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COURT OF CLAIMS  
OF OHIO

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IN THE COURT OF CLAIMS OF OHIO

MATTHEW RIES, Admr., et al., :  
 :  
 Plaintiffs :  
 :  
 v. : Case No. 2010-10335  
 :  
 THE OHIO STATE UNIVERSITY : Judge Patrick M. McGrath  
 MEDICAL CENTER, :  
 :  
 Defendant :

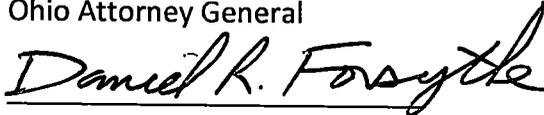
**DEFENDANT'S EXPERT DISCLOSURE**

In accordance with the Court's scheduling order, and pursuant to extensions agreed to by the parties, defendant hereby identifies the following witnesses as experts:

1. Stephan R. Payne, M.D., internal medicine, report attached.
2. Olaf Johansen, M.D., colorectal surgeon, report attached.
3. Mark A. Fialk, M.D., oncologist, report attached.
4. Bruce L. Jaffee, Ph.D., economist, report forthcoming.

Respectfully submitted,

MIKE DEWINE  
Ohio Attorney General



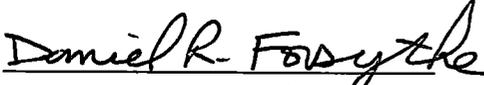
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COUNSEL FOR DEFENDANT

**ON COMPUTER**

CERTIFICATE OF SERVICE

I hereby certify that a copy of Expert Witness Disclosure was sent by regular U.S. Mail, postage prepaid, this 22<sup>ND</sup> day of August, 2014 to:

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Daniel R. Forsythe  
Assistant Attorney General  
Court of Claims Defense Section  
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Date: 7/11/14

Re: Michael McNew (Ries v. The Ohio State University Medical Center)

Dear Mr. Forsythe,

The following is a report on Michael McNew. I have reviewed the following medical records and materials:

Complaint

Dr. Howard Rothbaum – office records

Dr. Syed Husain – office records

Washington Township Fire – Dublin, Ohio – EMS Run Sheet

Dublin Methodist Hospital E.R.

Riverside Methodist Hospital

Death Certificate

Deposition – Dr. Howard Rothbaum

Deposition – Cyrelle McNew

Expert Report – Dr. Kenneth Braunstein

Expert Report – Dr. Jerome Daniel

Expert Report – Christine Reid, RN, BSN, CCRN

Based upon this review and upon my experience and training as a board-certified internist, I offer the following report. I routinely care for patients with the symptoms experienced by Michael McNew. I have 33 years experience as a practicing primary-care internist. I am a clinical preceptor for the University of Cincinnati College of Medicine.

Michael McNew, DOB 2/27/71, was a patient in the primary-care practice of Dr. Howard Rothbaum. He was first seen on 9/3/08 for an office visit to establish as a new patient, and for a complete physical. He had no significant past medical history and his only complaint was occasional knee pain after playing basketball. His review of systems was negative. His vital signs were as follows: BP 122/70 P 70 R 16 HT 5' 10.5" WT 210. His physical exam was normal. Dr. Rothbaum's assessment was "healthy adult male" and he recommended appropriate preventative

measures, including his plan for Mr. McNew to come in for fasting blood work. However, I saw no such blood work results in the chart.

The next encounter that I saw documented in the medical record was an 8/27/09 nurse encounter with Mark Bush, LPN. In her deposition, Cyrelle McNew, spouse of Michael McNew, stated that she believes that Michael saw a nurse on 8/27/09 at Dr. Rothbaum's office, for "virus symptoms" of fatigue, headache, nausea, diarrhea, and intermittent fever. The reason for the visit documented in the medical record was "sore throat." Vital signs were BP 120/70 T 99.4 P 84. A rapid strep test and throat culture were obtained by Nurse Bush and were both negative for strep. In his deposition, Dr. Rothbaum stated that he was not present for that visit, but was aware of the visit on August 29<sup>th</sup> or 30<sup>th</sup>, was aware of the negative strep tests, and that he asked nursing to inform the patient of the negative results. This is documented in the medical record.

