation within that glomerulus.

1                   So the reason the kidney is so susceptible  
2 to lupus is that it receives so much of the blood  
3 every minute, that if there are circulating  
4 antigen-antibody complexes secondary to this  
5 autoimmune response, then it's going to be a primary  
6 target where these antigen-antibody complexes sit and  
7 it's going to be a primary target for inflammation at  
8 that site.

9                   Q       Now, has your group at Yale studied and  
10 written about this process by which will lupus lodges  
11 in the -- the immune complex lodges in the glomerulus  
12 and causes inflammation?

13                   MR. ALTMAN: Objection as to relevance,  
14 Your Honor. He's already been qualified.

15                   THE COURT: I overrule the objection

16                   A       Yes. Actually in many of my papers that I  
17 have written about lupus I go through the logistics,  
18 as I call it, the relationship of the amount of  
19 antigen/antibody that's formed and the severity, the  
20 kind of lupus, that can affect the kidney, yes.

21                   Q       Now, how can treatment with drugs, if it's  
22 rendered in a timely way, help a patient who has lupus

1 nephritis?

2           A       Well, obviously what I just went through  
3 is I said that this was a renegade autoimmune  
4 response, it was a renegade response of our immune  
5 system against our own protein. It's immunity against  
6 ourselves. Lupus is one of many autoimmune diseases.

7                   But there are two ways in which a  
8 physician can modify that autoimmune response and  
9 prevent it from causing damage to tissues, whether it  
10 be the kidney, the lungs, the liver, the brain.

11                   One is to directly attack the inflammation  
12 itself. As I stated, we got antigen-antibody  
13 complexes lodged in the blood vessel and that it  
14 attract the components which initiate the attraction  
15 of leukocytes which then causes what we call  
16 inflammation. If we can reduce that, they would then  
17 be able to reduce at least sort of the end stage of  
18 the process.

19                   And so one of the drugs that we have in  
20 our armamentarium as physicians are corticosteroids --  
21 steroids, cortisone -- and we know that cortisone is  
22 given for a lot of inflammatory diseases. If you have

1 arthritis, you get cortisone. You get cortisone for  
2 inflammation if you have sinusitis. You get cortisone  
3 if you have asthma.

4           So cortisone reduces inflammation but it  
5 does not directly affect the other aspects of what I  
6 told you is important to lupus and that is the  
7 renegade autoimmune response, the fact that the T  
8 cells and B cells are making -- or are working to make  
9 antibodies which are directed against your own  
10 proteins.

11           So the only other way to do that is by  
12 trying to modify that immune response by modifying --  
13 by attacking those cells which are producing the  
14 antibody. Since when someone has an acute episode of  
15 lupus those cells are making more antibodies than  
16 other cells are, they're making too much, and  
17 therefore we get all of these immune complexes and  
18 they're going and replicating at a much more rapid  
19 rate than are other immune cells so they're sort of  
20 like cancer cells. Cancer cells replicate too  
21 rapidly; they continue to reproduce.

22           So the other thing that we can do to alter

1 that is to use an anti-cancer drug Cytosan, drug which  
2 will kill off cells.

3 Now, obviously I don't want to kill off  
4 all of your cells so you give a sufficient dosage to  
5 kill off those cells which are replicating too rapidly  
6 and not so much as to effect the other cells in your  
7 body which are also replicating but at a lower rate.

8 So that the two methods by which we can  
9 treat a patient with lupus is by giving steroids to  
10 reduce inflammation and by giving cytotoxic drugs like  
11 Cytosan to inhibit the proliferation of those cells  
12 which are making these renegade antibodies.

13 Q And the Cytosan inhibits the cells that  
14 make the immune complexes?

15 A Yes, and make the antibodies.

16 Q How long has this been the standard  
17 treatment for lupus?

18 A These two -- well, various forms of the  
19 combination of treatment with steroids and cytotoxic  
20 drugs have been going on for over 30 years.

21 Q And have doctors, including in your shop,  
22 followed patients closely over time to see how they

1 have done with that?

2 MR. ALTMAN: Objection to the leading  
3 nature of the question.

4 THE COURT: Sustained.

5 BY MR. MALONE:

6 Q What have you done by way of following up  
7 with patient?

8 A Actually a little over 30 years ago one of  
9 the nephrologists who I worked closely with at that  
10 time in the laboratory and basic science laboratory  
11 was very interested in patients with lupus because we  
12 were seeing these patients with lupus come in, and  
13 with the existing treatment at that time --

14 MR. ALTMAN: Objection. It's not  
15 relevant, Your Honor, and it's not responsive to the  
16 question.

17 THE COURT: I sustain the objection.  
18 Listen to and answer only the specific questions that  
19 the attorney poses.

