

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF NEWPORT NEWS

CASSANDRA M. AGARD,)

Plaintiff,)

v.)

CHARLIE M. FAULK, M.D.,)

Defendant.)

AT LAW NO.

CL09-0233P-03

DEPOSITION UPON ORAL EXAMINATION

OF MICHAEL D. FABRIZIO, M.D.

TAKEN ON BEHALF OF THE DEFENDANT

Norfolk, Virginia

March 16, 2010

TAYLOE ASSOCIATES, INC.

Registered Professional Reporters

Telephone: (757) 461-1984

Norfolk, Virginia

TAYLOE ASSOCIATES, INC.

1 Appearances:

2

3 On behalf of the Plaintiff:

4 JAMES C. LEWIS, ESQUIRE
5 Shapiro, Cooper, Lewis & Appleton, P.C.
6 1294 Diamond Springs Road
7 Virginia Beach, VA 23455
8 (757) 460-7776

9

10 On behalf of the Defendant:

11 MARK J. FAVALORO, ESQUIRE
12 Oast Law Firm
13 1092 Laskin Road
14 Virginia Beach, VA 23451
15 (757) 963-2300

16

17 On behalf of the Deponent:

18 DOUGLAS E. PENNER, ESQUIRE
19 Goodman, Allen & Filetti, PLLC
20 Harbour Place, Suite A
21 215 Brooke Avenue
22 Norfolk, VA 23510-0909
23 (757) 625-1400

24

25

I N D E X

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

WITNESS:	Examination by	Page
MICHAEL D. FABRIZIO, M.D.	Mr. Favaloro	4

1 Deposition upon oral examination of
2 MICHAEL D. FABRIZIO, M.D., taken on behalf of the
3 Defendant, before M. Katherine Vermillion, RPR, and
4 Notary Public for the Commonwealth of Virginia at
5 Large, commencing at 10:38 a.m., on the 16th day of
6 March, 2010, at the offices of UROLOGY OF VIRGINIA,
7 420 North Center Drive, Building 1, Suite 250,
8 Norfolk, Virginia.

9
10 EXAMINATION

11 BY MR. FAVALORO:

12 Q. Good morning again, Doctor.

13 A. Good morning.

14 Q. My name is Mark Favaloro, we just met, and
15 I represent Dr. Faulk in the matter that brings us to
16 this deposition. Let me ask you at the outset whether
17 you've ever been deposed before?

18 A. Yes.

19 Q. And how many times?

20 A. A couple. Expert witness testimony.

21 Q. Okay. Can you give me a brief summary of
22 your educational background starting with
23 undergraduate?

24 A. Sure. College of William & Mary. Medical
25 College of Virginia for medical school. Thomas

1 Jefferson University for residency. Johns Hopkins for
2 fellowship, and here.

3 Q. Okay. Just attach dates to those places,
4 if you would.

5 A. I've got to think. '84 to '88, '88 to
6 '92, '92 to '98, '98 to '99, and '99 to present here.

7 Q. Okay. And the name of the group that
8 you're presently affiliated with?

9 A. Sentara Medical Group, Urology of
10 Virginia.

11 Q. Okay. Are you board certified?

12 A. Yes.

13 Q. In urology?

14 A. Yes.

15 Q. And when did you attain that
16 certification?

17 A. I attained my certification in 2001
18 initially, and then recertified this year.

19 Q. Certified in any other discipline?

20 A. No, urology.

21 Q. Can you tell me when you first met the
22 plaintiff in this case, Ms. Agard?

23 A. I have to refer to notes.

24 Q. That's absolutely fine.

25 A. I don't know. If you can point it out,

1 maybe make it quicker that's fine, too. My notes may
2 not be in order, so if you have some in order that
3 would help.

4 Q. I want to say March.

5 A. I see a May note here, but it was --
6 sorry.

7 Q. Looks like April 23rd.

8 A. That sounds about right. Is that the
9 first time I encountered her? Was that an office
10 visit?

11 Q. Yes.

12 A. Okay. Yeah, I don't have that here
13 readily available.

14 MR. LEWIS: I don't either for some
15 reason.

16 THE WITNESS: April 23rd was the date? I
17 have a May operative note. That was probably the
18 first operation, May 1st.

19 MR. LEWIS: It was.

20 THE WITNESS: Okay. Yeah, I don't have
21 that note, I don't think, in my copy of the records.

22 BY MR. FAVALORO:

23 Q. I'd just ask you to take a minute and look
24 at that, Doctor, if you would.

25 A. Sure. Okay.

1 Q. I'm interested in your initial impressions
2 and your memory today, if you have it, as to the
3 circumstances by which you came to see and meet Ms.
4 Agard.

5 A. I believe Eric Darby, who is a urologist
6 on the Peninsula, referred her to me. That's how I
7 came to know her.

8 Q. Okay. And do you know why the referral
9 was made?

10 A. At the time that she was referred she had
11 a nephrostomy tube in for a right distal ureteral
12 injury.

13 Q. Okay. And do you recall your initial
14 discussions with Ms. Agard?

15 A. From records only. I don't recall any
16 specifics.

17 Q. Okay. And what do the records tell you
18 those discussions were?

19 A. Let me make sure this is the right note.
20 Let's see, yeah, my initial discussion was I wanted to
21 reevaluate her urological system, both kidneys,
22 ureter, and bladder to figure out exactly what was
23 going on. Her, you know, internal anatomy.