The next encounter that I saw documented in the medical record was a 9/14/09 office visit with Dr. Howard Rothbaum for the complaint of "rectal/anal pain – since Saturday" (9/12/09 was the previous Saturday.) Dr. Rothbaum documented an appropriate medical history, including "No bleeding at all – nor on toilet paper." He noted that the patient complained of two loose bowel movements per week for past four weeks. He also documented, "No travel, all other review of systems normal." His detailed review of systems included "No chest pain, no shortness of breath, no fevers, no chills, no abdominal pain, nor other complaints except as above." Dr. Rothbaum's physical exam of Mr. McNew was detailed. He documented vital signs of BP 120/70 P 64 HT 5'9" WT 200, that Mr. McNew was alert, oriented, cooperative, in no acute distress, that his skin was warm, dry, and without rashes, that his lungs were clear with regular breathing effort, that his heart, extremities, and psychiatric exams were all normal. The exam of the rectal area stated, "Rectal: appears to be a thrombosed hemorrhoid. No evidence of ischemia / no bleeding – though it is large and near the rectal opening." Dr. Rothbaum's assessment was "Proctalgia – appears to be a thrombosed hemorrhoid. No evidence of ischemia. Again – no bleeding – but it is large and with its location – likely the cause of his pain." His plan was, "Discussed at length – and urgent referral to colorectal surgeon due to the pain." He prescribed Ultram and Norco as needed for the pain. The medical record documented an order for ambulatory referral to colorectal surgery. In his deposition, Dr. Rothbaum stated that he recalled the discussion with Mr. McNew re: the referral to the colorectal specialist, and that he (Dr. Rothbaum) personally helped to get Mr. McNew an urgent visit, because Mr. McNew was hurting a lot, and that the patient was very appreciative.

I saw no further communication between Dr. Rothbaum and Mr. McNew documented in the medical record. In his deposition, Dr. Rothbaum stated that he did not remember any phone call between himself and Mr. McNew or Mr. McNew's wife between the 9/14/09 office visit and the time that Mr. McNew died. He stated that, typically, if he had gotten a phone call from either party, he would have entered a note in the medical record.

Subsequent to the above encounters, Mr. McNew was treated by colorectal surgeon Dr. Syed Husain, was hospitalized emergently on 9/18/09 due to an acute cerebellar intraparenchymal hemorrhage, was diagnosed by a hematologist (name unclear) at Riverside Methodist Hospital as acute myelogenous leukemia and critical thrombocytopenia, and expired on 9/19/09. The Death

Certificate was completed by Dr. Donald Deep. Cause of death was "Intracerebral hemorrhage (days) due to thrombocytopenia (days)." No autopsy was performed.

I have been asked to give my opinion regarding the standard of care for the medical practice of Dr. Howard Rothbaum and his staff as it applies to this case, which I will offer as follows:

Nurse Bush saw Mr. McNew on 8/27/09 for the complaint of sore throat, and performed vital signs and did two routine diagnostic tests for strep, both of which were negative. The typical differential diagnosis for sore throat in a primary-care practice is viral syndrome versus strep infection. Strep infection was effectively ruled out to a high degree of probability by the two negative tests. It was therefore, reasonable for Dr. Rothbaum, being aware of the test results, to diagnose probable viral syndrome and not perform further evaluation at that time. Acute myelogenous leukemia was not part of the typical differential diagnosis in the setting of the 8/27/09 encounter and it was not the standard of care for Dr. Rothbaum to consider it around the time of that encounter. Mr. Bush did appropriate evaluation and testing on 8/27/09, obviously working under the instructions of Dr. Rothbaum, who was aware of the results within several days.