20 THE WITNESS: Okay. I was trying to do  
21 that but I guess I was going about it in a round-about  
22 way.

1                   Well, a number of years ago we began to  
2   use cytotoxic drugs at our institution to treat these  
3   patients with lupus and therefore over the last 30-odd  
4   years we have been a center where patients with lupus  
5   have been referred to for treatment with cytotoxic  
6   drugs, particularly if they have lupus nephritis, and  
7   as a result we have studied those patients over this  
8   period of time.

9                   BY MR. MALONE:

10                  Q     Before the development of this type of  
11   treatment, was lupus considered a fatal disease?

12                  A     It was. Generally-speaking, patients who  
13   had lupus with involvement of either the kidneys or  
14   the brain would have been dead within one year.

15                  Q     What was it that typically would kill a  
16   patient with lupus?

17                  A     Kidney disease.

18                  Q     You studied Sotiri Ponirakis' medical  
19   records at my request after I contacted you after you  
20   had done the electron microscopy; is that correct?

21                  A     That's correct.

22                  Q     Do you have an opinion within reasonable



1 medical probability about how much he would have  
2 benefitted from having his lupus caught in either  
3 December 1996 or January of 1997?

4 A. I do.

5 Q What is your opinion?

6 A My opinion is that he would not have gone  
7 on to end-stage renal failure and would not have  
8 required transplantation and would not have suffered  
9 from any of the complications that he has suffered up  
10 to now.

11 Q And what is basis of your opinion?

12 A The basis of my opinion is based on my  
13 experience in following patients with lupus over the  
14 past 30 years in terms of looking at the response that  
15 these patients have had in response to this type of  
16 therapy and analyzing what their long-term and  
17 short-term prognosis was and the fact that if the  
18 lupus had been controlled and the kidney disease had  
19 been controlled, he would not have gone on to renal  
20 failure and he would not have reached any of the  
21 complications that he has had since.

22 Q What are the statistical odds, if he had

1   been treated in December 1996 or January 1997, of  
2   being able to preserve kidney function so that he  
3   would not have needed dialysis or needed a kidney  
4   transplant?

5                   MR. ALTMAN:  Objection as to the form of  
6   the question.

7                   THE COURT:  I sustain the objection.

8                   BY MR. MALONE:

9                   Q     Well, what were the factors in his favor  
10   in December 1996/January 1997 that form the basis of  
11   your opinion that he would have preserved kidney  
12   function?

13                   MR. ALTMAN:  Objection as to form of that  
14   question.

15                   THE COURT:  I overrule that question  
16   because he has opined to a reasonable degree of  
17   medical certainty and he has stated a basis to support  
18   that opinion.  So I overrule the objection.

19                   A     Well, in December and January of that year  
20   his creatinine, which is a measure of the ability of  
21   the kidney to filter, was 1.9 and in December 2.1, so  
22   that his creatinine was in a favorable range for

1 somebody who is going to be treated for lupus and who  
2 is going to have a good response.

3 Other factors which would suggest that he  
4 would have had good response is the fact that he did  
5 not have high blood pressure at the time. He had  
6 normal blood pressure. Another factor --

7 BY MR. MALONE:

8 Q I want to write down --

9 A. Another factor which would be --

10 Q Wait a minute. Wait a minute.

11 A Okay.

12 Q Favorable factors. You mentioned  
13 creatinine in the 1.9 and the 2.1 range, and then you  
14 say he had no high blood pressure.

15 Why was the lack of high blood pressure  
16 something that favored Sotiri back at that time?

17 A When we analyzed our patients that we had  
18 looked at from when we began treatment with cytotoxic  
19 drugs until such time as we were able to collect them,  
20 we looked at those risk factors which were favorable  
21 and those risk factors which were unfavorable. In  
22 addition, not only our group but many groups, both in

1 this country, including the group at the National  
2 Institutes of Health, including a group at Columbia  
3 University, including a group at Chicago and including  
4 a group in Italy, Germany and Great Britain, all have  
5 looked at those factors which would give -- which  
6 would predict a group prognosis, and on the basis of  
7 our own studies and these other studies --

8 MR. ALTMAN: Objection to the hearsay  
9 nature of the Doctor's answer, Your Honor.

10 THE COURT: I overrule that objection.  
11 Doctor, you can't tell us what the results of those  
12 studies were. Under 8.01-401.1 and in McMunn versus  
13 Tatum, you can set out the basis for your own opinion,  
14 if that's where you're going.