24 Q. Okay. Do you recall any discussions with
25 Dr. Darby prior to your initial meeting with Ms.

1 Agard?

2 A. I do not.

3 Q. Okay. And what occurred as a result of
4 that initial meeting with Ms. Agard?

5 A. We initially talked about just basically
6 restaging her, reevaluating her with imaging studies,
7 and starting off with an exam under anesthesia.
8 That's basically what I told her we needed to do.

9 Q. Did you do a physical examination of Ms.
10 Agard on April 23rd?

11 A. Limited, it looks like. She had a right
12 percutaneous nephrostomy tube in place at the time and
13 an incision in the lower abdomen.

14 Q. Okay. Anything else in terms of a
15 physical exam that you see?

16 A. A limited respiratory exam, which was
17 normal. But we didn't do a full genitourinary
18 examination, because we felt we should do it under
19 anesthesia.

20 Q. Okay. What happened next?

21 A. Looks like we did that. This is in order,
22 these records?

23 Q. They may be. It may be dependent on when
24 they came in. Let me direct you to --

25 A. Yeah, just direct me. I think it was a

1 May --

2 MR. LEWIS: Here.

3 THE WITNESS: It looks like a May 1st
4 document which I saw, which I have here.

5 BY MR. FAVALORO:

6 Q. It's 1802, I think, in your --

7 A. Yeah, May 1st, '08; is that correct? Is
8 that what you have?

9 MR. LEWIS: Yes, uh-huh.

10 THE WITNESS: So we took her to the
11 operating room and did a cystoscopy and bilateral
12 retrograde polygrams, and we did a nephrostogram
13 through her existing percutaneous nephrostomy tube,
14 and we examined her under anesthesia. I did that with
15 myself and one of my partners, Kurt McCammon, who is
16 a -- specializes in reconstructive urology.

17 BY MR. FAVALORO:

18 Q. And what impressions did you form?

19 A. That -- let me just refresh this here.
20 The first thing we wanted to rule out is that there
21 was no evidence of a fistula in the bladder. And the
22 left ureter appeared to be normal. The right ureter
23 was -- there was -- on the retrograde there was a
24 cut-off in the pelvis. And we also did an antegrade
25 nephrostogram which revealed there was a separation

1 between the top of the ureter and the bottom of the
2 ureter.

3 Q. Okay.

4 A. I said here "inspect the location of
5 ureter vessels." There was about a centimeter gap
6 between the two sections at that time, but there was
7 no evidence of fistulization.

8 Q. Okay.

9 A. And we left the tube for drainage and
10 brought her to the recovery room.

11 Q. I see in your operative report that you
12 planned to perform a ureter reimplantation, or Dr.
13 McCammon was going to do that?

14 A. One of the two of us, yes.

15 Q. Yeah. And that it appeared to be the only
16 injury?

17 A. That's right.

18 Q. Okay. Can you expand on that conclusion?

19 A. Basically we thought that the only injury
20 that we saw right then at the time was a right
21 ureteral injury.

22 Q. Okay.

23 A. We -- of course, anytime in these cases
24 you're worried about fistulas, you know, any kind of
25 abnormality to the bladder or ureter.

1 Q. Okay. And what happened next with Ms.
2 Agard?

3 A. Looks like we may have -- we set her up
4 for surgery. I think she had some imaging studies in
5 the interval, some CAT scans, which are in here. And
6 let me just look at my notes. And then I believe just
7 the next step was she went to the operating room, but
8 I don't have the time frame for that, if you have it,
9 for the ureteral reimplantation.

10 Q. That was June 24th, I believe.

11 MR. LEWIS: Yeah.

12 THE WITNESS: Was that June 24th?

13 BY MR. FAVALORO:

14 Q. 1643, Doctor, in the volume that I have in
15 front of you.

16 A. Okay. 1643? Is there a number?

17 Q. Yeah, on the bottom right you will see the
18 number.

19 A. All right. I don't know how you're
20 numbering them.

21 MR. LEWIS: Volume two?

22 MR. FAVALORO: Yeah. It would be
23 June 24th.

24 MR. LEWIS: Do you want to look at mine?

25 MR. FAVALORO: Do you have it?

1 MR. LEWIS: Yeah.

2 BY MR. FAVALORO:

3 Q. All right. Before we talk about the
4 June 24th procedure, Doctor, as you sit here today do
5 you have any memory of Ms. Agard?

6 A. Ms. Agard? Sure. Absolutely.

7 Q. Okay. And do you recall any conversations
8 or meetings or discussions at all with Ms. Agard
9 between May 1st and June 24th?