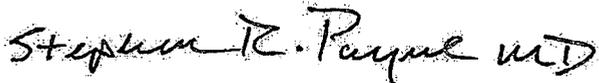
At the 9/14/09 encounter, Dr. Rothbaum did a very thorough history and physical exam which included a detailed review of systems and physical exam. The patient's complaint was rectal / anal pain and occasional loose bowel movements for four weeks. There was a physical finding, a thrombosed hemorrhoid, which provided a reasonable explanation for the patient's symptoms. There were no documented complaints of viral-type symptoms. The review of systems and physical exam did not suggest the need for any blood testing. Dr. Rothbaum recognized the need for a referral to an appropriate specialist to further evaluate and treat the hemorrhoid. This referral was immediately arranged by Dr. Rothbaum in a very timely manner. There is no evidence in the medical record that there was any further communication between Mr. McNew and Dr. Rothbaum after the 9/14/09 office visit. In her deposition, wife Cyrelle McNew stated that Mr. McNew told her that he had called one of the treating doctors regarding progressive bruising and that he had been told to discontinue the pain medication tramadol. In his deposition, Dr. Rothbaum stated that he did not recall such a conversation with Mr. McNew, but had there been one, his usual practice would have been to document it. Also, he stated that, had he been informed of Mr. McNew's unusual bruising, his usual practice would be to do a history and physical exam and order blood tests on an urgent basis, based upon the fact that it could be leukemia. It is my opinion that, had such a phone call been received during regular office hours, it would have typically been taken and documented in the medical record by the front-office staff person answering the phone, and further documented by Dr. Rothbaum when he was routed and handled the call. The patient would then have been typically instructed to either come to the office immediately or to go to an emergency department immediately. Had the call come in after hours, and been handled by Dr. Rothbaum, the patient would then have been typically instructed to go to an emergency department immediately. Those actions would have been within the acceptable standard of care for Dr. Rothbaum and his practice. It would not have been within the acceptable standard of care for Dr. Rothbaum to simply instruct Mr. McNew to discontinue tramadol, a drug that does not typically cause bruising, without immediate further evaluation. However, there is no evidence in the medical record, or in Dr. Rothbaum's deposition testimony,

that Dr. Rothbaum did recommend discontinuing tramadol as a treatment for unusual bruising, to the exclusion of immediate further evaluation of Mr. McNew.

In summary, it is my opinion that Dr. Rothbaum and his office staff were at all times in compliance with the standard of care for a primary-care practice in their treatment of Michael McNew.

All of my opinions are to a reasonable degree of medical certainty and are based upon my training and experience as a board-certified primary-care internist. I reserve the right to amend this report upon receipt of additional information.

Sincerely,

A handwritten signature in black ink that reads "Stephen R. Payne MD". The signature is written in a cursive, slightly slanted style.

Stephen R. Payne, M.D.



Daniel R Forsythe  
Senior Assistant Attorney General  
Court of Claims Defense Section  
150 East Gay St, floor 18  
Columbus, Ohio 4321

Dear Mr. Forsythe

At your request, I have reviewed the following records related to the Michael McNew's case, and the letter summarizes my review and opinion.

1. Office notes of Howard Rothbaum, MD, dated September 3, 2008, August 30, 2009 and September 14, 2009
2. Office notes from Syed Husain, MD, dated September 15, 2009
3. Dublin Methodist Hospital records, dated September 18, 2009
4. Riverside Methodist Hospital, dated September 18 through September 20
5. Plaintiff's response to interrogatories, dated January 5, 2011.
6. Written opinion rendered by Christine D. Reid, RN, dated June 30, 2014
7. Written opinion of Kenneth M Braunstein, MD-Hematology, dated June 20, 2014
8. Written opinion of Scott Hockenberry, MD-Surgical Specialties, dated July 23, 2014
9. Written by Vocational Economic Assembly, Anthony Gamboa, dated June 30, 2014
10. Written opinion of Jerome Daniel, MD-Primary Health Group, dated June 26, 2014
11. Depositions of Cyrelle McNew, dated June 20, 2011
12. Deposition of Syed Husain, MD, dated April 16, 2014
13. Written opinion of Andrew Eisenberger, MD, Heme/Onc, dated July 21, 2014
14. Written opinion of Stephen Bloomfield MD, Neurosurgery, dated July 24, 2014

Mr. McNew first saw Dr Rothbaum on September 3, 2008. At that time he was without complaints; specifically, he denied any chest pain or shortness of breath.