15 A. My own opinion is based on my own  
16 experience and my own study of patients with lupus  
17 over these past 30 years and we have identified those  
18 factors which would be favorable, which would predict  
19 a favorable response, and those factors which would  
20 predict a not very favorable response. And so on the  
21 basis of our experience and my analysis of our  
22 patients, our own patients that we have seen, I would

1 have predicted that he would have had good response.

2 BY MR. MALONE:

3 Q Other factors besides his creatinine level  
4 and the fact that he did not have high blood pressure  
5 were what?

6 A Yes. We know he had normal platelet count  
7 at that time. And so these are all factors which  
8 would --.

9 And the other major factor is his race.  
10 He's of the white race and one of -- at least in this  
11 country, one of the major negative factors is  
12 individuals that are of African-American descent tend  
13 to have a much poorer prognosis with lupus and with  
14 other kidney diseases as well.

15 Q Is that a genetic thing or a clinical  
16 thing?

17 A. That's probably a generic thing, because  
18 correcting for socioeconomic problems, there's still a  
19 different increase in risk and prognosis in  
20 African-Americans as compared to Caucasians.

21 Q What is your familiarity with the other  
22 complications that Sotiri has suffered since July

1 1997. Did you get a chance to look at his medical  
2 records?

3 A Yes, I did.

4 Q You saw that he had developed a condition  
5 called TTP?

6 A Yes, I did.

7 Q I think you testified earlier to Mr.  
8 Altman that you're quite familiar with TTP. Tell us  
9 how TTP has affected Sotiri.

10 A. The TTP has affected Sotiri by causing  
11 damage to his bowel, which has required numerous  
12 resection of his bowel. So right now, from what I can  
13 gather reading his record, he only has a very small  
14 amount of bowel to function for absorption of  
15 nutrients and so he's really at a very critical stage  
16 at the moment.

17 Q Why is it your opinion that -- I think I  
18 said all of his complications. Are you including TTP  
19 in that?

20 A Yes.

21 Q Why is it your opinion that the TTP could  
22 likely have been avoided with earlier treatment?

1           A       TTP is a very, very rare complication that  
2 is sometimes seen with lupus. Thrombotic  
3 complications or thrombosis occurs in patients with  
4 lupus but it's usually due to an antibody that we call  
5 lupus anticoagulation. So TTP is a rare occurrence.

6                   But if we had controlled his lupus, we  
7 would not have expected any kind of complications from  
8 his lupus.

9                   Because he ended up in end-stage renal  
10 disease, he had to undergo a number of things. First  
11 of all, his kidney transplantation and exposure to  
12 drugs necessary to inhibit the immune response to that  
13 transplanted kidney and one of those drugs, which is  
14 called Cyclosporin, can damage the lining of our blood  
15 vessels, the endothelium, and is a known cause of  
16 coagulation in patients who have received that. So  
17 that his endothelium may have been damaged by that  
18 drug as well, even though he was taken off that drug  
19 when the kidney transplant was removed, because his  
20 lupus would have been controlled had he been treated  
21 properly.

22                   MR. ALTMAN: Objection, Your Honor. May we

1 approach, sir?

2 THE COURT: Yes.

3 (Whereupon, there was a bench conference  
4 held without the hearing of the jury.)

5 THE COURT: Ladies and gentlemen, strike  
6 that portion of Dr. Kashgarian's testimony which is  
7 basically the last sentence which said his lupus would  
8 have been controlled had he been treated properly.  
9 Basically the attorneys agree that Dr. Kashgarian is  
10 not a standard of care expert in this case as to  
11 whether or not there was or was not negligence in the  
12 treatment of the plaintiff and that's my ruling.

13 Ask your next question.

14 BY MR. MALONE:

15 Q I want to just focus on the issue of the  
16 timeliness of treatment. Had he gotten the timely  
17 treatment in January '96 and December '97 -- I think  
18 you were just completing your answer.