10 A. I don't, unless they're in our chart. Do
11 you have them?

12 Q. I don't see any indication of any contact.

13 A. Yeah.

14 Q. Did you have any --

15 A. Just telephone calls.

16 Q. Did you ever have any discussions with Dr.
17 Faulk about this matter?

18 A. I do not believe so. I don't think I've
19 spoken to him.

20 Q. And that is true even as of today about
21 this case?

22 A. I believe so.

23 Q. Do you have records that would indicate
24 otherwise other than what you have before you today?

25 A. Not to my knowledge, no.

1 Q. Okay. What can you tell me then about the
2 June 24th procedure?

3 A. June 24th we did a right ureteral
4 implantation and a psoas hitch and placed a stent at
5 that time. That's what we did.

6 Q. Okay. Was her presentation consistent
7 with what you expected based upon your May 1st
8 evaluation of her?

9 A. Let me refresh my memory on the op note.

10 Q. Okay.

11 A. Yes. The ureter -- I dictate that the
12 level of the injury was identified. There were --
13 somewhere across the blood vessels, the iliac blood
14 vessels where the ureteral artery was, and we
15 dissected the ureter and reestablished continuity to
16 the bladder.

17 Q. Okay. And in your opinion was the
18 procedure successful?

19 A. Yes.

20 Q. And let me just ask you again about your
21 meeting, and jump back for a minute, with Ms. Agard on
22 May 1st.

23 A. Uh-huh.

24 Q. Do you recall any indication of pain from
25 Ms. Agard during that meeting?

1 A. No.

2 Q. Okay. And -- go ahead.

3 A. I don't have any specific complaints.

4 Q. All right. Is it fair to say you don't
5 have any memory as to her presentation or the
6 substance of any discussions you had with her on May
7 1st?

8 A. I know she had a nephrostomy tube in.
9 Probably had experienced some discomfort with that.
10 Had a lower abdominal incision. Those are the only
11 two things that I can recall.

12 Q. When you say she probably experienced some
13 discomfort with that, what do you base that on?

14 A. Well, Ms. Agard had had some lower
15 incisional pain throughout the time that I've known
16 her. And that's something that, you know, you asked
17 earlier, if I remembered Ms. Agard. I remember Ms.
18 Agard, you know, from --

19 Q. Did she indicate that to you on May 1st,
20 that she was experiencing pain?

21 A. I don't have the specifics unless I
22 documented it.

23 Q. But you have a memory as you sit here
24 today that there was some level of pain?

25 A. Yes.

1 Q. Okay. What else can you tell me, back to
2 the June 24th procedure, in terms of what happened
3 beyond what's set forth in your operative report?

4 A. Sure. Well, we reimplanted her ureter. I
5 think she had a fairly uneventful post-operative
6 course, if I recall correctly. It's so foreign to see
7 written notes. It's kind of nice. Yeah, that's what
8 I recall.

9 Q. Okay. It appears, Doctor, that Ms. Agard
10 was discharged on June 27th.

11 A. Okay.

12 Q. If you could take a look at that discharge
13 summary, please.

14 A. All right, sir. Let's see if you have it
15 here.

16 MR. LEWIS: I may not have it tabbed.

17 THE WITNESS: Was it a dictated discharge
18 summary?

19 MR. LEWIS: It would be, but I don't think
20 it's in this volume. Mark, you're going to have to
21 give it to him probably.

22 MR. FAVALORO: Okay.

23 THE WITNESS: Let me see if I have it
24 here, but it's doubtful. Do you have it there?

25 MR. FAVALORO: I just have a summary of

1 the summary, which I'm happy to share with you.

2 THE WITNESS: Here is it, actually,
3 believe it or not. Here we go. Okay.

4 BY MR. FAVALORO:

5 Q. All right. As I read it, Doctor, again it
6 appears to be indicative of a successful procedure.
7 Would you agree with that?

8 A. Yes.

9 Q. Okay. My notes indicate that the post-op
10 course was relatively unremarkable. Is that contained
11 in your discharge summary?

12 A. Yes.

13 Q. Okay. Anything that you have indicated in
14 the summary that indicates anything in a negative
15 context about urine flow?

16 A. No. Only that she had a positive culture
17 from the -- previously from a Foley catheter.

18 Q. Okay. And at the time of discharge were
19 the nephrostomy tubes in place?

20 A. Looks like they were removed during this
21 hospitalization.

22 Q. Okay.

23 A. Status, post-removal right percutaneous
24 nephrostomy tube.

25 Q. And it appears, as I read the report, that

1 bowel function was normal?

2 A. Correct.

3 Q. Okay. And that your -- the summary
4 indicates that there was 10 cc's over her last eight
5 hours. Let me back up on that. JP drain output not
6 increased, 10 cc's over the last eight hours, and
7 removed post-op day number three?

8 A. Uh-huh.

9 Q. Again, is that a normal and a favorable
10 outcome in your opinion?

11 A. It's an expected course. JP output is
12 low, you remove the JP.

13 Q. Okay. Anything else in that discharge
14 summary that would indicate any expected complications
15 from the procedure that was performed?

16 A. No.

17 Q. Okay. Were you aware that the day
18 following discharge there was a telephone
19 conference -- conversation between Ms. Agard and Dr.
20 Faulk?

21 A. No.

22 Q. Okay. When was the next time that you saw
23 or spoke to Ms. Agard?

24 A. Let me make sure I'm correct on the
25 timing, because you probably have better notes. But

1 it looks like maybe July 9th maybe, somewhere around
2 there. It looks like I have a progress note here, or
3 she also had called my nurse, it looks like, on July
4 2nd for some pain medication.