Mr McNew followed up approximately one year later on 8/27/09, seeing Mark Bush, a nurse in Dr. Rothbaum's office for a sore throat. A throat culture was done, at that time he had vital signs (blood pressure, pulse and temperature) were within normal limits. Mr. McNew was advised to call back for an appointment if not improved in 4 to 5 days. I cannot find any record indicating he called back for continued complaints of those presenting symptoms.

Mr. McNew did return for a new acute visit on 9/14/09, complaining of acute rectal pain. At the time of that office visit he denied any other complaints, specifically, he denied chest pain, shortness of breath, fevers, chills or abdominal pain. His vital signs were entirely normal including a pulse of 64 and a detailed documented history was normal other than the description of a large thrombosed hemorrhoid. At that time no lab work or other evaluation was done, which is entirely appropriate and well within the standard of care. An appropriate referral was made to Syed Husain, M.D. a Colon and Rectal Surgeon.

Mr. McNew was seen by Dr Husain the following day September 15, 2009. At the time of that office visit, the patient checked off the "no" box to all questions, including question number 8, where he denied bleeding problems, question 9 where he denied shortness of breath, and question 14 where he denied he had warning signs of a stroke. Dr. Husain's note, including a detailed letter to Dr. Rothbaum dated that day (September 15, 2009), detailed the treatment of Mr. McNew's acute thrombosed hemorrhoid, which was office excision under local anesthesia without further pre-op evaluation or lab testing, which is the appropriate treatment of an acute painful thrombosed hemorrhoid.

The following day, per Dr. Husain's deposition, he returned a call, speaking with Michael's wife, Cyrelle McNew. According to Dr. Husain, that discussion revolved around the amount of post procedure pain Michael was having. Having post-op pain after excision of a hemorrhoid is expected. Standard and accepted advice is to continue taking pain medications and to perform warm soaks. Further work up or evaluation is not indicated. The advice given by Dr. Husain was appropriate.

According to Cyrelle McNew's deposition, her recollection was that Michael called Dr. Husain and explained that he was saturating through five layers of gauze and was told by Dr. Husain to see what happens. If Cyrelle's recollection of this call was accurate, it's more bleeding than typically would be expected after an excision of a hemorrhoid, and a prudent Colon and Rectal Surgeon would attempt to quantify the volume of bleeding and any associated symptoms. If the patient was otherwise well, advice of continuing to monitor the bleeding and call back if it persisted or worsened would be completely appropriate, as was the advice given by Dr Husain. According to Cyrelle's deposition, Dr. Husain called back early the next day and spoke with Michael and was told he was still bleeding but not as much. Not recommending any intervention or evaluation for bleeding which was slowing, was appropriate which was done.

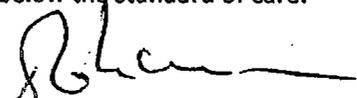
According to the charts and Dr. Husain's and Cyrelle's deposition, no phone calls or visits were made to any practitioners the following day, September 17, 2009.

According to Cyrelle, a phone call on the morning of September 18 to Dr. Husain's office was made. When Cyrelle returned home in the afternoon of that day, she called Dr. Husain's office and she spoke with Dr. Husain stating Michael had shortness of breath the previous evening, which occurred when his pain medication were increased. He had thus stopped taking pain medications and was now in extreme pain. Dr. Husain appropriately advised that pain medication does not cause shortness of breath and if the shortness of breath happened again, he should see his regular doctor. Per Cyrelle's deposition, she also stated that he stopped taking Tramadol secondary to bruising and was still bleeding, Dr Husain has no recollection of such a discussion.

According to Cyrelle after she spoke with Dr. Husain in the afternoon, she left the house for a few hours and upon her return found Michael in severe distress and called 911. He was taken to Riverside hospital passing shortly thereafter from an intracranial bleed.

The reasons for Mr. McNew's death was a complication of acute myelogenous leukemia, which lead to thrombocytopenia and a spontaneous intracranial bleed. It was unrelated to his office excision of his hemorrhoid. The standard of care for an apparent ASA 1 or ASA 2 patient with a thrombosed hemorrhoid, without any other complaints or findings (as well documented in Dr. Rothbaum's note, Dr. Husain's note and patient's intake form) is to proceed with office excision, without further evaluation, consultation or blood work. This is the practice I follow and is the well-established standard of care for this condition.