19 A I was just trying to summarize. Perhaps I  
20 overextended myself, Your Honor. I'm sorry.

21 If he had been treated and his lupus had  
22 been under control, he would not, in my opinion, have



1 developed renal insufficiency and end-stage kidney  
2 disease and he would not have had sufficient activity  
3 of his lupus to suffer any of the complications that  
4 would occur as a result of that and he would not have  
5 had to experience the treatment necessary for the  
6 maintenance of a transplant using these drugs which  
7 could have injured his vasculature.

8 Q That's all I have. Thank you.

9 THE COURT: You may cross-examine, Mr.  
10 Altman.

11 CROSS-EXAMINATION

12 BY MR. ALTMAN:

13 Q Dr. Kashgarian, he had systemic lupus; you  
14 would agree with that?

15 A Yes, he did.

16 Q He had systemic lupus long before he ever  
17 came to Dr. Choi, didn't he?

18 A Yes.

19 Q You would agree with me that back in 1994  
20 when he had those abnormal urine studies he had a  
21 fairly advanced case of lupus affecting the kidney?

22 A I would not agree with your statement that

1 he had a fairly advanced case.

2 Q I didn't say it was permanent, but that  
3 was a fairly significant case of lupus affecting his  
4 kidneys?

5 A There was evidence that lupus was  
6 affecting his kidneys.

7 Q You would agree with me that  $\pm$  blood and  
8 protein is a fairly significant finding in somebody's  
9 urinalysis.

10 A. It is.

11 Q And you would agree with me that  
12 retrospectively you can say that was part of his  
13 lupus?

14 A Yes.

15 Q It sounds like as you were going over the  
16 anatomy with the ladies and gentlemen as you described  
17 the filtration system -- it seemed to me that you were  
18 saying that lupus is within the blood and is carried  
19 to the kidneys and because of the kidneys' job as  
20 filtering, the lupus tends to stay there.

21 A It stays there, yes.

22 Q But I take it you're also saying that it

1 is in the body in other places and is carried through  
2 the blood to the kidneys?

3 A Its everywhere throughout the body.

4 Q Now, it's my understanding that it's your  
5 opinion that the problems he has had with his colon  
6 are somehow related to the delay in treatment?

7 A Yes, that's correct.

8 Q And the basis for that is that you believe  
9 he would have been given strong drugs at the time of  
10 the transplant that might have caused a problem in the  
11 colon.

12 A Not in the colon, no. It would have  
13 caused a problem in his blood vessels.

14 Q And how would that problem have been  
15 manifested?

16 A Cyclosporin, which is one of the drugs  
17 which is used in the management of transplants,  
18 activates the lining of the blood vessels all over the  
19 body and that's what we call the endothelium.

20 The endothelial lining, when it's  
21 activated, activates a number of enzymes and those  
22 enzymes do two things: They can activate coagulation

1 or they can activate inflammation.

2 With Cyclosporin, the activation of those  
3 enzymes can sometimes cause coagulation.

4 If you are asking about TTP -- I assume  
5 that's what you're asking about.

6 Q I thought I asked a different question and  
7 I don't even know what your answer is going to now.

8 A. You asked me about --

9 Q How does the manifestation of the  
10 treatment manifest itself in the colon?

11 A The manifestation of the treatment is that  
12 it injures the endothelium all over the body and it  
13 promotes blood coagulation, and the blood coagulation  
14 occurs in the small vessels of the colon and the colon  
15 doesn't have enough nutrients and it will cause the  
16 death of that colon.

17 Q So it is your understanding -- let's make  
18 sure the ladies and gentlemen understand this.

19 Because of the medications that were  
20 given, it's your testimony that essentially he  
21 developed coagulation in his blood vessels; is that  
22 correct?

1           A.     That's what TTP is, yes.

2           Q     And coagulation would then cause a  
3 decrease in the ability of the blood to flow through  
4 the vessels; right?

5           A     Through small vessels; correct.

6           Q     And therefore he would develop ischemic or  
7 areas of his bowel that would not get enough blood  
8 supply?

9           A     That's right.

10          Q     If you don't get enough blood supply, then  
11 you don't get enough oxygen that's carried through the  
12 blood.

13          A.     That's right.

14          Q     And it's your opinion that this gentleman  
15 suffered an ischemic insult on his bowel, a lack of  
16 blood supply and oxygen to the bowel?

17          A     That's right.

18          Q     Okay. And is it your opinion, sir, that  
19 that's what medical records say in this case?

20          A     It says that he has ischemic bowel, yes.

21          Q     Is it your opinion that that's how the  
22 ischemic bowel developed?

1           A.     The ischemic bowel, from my understanding  
2 of the medical record, was as a result of the initial  
3 episodes of TTP and subsequent episodes.