5 Q. Okay. That was July 2nd?

6 A. Uh-huh.

7 Q. Okay. How about on July 9th?

8 A. On July -- looks like she had a call to my
9 nurse and my secretary on July 2nd. On July 9th I saw
10 her for a post-operative evaluation. She had a
11 cystogram done with a catheter in place, which we
12 leave in. She was sent home with a catheter in her
13 urinary bladder after the reimplantation. The
14 cystogram showed no evidence of leaks, so her catheter
15 was removed, the stent was in place, and suggested
16 that she follow-up for stent removal in a couple of
17 weeks.

18 Q. Okay. And did she do that, do you know?

19 A. Yes.

20 Q. And when did you see her regarding the
21 stent removal?

22 A. Looks like she -- on July 28th -- I don't
23 know if you have these encounters. Do you have these
24 telephone encounters from the EPIC system?

25 Q. Yeah.

1 A. She had a positive urinary tract -- or a
2 positive culture. We wanted to treat her with some
3 antibiotics before instrumenting her. She was having
4 some pain and wanted some pain medication. And then
5 on August 8th we saw her in the office and removed her
6 stent at that time.

7 Q. Okay. Do you have a copy of that office
8 note?

9 A. Yes.

10 Q. And was that Dr. Malcom?

11 A. It was John Malcom, yes.

12 Q. And in that office note there is an
13 indication that there were "no complications and doing
14 well," do you see that?

15 A. No complaints. I just see discuss
16 possible long-term complications, including ureteral
17 stricture. Discuss possible symptoms of obstruction
18 to be aware of. Will have patient follow-up in six
19 weeks with a renal ultrasound.

20 Q. I agree, what you just read is a better
21 summary than I just asked in my question. Do you know
22 what discussions occurred regarding possible long-term
23 complications?

24 A. Do I know? I don't know what discussions
25 John Malcom had at that time.

1 Q. In your practice is it typical to have
2 standard complications discussed in connection with
3 the procedure that Ms. Agard had?

4 A. Yes.

5 Q. And what would those complications be?

6 A. Bleeding, infection, injury to surrounding
7 structures, blood vessels, bowel, abdominal organs,
8 recurrent ureteral stricture, persistent bladder
9 leaks, positioning neuropathies from the procedure.

10 MR. LEWIS: Pleasant.

11 THE WITNESS: Anesthetic complications.

12 BY MR. FAVALORO:

13 Q. Do you know if Ms. Agard was suffering any
14 of those conditions at the time of this office visit
15 on August 8th, '08?

16 A. I don't -- I'm not aware of those.

17 Q. Okay. And there are none indicated in
18 this progress note?

19 A. On August 8th, no.

20 Q. On August 8th. Okay. Do you know when
21 your office next saw Ms. Agard?

22 A. Looks like -- well, the next note I have
23 is October; is that correct? Is that what you have,
24 or is there somewhere in between there?

25 Q. October 3rd?

1 A. Yes.

2 Q. All right. That's the next one I have as
3 well.

4 A. Okay. And Stephanie Oldfield did the
5 note, my nurse practitioner, who was probably with me
6 at the time, but -- she had a stent removed. She had
7 a renal ultrasound on 9/22/08 which showed no
8 hydronephrosis, no stones, no stranding. Normal
9 ultrasound.

10 Q. Is it fair to say based upon your review
11 of this note that as of October 3rd, 2008 Ms. Agard
12 was making a satisfactory recovery from the procedure?

13 A. Correct.

14 Q. Any indications in that office note of
15 existing problems?

16 A. She had some low back pain on both sides
17 with some right lower quadrant pain which was
18 intermittent.

19 Q. Is that type of pain --

20 A. And occasional constipation as well, I'm
21 sorry.

22 Q. Yeah. Is that type of pain consistent
23 with post-operative complaints of pain in the
24 procedure you performed?

25 A. Well, certainly we operated on her right

1 lower quadrant, so that would be expected. The lower
2 back pain, I'm hard-pressed to say what that's from.

3 Q. Okay. Do you know if there was any
4 follow-up treatment or medication prescribed for that?

5 A. For what?

6 Q. The lower back pain.

7 A. Personally I don't think I would prescribe
8 low back medication for her low back pain, just for
9 her post-operative pain.

10 Q. Okay. Do you know when your office next
11 saw or had any discussions with Ms. Agard?

12 A. I don't know. I don't know the next
13 actual visit. Was that on February 20th? Is that
14 what you have?

15 Q. February 2nd.

16 A. February 2nd? Maybe you could provide
17 that note.

18 Q. Yeah.

19 A. Looks like she had -- I just have some
20 interval notes. She had, I guess, some routine labs
21 that were sent to us, and she had a low white count,
22 so I suggested that she follow-up with her primary
23 care physician. I also recommended -- she had already
24 seen a hematologist, which was also suggested, and
25 they were already aware of the condition. I just

1 wanted to bring that to her attention.