To not make a diagnosis of anemia, or acute leukemia or order blood work, based on this patients presentation of a thrombosed hemorrhoid, or the common subsequent post op issues certainly does not fall below the standard of care.



Olaf B Johansen MD, FASCRS

Clinical Professor of Surgery Indiana University

President and Managing Partner Kendrick Colon and Rectal Center

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8/11/2014

Daniel R. Forsythe  
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RE: Matthew Ries v. Ohio State University Medical Center

Dear Mr. Forsythe:

You have forwarded to me the following materials in the above medical malpractice case and have asked me to render an expert opinion:

1. Plaintiff's complaint with affidavits of merit;
2. Plaintiff's identification of expert witnesses and expert reports: Kenneth Braunstein, M.D.; to Jerome Daniel, M.D.; Anthony Gambova, Ph.D.; Christine Reid, R.N.; Stephen M. Bloomfield, M.D.; Scott E. Hockenberry, M.D.; and Andrew Eisenberger, M.D.
3. Medical records of patient, Michael McNew including: Dr. Howard Rothbaum (internist) office records, Dr. Syed Husain (colorectal surgeon) office and procedure records, and records from Washington Township Fire Department (ambulance), and Dublin Methodist and Riverside Hospitals.
4. Deposition transcripts of Howard Rothbaum, M.D., Syed Husain, M.D., and Cyrelle McNew (widow).

On September 3, 2008, Michael J. McNew, date of birth 02/27/1971, was seen by Howard R. Rothbaum, M.D. at OSU Internal Medicine at Stoneridge/Dublin. A complete physical examination was performed. No abnormalities were noted.

The impression was a healthy adult male.

Recommendations included monitor BP, diet, exercise, weight, self-testicular exams, eye doctor, dentist, seatbelt, and screening blood test as ordered, which included lipids/LFT/glucose/BUN/creatinine. Tetanus-Pertussis vaccine was recommended, but was deferred. Mr. McNew agreed to return for fasting laboratory testing. Mr. McNew was examined by Howard R. Rothbaum, M.D. The examination was normal. At the time of this visit, Mr. McNew was 37 years old.

**Page 2**

On August 27, 2009, Mr. McNew presented to Marc Bush, LPN at OSU Internal Medicine at Stoneridge/Dublin with a sore throat. A throat culture was performed and was negative for Beta Strep. The Strep test was a rapid strep and the patient was discharged with recommendations to treat these symptoms.

On September 14, 2009, Mr. McNew was again seen at OSU Internal Medicine at Stoneridge/Dublin. At this time, Mr. McNew was 38 years old. He was seen by Howard R. Rothbaum, M.D. for "acute visit – complaining of rectal/anal pain – since Saturday. No bleeding at all – nor on toilet paper. Getting worse – worse with walking/movement/sitting. No itching, no burning. Two episodes a week – of "loose BMs" for about a month. No travel, all other ROS normal. Has tried preparation H, no benefit and tried some Tylenol."

Dr. Rothbaum conducted a physical examination including an evaluation of the skin, heart, lungs, psyche, and extremities. Rectal examination revealed "appears to be a thrombosed hemorrhoid. No evidence of ischemia/no bleeding – though it is large and near the rectal opening." An urgent referral was made to a colorectal surgeon. The patient was treated with tramadol 50 mg p.o. and hydrocodone/acetaminophen 5/325 mg p.o. He was instructed to use the tramadol one tablet every six hours as needed for pain and hydrocodone/acetaminophen one tablet by mouth every four hours as needed for pain. Mr. McNew was instructed to "return if symptoms worsen or fail to improve."