4           Q     What about his lungs; did he have problems  
5 with his lungs?

6           A     I don't remember.

7           Q     You don't remember. Are you also an  
8 expert in lupus of the lungs?

9           A.     I'm an expert on lupus throughout the  
10 body.

11          Q     Do you know if he had lupus in the lungs?

12          A     As far as I could recall from what I read  
13 in the medical records, there was no indication that  
14 he had lupus pneumonitis.

15          Q     There's no indication?

16          A     From what I read in -- . There may have  
17 been, but I may not have read those sections.

18          Q     What would be the significance if this  
19 gentleman had lupus pneumonitis?

20          A     That would mean that he had systemic lupus  
21 that was involving his lungs.

22          Q     And it was unrelated to the drugs that he

1    went through?

2           A       That's correct.

3           Q       It would be also unrelated to whether or  
4   not there was a delay in diagnosing it?

5           A.     I don't understand your question.

6           Q       Well, let me ask you to assume that in  
7   fact in 1998 this gentleman had interstitial  
8   pneumonitis with intraalveolar hemorrhage consistent  
9   with lupus pneumonitis. I take it you were unaware of  
10 that?

11          A       I don't remember reading that in the  
12 record.

13          Q       Doctor, is it your opinion somehow the  
14 problems that he had in other parts of his body other  
15 than his kidneys are somehow related to the lack of  
16 kidney function?

17          A       Yes.

18          Q       Pathologically, explain that to the ladies  
19 and gentlemen.

20          A.     The lack of kidney function --. What  
21 happens is that we build up within our bodies  
22 molecules which affect almost all the normal functions

1 of the body and these are called middle molecules.  
2 Dialysis does not take care of those molecules.

3           So that, with lack of kidney function for  
4 example, there's not enough hormone to stimulate the  
5 bone marrow to produce blood, there are chemicals  
6 which are present which inhibit certain immune  
7 responses, there are chemicals which cause other toxic  
8 effects on the body and on the brain and on the brain  
9 cells and on other cells. So that there are multiple  
10 effects of the lack of kidney function.

11           Q     Doctor, would you agree with me that there  
12 are patients who have very severe lupus cases who have  
13 no kidney involvement?

14           A     Yes, that does occur, but I would have to  
15 say that if someone has very severe lupus, that at  
16 some point in their course they probably will have  
17 kidney involvement.

18           Q     They may develop it at some point, but  
19 you're aware that there are patients who have severe  
20 very cases of lupus who do not have kidney  
21 involvement.

22           A     Correct. And there's patients who have



1 very severe cases of lupus who have TTP without having  
2 kidney involvement. That is, TPP is a very rare  
3 complication of lupus.

4 Q Have you read the rheumatologic literature  
5 on whether or not that is seen?

6 A Yes, I have.

7 Q You are aware that it is in fact seen?

8 A. It is in fact seen.

9 Q You're aware that in fact a patient can  
10 have lupus pneumonitis without kidney problems?

11 A. That's correct.

12 Q And you would agree with me that this  
13 young gentleman has a very severe case of lupus?

14 A He does.

15 Q And he does have something called lupus  
16 flares?

17 A Yes, he does.

18 Q This is even after being treated?

19 A He was not treated for his lupus actively.  
20 He was treated only briefly until his kidney function  
21 was lost and then he was not treated specifically for  
22 lupus in aggressive fashion because he was on -- as I

1 can recall, he only received steroids at various  
2 times. He never received cytotoxic drugs.

3 Q It is your understanding he never received  
4 cytotoxic drugs?

5 A After the initial attempt.

6 Q What is the initial course of treatment  
7 with cytotoxic drugs with people with lupus nephritis?

8 A. There is a debate as to whether the  
9 cytotoxic drugs should be given orally or  
10 intravenously, but generally-speaking the standard  
11 course is to initiate treatment of someone who has  
12 severe lupus with very a high dose initially of  
13 cortisone to reduce the inflammation and then  
14 immediately begin cytotoxic drugs. And cytotoxic  
15 drugs, because the cytotoxic drugs take some time for  
16 that effect, two to three weeks, so cytotoxic drugs  
17 are given --

18 Q I asked --

19 A. I'm coming to that. It depends on whether  
20 it's given orally or intravenously.

21 Q Is the standard treatment of cytotoxic  
22 drugs six months of intense therapy followed by 18

1 months of maintenance therapy?