2 Q. Is that a February 2nd note you're
3 reading?

4 A. That's a February 2nd note, that's
5 correct.

6 Q. Okay. And do you know where the lab work
7 was done?

8 A. No, I don't.

9 Q. Okay. But you had seen, or your office
10 had seen -- looks like you had --

11 A. My office had seen probably, and it looks
12 like my nurse maybe informed me at the time.

13 Q. Okay. Did you form an opinion on
14 February 2nd, '09 as to why the white blood count was
15 low?

16 A. No.

17 Q. And what action did you take upon reading
18 those lab results?

19 A. I just suggested that she contact her
20 primary care doctor, who was apparently aware of the
21 situation, and suggested that she follow-up with a
22 hematologist as well.

23 Q. Okay. And do you know whether that
24 happened?

25 A. I do not.

1 Q. Okay. And when did you next see or have
2 contact with Ms. Agard?

3 A. Is that February 20th? Is that a note?

4 Q. Yes.

5 A. Okay.

6 Q. All right. Do you have that, Doctor?

7 A. Yeah.

8 Q. And what happened on February 20th?

9 A. She had some vague right lower quadrant
10 pain and suprapubic pain at times, intermittent, was
11 colicky with some radiation to the right side. And
12 she had a CT scan in follow-up, which I don't have a
13 copy of the report of here, you may.

14 Q. Uh-huh.

15 A. But it suggested a filling defect in the
16 right ureter, which was the side we reimplanted.

17 Q. Right.

18 A. And we had recommended -- reviewed her
19 history and recommended that she have a follow-up
20 imaging study and a cystoscopy at the time based on
21 those findings.

22 Q. Uh-huh.

23 A. So we did a scope -- we did a cystoscopy
24 in the office on that time, during that time frame.
25 The bladder was normal, but we could not cannulate the

1 right reimplanted ureter. And the cystogram was
2 negative for reflux, so we couldn't really opacify the
3 collecting system, so we felt that we should try in
4 the operating room.

5 Q. So this procedure -- this study that you
6 did was on February 20th?

7 A. Yes.

8 Q. And all of what you just described
9 happened in your office?

10 A. That's right, the cystoscopy did.

11 Q. The cystoscopy? Okay. And you therefore
12 scheduled an admission to Sentara?

13 A. Uh-huh.

14 Q. And that occurred on March 10th?

15 A. March 10th, yeah, that's what I have.

16 Q. And did you have any meetings or studies
17 done in connection with Ms. Agard between February
18 20th and March 10th? I direct your attention to your
19 notes of March 3rd.

20 A. Let me see, you may have to provide the
21 March 3rd notes. I don't have them.

22 Q. Okay.

23 THE WITNESS: It's a lot harder to get
24 records these days with an electronic system, for
25 sure. I mean, we can't find records on our own

1 patients. I don't know whether that's always good or
2 bad.

3 MR. LEWIS: Don't say that in front of
4 somebody like her.

5 THE WITNESS: Yeah, electronic medical
6 records. So she had a urine culture done. It looks
7 like that revealed 10,000 organisms, two different
8 organisms.

9 BY MR. FAVALORO:

10 Q. Okay. Anything remarkable about that
11 culture?

12 A. She had two different organisms. It could
13 be real, it could be contaminant, usually contaminant
14 when you see a report like that.

15 Q. Okay. Doctor, anything else on that lab
16 report that you just looked at in terms of findings
17 that would have concerned you?

18 A. No. Positive culture, once again, nothing
19 else.

20 Q. Okay. If you would flip to page 205 in
21 the records before you?

22 A. Okay.

23 Q. 205.

24 A. Back?

25 Q. Yeah.

1 A. Okay.

2 Q. This appears to be a telephone
3 conversation with your office?

4 A. Uh-huh.

5 Q. And if you could just take a minute and
6 review that, please.

7 A. Okay.

8 Q. It looks like Ms. Agard was in a lot of
9 pain? Complaining of a lot of pain?

10 A. Yeah, the note says she called having
11 symptoms -- or surgery tomorrow. Currently in a lot
12 of pain. That's what the note says from Avery
13 Dankmyer, one of our assistants, and requesting pain
14 medication. And we called her in some Vicodin.

15 Q. And does the note indicate that you
16 ordered the Vicodin?

17 A. MDF said to call in Vicodin, that's
18 correct.

19 Q. And do you know -- and that was you who
20 made the order?

21 A. It says MDF, those are my initials.

22 Q. Okay. And would it have been your
23 practice on that date to have a conversation with Dr.
24 Dankmyer? Did Dr. Dankmyer --

25 A. No. She was an administrative assistant.

1 Q. Okay. So Dankmyer is not an M.D.?

2 A. Correct.

3 Q. Okay. So the conversation was relayed to
4 you and you made the decision to order the Vicodin?

5 A. Yes.

6 Q. Okay. And if you could take a look at
7 your operative report for March 10th, 2009.

8 A. Sure.

9 Q. And just indicate to me what happened
10 during that procedure.

11 A. Let me review everything. Well, she was
12 put to sleep, had DVT prophylaxis. We placed a
13 cystoscope in the bladder. Her bladder appeared to be
14 normal. We found the native ureteral orifice on the
15 right, and the left ureteral orifice, which was noting
16 clear urine. The right -- we had difficulty finding
17 the right ureteral orifice. The bladder had been
18 distorted from our reimplant. We do a psoas hitch, so
19 we pull the bladder up and that can distort the
20 bladder and make it difficult to find the ureteral
21 orifice.