Mr. McNew was seen on September 15, 2009 by Syed G. Husain, MBBS, a colorectal surgeon. Mr. McNew presented to Dr. Husain complaining of severe rectal pain. Dr. Husain noted "the patient states that he experienced a perianal bulge associated with the pain starting on Sunday. He is otherwise healthy and does not have any chronic medical conditions. He does not take any medication on a regular basis and reports allergies to penicillin. On examination, upon gentle effacement of the anal canal, I was able to elicit a thrombosed external hemorrhoid over the right lateral aspect. I proceeded with infiltrating local anesthesia in the region and then incised the hemorrhoid to evacuate the clot. The patient tolerated the procedure well. I have instructed him to continue taking sitz baths and pain medications as needed. We also discussed the natural history of thrombosed external hemorrhoid, and I have relayed to him that it will eventually reabsorb and evolve into a perianal skin tag." In her deposition testimony, Mr. McNew's wife, Cyrelle McNew noted in notes that she had taken "Mr. McNew to see Dr. Rothbaum due to rectal pain and continuation of viruses and was referred to Dr. Husain and was told that they would 'treat the hemorrhoid first and address the rest later' - meaning the other symptoms".

On page 33 and 34 of her deposition, Mrs. McNew testified, "I asked Dr. Husain a couple of times how he got this hemorrhoid. And also explained that he hasn't been feeling well lately and Dr. Husain said that the hemorrhoids are usually from constipation. And I said, 'well, he hasn't – he asked Mike if he had been having constipation. That was one of the questions I remember now.' And Mike said, 'no, not lately.' And we discussed that he had been having virus symptoms lately with diarrhea."

**Page 3**

On the evening of September 15<sup>th</sup>, Mrs. McNew stated, "the bleeding concerns started the evening of the procedure." "He was told that he would have some spotting and he was saturating gauze, so I encouraged him to call the office, which he did." Furthermore, Mrs. McNew documented in her notes, "Mike called Dr. Husain and explained that he was saturating through 5+ layers of gauze not just spotting."

On page 41 of her deposition, Mrs. McNew stated "well on the 15<sup>th</sup>, he also started to take baths that are recommended, and I noticed something like a mark on his arm." On page 43, Mrs. McNew stated "he was still looking pale and kind of sick, but I think I didn't know." Furthermore, Mrs. McNew stated on the 16<sup>th</sup>, "I have a note that Dr. Husain called to see how Mike was and the doctor was told that he is still bleeding, but not as much as the previous night and that was the end of it." Additionally, Mrs. McNew stated on page 45 "on the 16<sup>th</sup>, at one point, I started thinking about the mark on his arm and it looked darker to me and I was wondering if it was more like a bruise and so I discussed with Mike that he should call the doctor about it. Then he told me that he did." Mrs. McNew agreed in her deposition that she is not sure, which doctor was called concerning the bruise on the arm.

Mrs. McNew on page 48 recalled that from the 16<sup>th</sup> to the 17<sup>th</sup> "he was still bleeding." "I remember seeing every day that there was blood in the tub. I remember he was still changing the gauze pads." Additionally, Mrs. McNew reported "he was having shortness of breath due to the side effect of the oxycodone when he was climbing the stairs" on the 17<sup>th</sup>.

On the morning of the 18<sup>th</sup>, Mrs. McNew stated "Mike called Dr. Husain's office." Apparently, she had a note concerning this call. Apparently, there were different notes documenting this, a handwritten note stated "he did not take the oxycodone until hearing from Dr. Husain. I spoke to Dr. Husain at 3 o'clock." Another note read "Mike stopped taking the oxycodone. Cyrelle called Dr. Husain's office in the afternoon, because he had not called. The receptionist was very surprised we had not heard from him. Dr. Husain - we spoke to Dr. Husain around 2 o'clock and explained that the shortness of breath seemed to occur once the dose of oxycodone was increased. Cyrelle explained that Mike was having bruising, so we stopped taking tramadol and then stopped taking the oxycodone due to the shortness of breath and Cyrelle explained that Mike was in extreme pain and could not talk. Dr. Husain asked to talk to Mike and Mike talked to him at one point, but handed the phone back to Cyrelle who explained he was in too much pain. Mike was talking very slow. Dr. Husain said the oxycodone would not cause the shortness of breath and he needed a painkiller. Husain muttered something about where we lived and how long it would take for us to get to his office. Then if the shortness of breath persists, he should make an appointment with the cardiologist because he should increase the dose of the oxycodone to at least two tablets every four hours since he is in so much pain and he can also take Motrin. Cyrelle explained that he is still bleeding and asked why isn't he getting better? Dr. Husain said everyone heals at a different rate. Cyrelle asked if he is not better by Monday, should he call? He said okay." Cyrelle asked "if he is not better by Monday, does that mean that there is something wrong?" He said "no, it means it is taking him longer to heal." Mike took two tablets of the oxycodone and after the call, an Advil.