2           A     It depends. There are some individuals  
3 who would continue with intravenous cytotoxic drugs  
4 for longer than six months, and some individuals who  
5 would start patients out on cyclophosphamide or  
6 Cytosan and continue them for two to three years.

7           Q     I didn't ask you whether some people might  
8 do the shortened. Is there a standardized treatment?

9           A     I would have to say that there's probably  
10 no specific standardized treatment other than the fact  
11 that because it varies from center to center, it also  
12 varies from study to study because we really do not  
13 know.

14                     But basically the use of cytotoxic drugs  
15 and steroids is considered the standard therapy  
16 today.

17                     MR. ALTMAN: I have nothing further, Your  
18 Honor.

19                     THE COURT: Any redirect?

20                             REDIRECT EXAMINATION

21                     BY MR. MALONE:

22           Q     Mr. Altman was asking you about the fact

1 that the young man has a severe case of lupus. I'm  
2 not quite sure I understood your earlier testimony,  
3 but how could hitting the lupus earlier with the  
4 cytotoxic drugs back in December 1996 and January 1997  
5 -- how would that have affected the overall severity  
6 of his lupus?

7 MR. ALTMAN: Objection. Asked and  
8 answered on his direct.

9 MR. MALONE: I don't think it was clear  
10 from what I understood.

11 THE COURT: Nor am I a hundred percent,  
12 clear so I'm going to overrule the objection.

13 A Well, if he had received therapy when his  
14 creatinine was 1.9 and he had all of the favorable  
15 factors that I went into before, if I looked at the  
16 patients that we have studied at our institution and  
17 that I have followed for over 30 years, I would have  
18 predicted that he would have had good kidney function  
19 for as long as 20 or maybe 30 years without loss of  
20 kidney function. That's what I would have predicted  
21 his long-term outcome would have been.

22 Q But specifically about the other aspects

1 of his lupus is what I was getting at.

2 A If we were able to control the kidney  
3 aspects of his lupus, we would be able to control  
4 other aspects of his lupus.

5 Now, as a matter of fact, in one of the  
6 papers, actually one of the papers that I have.

7 Written --

8 MR. ALTMAN: Objection. Hearsay.

9 THE COURT: You can't talk about the other  
10 papers. Just listen to the specific questions and  
11 tell us what your opinion is.

12 BY MR. MALONE:

13 Q If it is based on your own work, you can  
14 talk about it.

15 A Yes. On my work. In one paper which I  
16 have written, which is the most frequently-quoted --

17 MR. ALTMAN: Not responsive to the  
18 question.

19 A -- I describe a patient that I have  
20 followed now for over 30 years who, at the same age --

21 MR. ALTMAN: Your Honor, would you rule on  
22 the objection?

1                   THE COURT: Sustain the objection. Your  
2 question is kidney has been controlled --

3                   A       I would have been able to control the  
4 other problems.

5                   THE COURT: If you have another question,  
6 you can ask in the next the question basis for that.

7                   A.     The basis for that is my experience in  
8 looking at the patients that I have been studying now  
9 to 30 years, and one of those patients I have  
10 published and where the patient had --

11                   MR. ALTMAN: Objection to relevance, Your  
12 Honor.

13                   THE COURT: Objection is overruled.

14                   A.     -- where the patient presented with a  
15 creatinine very similar to what Mr. Ponirakis  
16 presented with, was treated successfully with  
17 cytotoxic drugs, had a long period of remission, had  
18 flares, which are again treated by cytotoxic drugs and  
19 had another remission, one of which was  
20 life-threatening because she also had involvement of  
21 her lungs and brain, which was again treated. And now  
22 that woman, who we saw first at the age of 25, is now

1 still alive and well with normal kidney function 30  
2 years later.

3 MR. MALONE: Nothing further.

4 THE COURT: Anything further of this  
5 witness?

6 Is he free to go?

7 MR. ALTMAN: Yes, sir.

8 THE COURT: Doctor, thank you very much.  
9 You're free to go.

10 (Witness excused.)

11 THE COURT: Counsel, let me see you at the  
12 bench before I discharge the jury for the evening.

13

14 (End of requested portion of transcript.)

15

16 (Whereupon, the trial was adjourned at 5:09  
17 p.m., to be reconvened on Wednesday, April 12,  
18 2000, at 9 o'clock a.m.)

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