22 And we really couldn't cannulate the
23 ureteral orifice at that time in the operating room.
24 We tried multiple different tricks to get -- to do
25 that, but we couldn't do it easily, which is -- and

1 then we gave her some Indigo Carmine, it looks like.
2 We saw the left ureter and the right ureter expressing
3 Indigo Carmine, indicating that they were both
4 draining. But, once again, we couldn't pinpoint the
5 orifice easily with our reimplanted orifice.

6 So, once again -- we tried a ureteroscope,
7 which is a much smaller scope. We could see the blue
8 coming from the -- effluxing from the ureteral
9 orifice, but we couldn't cannulate it easily, and we
10 didn't want to affect our repair, so we stopped.

11 Q. Okay. And your plan was to get a
12 compression IVP --

13 A. That's right.

14 Q. -- to evaluate the --

15 A. Right. To see if the filling defect truly
16 was real.

17 Q. Okay. Did you form an opinion on
18 March 10th, '09 as to why this procedure, the
19 March 10th procedure, was necessary?

20 A. Well, anybody who has a filling defect in
21 the ureter, we want to rule out tumor, and so -- and
22 we do everything we can to rule that out. So
23 compression IVP may allow us to compress the ureter
24 enough, which will give us good opacification of the
25 collecting system in the renal pelvis. It's just

1 another imaging study. It may prevent us having to
2 try to look up the ureter and go to a more invasive
3 approach to inspect the ureter.

4 Q. Okay. And at some point in time did you
5 do -- did you get the compression IVP?

6 A. I think we did. I don't have that report
7 here. Do you have the report? You can probably find
8 it quicker.

9 Q. I do.

10 A. I think we did, and there was no filling
11 defect, but we found another area in the upper pool
12 that we needed to look at. Actually, it looks like I
13 copied the report into my note here. Do you have
14 that?

15 Q. Yeah.

16 A. Perfect.

17 MR. PENNER: Is that the same thing?

18 THE WITNESS: Yeah, same thing. Yeah, I
19 didn't even see that.

20 MR. FAVALORO: Okay. Great.

21 THE WITNESS: So no filling defect was
22 identified in the area of the right ureteropelvic
23 junction, as described on the CT scan. And I don't
24 have -- yeah, that's right, and then they must have
25 compared that to the CT scan. There was some mild

1 prominence and clubbing of the superior calyces of the
2 right kidney. And the right infundibulum didn't fill
3 out completely or pacify. And, once again, they sort
4 of hedged and said "We really can't rule out
5 something." So that led us to the next, you know,
6 steps.

7 BY MR. FAVALORO:

8 Q. Okay. And can you describe the condition
9 of Ms. Agard post-procedure on -- and this was on
10 March 27th; correct?

11 A. That's correct. So I'm just looking at my
12 March 27th note, post-op visit. She was still having
13 some pain at present. It was generally in the right
14 lower quadrant. She was taking Vicodin about three to
15 four times a day, according to my note. This did not
16 resolve the pain. She was voiding without difficulty.
17 No vaginal discharge.

18 Q. Okay. Other than what we just talked
19 about, did you have any further concerns about the
20 condition and health of Ms. Agard on the 27th?

21 A. Yes. She had an abnormality on the IVP,
22 so I felt that we hadn't fully evaluated her right
23 collecting system.

24 Q. What did you do thereafter?

25 A. So I brought her back in, it looks like.

1 There's a note from April 1st. I asked to bring her
2 back in so I could discuss the surgery from looking in
3 an antegrade fashion.

4 It also looks like around that time she
5 had a renal scan scheduled for April 6th, same time
6 frame. Yeah, a renal scan, a Mag 3 renal scan. And
7 that scan is a very sensitive indicator of whether the
8 kidney is obstructed or not. And there was no
9 obstruction at all. And there was nearly symmetrical
10 renal function, which was reassuring. But, once
11 again, that study doesn't rule out an abnormality in
12 the collecting system.

13 Q. Uh-huh.

14 A. So I felt that we had to go to the next
15 step.

16 Q. And what was the next step?

17 A. Well, we sent several urines for cytology.
18 She had had two negative urine cytologies at this
19 point. I discussed the fact that her kidney was
20 unobstructed, and I felt that we should investigate
21 the right collecting system to rule out any filling
22 defect based on that last IVP. This is a May 1st note
23 from my office.

24 Q. Okay.

25 A. And based on the fact that the reimplanted

1 ureter was difficult to access in a retrograde
2 fashion, I felt the best attempt was to have -- to do
3 it in an antegrade fashion, so we would place a wire
4 from above so we could actually cannulate the orifice
5 from below. That's the best way to get access. And
6 the other option was to perform another imaging study
7 a few months down the road.