**Page 4**

There was apparently a handwritten note, which read on page 53 September 18<sup>th</sup>, "he did not take oxycodone until hearing from Dr. Husain. I spoke to Dr. Husain at 3 and told him about shortness of breath and explained to discontinue the other painkiller due to bruising. He was in a lot of pain and that his condition, pain has not improved. Husain said see your doctor if shortness of breath happens again, but it is not from the oxycodone. Husain said he needs to take more oxycodone for the pain. When questioned about not improving, Husain said to me everyone heals at a different rate. The fact he is in the same amount of pain as initially does not indicate there is any problem. It just means that it is taking him longer, so he took two tablets of the oxycodone at 3" I have in a note that "- can also take Motrin. Take two tablets of oxycodone at 3 and then had a headache, so took an Advil at 4."

Apparently, there is another version of the same sequence of events. That version reads on page 55 "Mike reported shortness of breath to Dr. Husain's office in the morning and stopped the oxycodone. Mike and Cyrelle spoke to Dr. Husain at 3 to report shortness of breath and told Dr. Husain that shortness of breath seemed to happen when the dose of oxycodone was increased. Cyrelle explained that Mike was in too much pain to talk and that he stopped taking tramadol because it was causing bruising and stopped the oxycodone because it seemed to be causing shortness of breath. Dr. Husain said oxycodone would not cause shortness of breath. He needs the painkiller. If shortness of breath happens again, he should see his regular doctor. He should increase the dose of oxycodone to at least two tablets every four hours since he is in so much pain and he can also take Motrin. Cyrelle asked why he is not healing yet. Dr. Husain explained everyone heals at a different rate. Cyrelle asked if he is not better by Monday should we call and he said okay. Cyrelle asked if he is not better by Monday, it does not mean there is something wrong? He said, no it just means it takes longer to heal. Mike took two tablets of oxycodone at 3 and one Advil at 4 and at 8:30, was sweating, vomiting, and had diarrhea." "Then I inserted that I called Dr. Husain again in the afternoon because he did not call. Also, I told Dr. Husain he was still bleeding. Also, Husain kept asking to talk to Mike and I told him he could not talk and wanted me to talk to the doctor. Mike did a couple of times and then handed me the phone and Dr. Husain knew that."

At 8:00 pm on the 18<sup>th</sup>, "they were back in bed" (the kids). Mr. McNew was seen by his wife in the bathroom vomiting, sweating, and also had diarrhea. He apparently said to his wife that he had a bad headache and maybe bumped his head, getting out of the tub. On page 62, Mrs. McNew states "he was starting to seem unresponsive a little bit. Mrs. McNew stated that she could not see any evidence of him hitting his head. She did state that he had a "glazed look". "He said he had to lie down and he was tired. So, he lied down on the bathroom floor." Mrs. McNew stated, "I called 911 at that point."

Mr. McNew was transferred to Riverside Hospital on September 18, 2009 at 23:23. The patient was seen in consultation by Dr. Janet Bay. She related "the patient is a 38-year-old man who was transferred from Dublin Methodist Hospital Emergency Department with a large posterior fossa hematoma with resultant obstructive hydrocephalus. Laboratory evaluation revealed WBC

5,700 with 0% neutrophils, 94% lymphocytes and 6% monocytes. The protime was 17 (INR 1.7), PTT 28 and platelets decreased. NA 128, K 2.0, C187, CO<sub>2</sub> 22. His history is taken from the wife. It is of note that he has had a viral type of illness over the past six weeks characterized by some nausea, anorexia, diarrhea, and mild headache. Four days ago, he underwent a minor outpatient procedure by a surgeon at the Ohio State University. This was drainage of a hemorrhoid, which is done in the office under a local anesthetic. He had some bleeding from the operative site thereafter. He developed some bruising on his limbs."