8 I also sent a urine study called a FISH,
9 Fluorescent In Situ Hybridization -- I don't know if
10 you got that one. And I also suggested that she see a
11 gastroenterologist as well, because of the continuing
12 abdominal pain, and suggested, you know, she could
13 have some adhesions. She'd obviously had multiple
14 surgery by this time. And that's it.

15 Q. Okay. And what happened next?

16 MR. PENNER: Excuse me, Mark. You said a
17 May 1 note, but I think -- isn't it actually the April
18 24th note?

19 THE WITNESS: Yeah, you've got a good
20 point. What did I say? It was since the last update,
21 but it was April 24th, you're right.

22 MR. PENNER: Okay.

23 THE WITNESS: Thanks.

24 MR. FAVALORO: Thank you.

25 THE WITNESS: I'm just looking, there's

1 two dates, but it was the last update.

2 BY MR. FAVALORO:

3 Q. Okay. What happened next with you and Ms.
4 Agard?

5 A. So -- let me look -- so the other -- she
6 had a positive FISH study, which is a study that can
7 help us. It's a screening test for cancer in the
8 urinary tract. And hers was positive. It doesn't
9 mean that she had cancer at the time. The sensitivity
10 is not a hundred percent. But certainly it made me
11 want to look up that collecting system even more and
12 inspect her collecting system. So we talked about
13 that and did a history and physical on her.

14 Q. And what was that date, Doctor?

15 A. It was June 12th, 2009.

16 Q. Okay.

17 A. And I did this on June 12th, that's right.
18 It looks like on June 15th she had a urinary tract
19 infection, and she was treated with Cipro. And then
20 it looks like on July 7th, 2009 she presented for her
21 percutaneous renal access.

22 Q. Yeah.

23 A. So they obtained access in an antegrade
24 fashion, as requested. And then we -- I'm trying to
25 get to my notes, it looks like on July 7th, 2009 we

1 took her to the operating room and did a cystoscopy,
2 bilateral retrogrades, and a right ureteroscopy, and
3 placed a stent at the time.

4 Q. Okay. And who performed that procedure?

5 A. Myself and two of our residents in
6 assistance.

7 Q. Okay. And what impressions or opinions
8 did you form during and immediately after the July 7th
9 procedure?

10 A. Let me look at my operative note again.
11 So they placed a four French catheter into the system.
12 We were easily able to then bring a wire down and
13 cannulate it and looked up the ureter, inspected the
14 collecting system. No abnormalities were noted. We
15 surveyed the entire collecting system, it said, and
16 then we left the stent in place. So no filling
17 defects or tumor.

18 Q. All right. And your note indicated
19 complications, none?

20 A. Correct.

21 Q. Okay. And condition, stable and
22 unchanged?

23 A. Yeah.

24 Q. Okay. What does that note mean, stable
25 and unchanged?

1 A. Well, she was just stable after the
2 procedure.

3 Q. Okay. And unchanged refers to what time
4 frame?

5 A. From the time that I met her that morning
6 until the time that she was going home.

7 Q. Okay. So her -- she -- another way to, I
8 guess, summarize the procedure is that it was
9 successful?

10 A. Yes.

11 Q. And what you expected to do you did?

12 A. Correct.

13 Q. Okay. When did you next -- well, let me
14 just ask you whether you remember any conversations or
15 any post-operative visits with Ms. Agard after the
16 July 7th procedure?

17 A. Not distinctly.

18 Q. Okay. When did you next have contact with
19 Ms. Agard?

20 A. I think this note is July 22nd; is that
21 correct? Let me look, maybe not. Hold on. This a
22 duplicate. July 30th maybe. July 30th.

23 Q. Okay. And what happened on July 30th?

24 A. We took out her stent that had been placed
25 at the time of the procedure in the office. We took

1 out her stent.

2 Q. Did you do a physical exam with Ms. Agard
3 on July 30th?

4 A. You know, I don't have a recollection of
5 that, but she certainly underwent cystoscopy, so as
6 part of the cystoscopy you're doing a genitourinary
7 exam.

8 Q. Anything in your notes to indicate any
9 conversations with Ms. Agard?

10 A. Just my note that we're going to follow up
11 in six months and give her some antibiotics.

12 Q. Nothing to indicate that -- or let me
13 rephrase that -- nothing to indicate a level of pain
14 or discomfort during that time period?

15 A. I don't see anything here.

16 Q. And you have no memory of any
17 conversations relating to that?

18 A. No.

19 Q. Okay. Tell me about your next contact
20 with Ms. Agard, please.

21 A. That would be December of '09; is that
22 correct?

23 Q. December 23rd?

24 A. I have the 15th here. It was a telephone
25 encounter.

1 Q. Okay. What do your notes indicate on
2 that?

3 A. We wanted to follow up. She was told she
4 had a urinary tract infection. She was having some
5 back pain. We advised her -- well, we suggested that
6 because she had a urinary tract infection and the back
7 pain, we wanted to get a urine culture. And we faxed
8 an order for that so that she could go to the CarePlex
9 and wouldn't have to come across the tunnel. And it
10 looks like she was given Bactrim, Bactrim DS for seven
11 days.