Laboratory testing at Riverside Hospital revealed a white count of 7.99, hemoglobin 8.8, hematocrit 24.9, and platelets 12000. The differential had 69% blasts, 3% metamyelocytes, 3% myelocytes, and 2% promyelocytes with 1% neutrophils. The protime was 17.2 (INR 1.7). The normal INR is 1.1. The PTT was 31.8 fibrinogen 206. The blood smear showed blasts with "reniform nuclei and multiple Auer rods diagnostic of acute myeloid leukemia and favoring acute promyelocytic type." Clotting evaluation revealed a low factor VII level of 45%, a low protein C antigen of 49%, and the low protein C activity of 42%. A CT of the brain revealed cerebellar hemorrhage compressing the fourth ventricle. A ventriculostomy was placed. Ultimately, there was no improvement in the fixed and dilated pupils and the patient was pronounced brain dead at 1:17 p.m. on September 19<sup>th</sup>.

The hematology consultant reviewed the blood smear and noted "obvious blasts with granules and Auer rods." Furthermore, the consultant stated "this unfortunate man has M3 AML and suffered its most common complication – severe bleeding. In this disease, there is a 10-20% incidence of fatal hemorrhage either prior to diagnosis or during induction." It is to be noted that no cytogenetic studies were performed.

It is my opinion within a reasonable degree of medical certainty that on September 3, 2008, when Mr. McNew presented for physical examination, there was no history to suggest the presence of an underlying leukemia. There was no indication to perform a complete blood count and the lab tests that were ordered were appropriate for a general medical examination.

On August 27, 2009, when Mr. McNew presented for a sore throat, the appropriate test, a throat culture, was performed. There was no indication to perform a complete blood count. On September 14, 2009, when a diagnosis of thrombosed hemorrhoid was made by Dr. Rothbaum, an appropriate referral was made to a rectal surgeon, Dr. Husain.

Dr. Husain's treatment from a surgical viewpoint was appropriate. Given the diagnosis of a thrombosed hemorrhoid, there was no indication to perform any laboratory work. Additionally, there were no obvious clinical signs of systemic bleeding that would have alerted Dr. Husain to work up a possible underlying hematologic disorder. Bleeding from a surgically treated hemorrhoid would not be an indication to order a blood count. Mrs. McNew noted a bruise on her husband's arm but this would not be an indicator of a systemic blood disorder or systemic bleeding. Therefore, it is my opinion that at no point in time was there an indication for a blood count to be performed, which might have led to an earlier diagnosis of acute myelogenous leukemia. Furthermore, on September 18, Dr.

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Husain advised Mrs. McNew, per her testimony that if shortness of breath "happens again" see your doctor. This is proper advice and would not indicate a new onset persistent and progressive condition calling for further evaluation.

Because of a lack of performance of conventional karyotyping, fluorescence in situ hybridization, molecular genetic methodologies such as reverse transcriptase polymerase chain reaction and immunostaining with anti-PML monoclonal antibodies, this leukemia cannot be definitely classified as an M3 AML (promyelocytic leukemia). Given the information in the record, this leukemia can be stated to be an acute myelocytic leukemia (AML). The five-year survival rate for cases of AML diagnosed from 2001 to 2006 in the 25 to 39-year-old age group (702 patients) was 49% as documented in an article written by Shah et al (Shah A., Andersson TM, Racht B., et al, Survival and Cure of Acute Myeloid Leukemia in England at 1971 through 2006; a population-based study. British Journal of Hematology 2013; 162:509). The intracerebral hemorrhage was a result of the thrombocytopenia secondary to acute leukemia. There was no significant clinical symptomatology or clinical findings reported to Dr. Husain that could have made him remotely suspicious of the profound nature of the thrombocytopenia. Dr. Husain's management of the surgical procedure for treatment of the hemorrhoid was proper. There was no reasonable indication for Dr. Husain to change his treatment recommendations for the surgical or post-surgical treatment of the hemorrhoid. There were no reasonable clinical indications for the performance of any lab testing.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark A. Fialk, M.D.", written in a cursive style.

Mark A. Fialk, M.D.