12 Q. Okay. When did you next see Ms. Agard?

13 A. There was another pain medication request
14 there around that time frame as well. And then we
15 suggested that she follow up with another scan to make
16 sure she was unobstructed. And that one -- maybe John
17 Lassiter saw her, I think, at that point. I don't
18 know if I have another note.

19 Q. Was there a procedure done on
20 December 23rd, '09?

21 A. December 23rd? Do you have something
22 there?

23 Q. Yeah.

24 A. Yeah, let me see it. Yes, ultrasound.

25 Q. And where was that performed?

1 A. It looks like that was done at the -- I
2 don't know. It doesn't indicate it here. I don't
3 know. Was it CarePlex? Would you -- it doesn't
4 indicate on the actual -- Tidewater Diagnostic
5 Imaging, but it doesn't say what hospital it was done
6 at. It looks like a Sentara report.

7 So fullness in the right collecting system
8 without caliectasis. So just some fullness otherwise.
9 No other abnormalities. It looks like that was
10 followed up subsequently with a renal scan. And there
11 was no evidence of obstruction and nearly symmetrical
12 renal function again.

13 Q. When was the renal scan done?

14 A. That was January 5th of this year.

15 Q. Do you know why the ultrasound was
16 performed on December 23rd?

17 A. I actually don't see -- unless it was a
18 screening ultrasound by us, you know, as part of her
19 follow-up visit.

20 Q. Okay.

21 A. Looks like we ordered it.

22 Q. Do you have a memory of whether you saw
23 Ms. Agard on December 23rd --

24 A. I don't have a memory of that.

25 Q. -- or on January 5th?

1 A. No, I don't have a memory of that either.

2 Q. When was the next time you had contact
3 with Ms. Agard after January 5th of this year, 2010?

4 A. I think at that point she started
5 following up with Dr. Lassiter. I'm not sure I saw
6 her in the office. I see a note here from John
7 Lassiter, one of our partners over at the CarePlex,
8 once again trying to save her some trips. And I don't
9 have any -- you may have something, I don't know. I
10 don't recall. I think we sent her to John just so she
11 didn't have to come across the tunnel.

12 Q. All right.

13 A. Her ureter is open, draining. She needs
14 follow-up for that FISH study, and I think I talked to
15 John about that.

16 Q. At the time that you transferred care to
17 Dr. Lassiter, do you have a memory or any indication
18 as to the condition of Ms. Agard vis-a-vis the
19 procedures you had been performing on her?

20 A. Well, we know that the kidney is draining
21 from the studies. But, you know, still having lower
22 quadrant pain, you can see from the notes, and that's
23 it.

24 Q. Okay. Are you privy -- or is your
25 office --

1 A. I also stressed to John Lassiter that it's
2 very important that she follow up -- she's been very
3 compliant with me -- but that she follow up for the --
4 because of the cytology -- or the FISH study, just to
5 make sure that she doesn't forget about it.

6 Q. Okay. Are you in contact with Ms. Agard
7 at all at this time other than through your contact or
8 consultation with Dr. Lassiter?

9 A. No. No.

10 Q. Okay. And the records that we have
11 discussed today relative to the care and treatment of
12 Ms. Agard are complete?

13 A. They look to be complete.

14 Q. Okay. And as far as you know, other than
15 the records that we have reviewed here today, there
16 are no other indications of treatment or care for Ms.
17 Agard; is that correct?

18 A. Not that I'm aware of.

19 MR. FAVALORO: Thank you, Doctor. No
20 further questions.

21 THE WITNESS: Okay. Thanks.

22 MR. LEWIS: I have none.

23 MR. PENNER: Dr. Fabrizio, do you want to
24 read the transcript, or do you want to waive the
25 reading of the transcript?

1 THE WITNESS: I think I --

2 MR. PENNER: Most waive.

3 THE WITNESS: Yeah, I think I -- one less
4 thing to read. That's great. I appreciate it.

5 MR. PENNER: You're all finished. Thank
6 you.

7 (Signature waived.)

8 (The deposition was concluded at 11:26
9 a.m.)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 COMMONWEALTH OF VIRGINIA AT LARGE, to wit:

2 I, M. Katherine Vermillion, RPR, a Notary
3 Public for the Commonwealth of Virginia at Large, of
4 qualification in the Circuit Court of the City of
5 Virginia Beach whose commission expires May 31, 2011,
6 do hereby certify that the within deponent, MICHAEL D.
7 FABRIZIO, M.D., appeared before me at Norfolk,
8 Virginia, as hereinbefore set forth; and after being
9 first duly sworn by me, was thereupon examined upon
10 his oath by counsel; that his examination was recorded
11 in stenotype by me and reduced to typescript under my
12 direction; and that the foregoing transcript
13 constitutes a true, accurate, and complete transcript.

14 I further certify that by consent of counsel
15 and the deponent, reading thereof and signature
16 thereto was expressly waived.

17 I further certify that I am not related to
18 nor otherwise associated with any party or counsel to
19 this proceeding, nor otherwise interested in the event
20 thereof.

21 Given under my hand and notarial seal at
22 Norfolk, Virginia this ____ day of _____, 2010.

23 _____
24 M. Katherine Vermillion, RPR, Notary Public
25 Notary Registration No. 192942