IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS

PROBATE COURT DEPARTMENT

In the Matter of the Guardianship
and Conservatorship of:

THOMAS J. PRICE, JR.

No. 22GC00224
Division 8
Chapter 59

CERTIFIED ORIGINAL TRANSCRIPT

EVIDENTIARY DEPOSITION OF MARTIN J. SCHERMOLY, M.D., a Witness, taken on behalf of the Proposed Ward and Conservatee, Thomas J. Price, Jr., before Sharon R. Larrick, CSR No. 767, CCR No. 765, RMR, CRR, CRC, pursuant to Notice on the 20th day of June, 2023, at the Olathe Health Family Medicine Doctors Building 1, 20375 West 151st Street, Legal Department Conference Room, Suite 317, Olathe, Kansas.

APPEARANCES

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EXHIBITS

NOTE: Schermoly Deposition Exhibits 1 through 3 were attached to the original transcript.

(Deposition commenced at 12:01 p.m.)

MARTIN J. SCHERMOLY, M.D.,

being first duly sworn, testified under oath as follows:

EXAMINATION

BY MR. BLONGEWICZ:

Q. Would you please state your name for the record.

A. Martin Schermoly, M.D.

Q. And what is your professional address, sir?

A. 20805 West 151st Street, Olathe, Kansas.

Q. And by whom are you employed?

A. Olathe Health Physicians.

Q. And we are at that location now and taking your deposition, do you understand that?

A. Correct.

Q. And you are appearing here voluntarily?

A. Correct.

Q. And what is your profession, sir?

A. I'm an internal medicine physician.

Q. And you are licensed in the state of Kansas?

A. Correct.
Q. Are you licensed anywhere else besides Kansas?
A. No.
Q. And how long have you been licensed in the state of Kansas?
A. Over 35 years.
Q. A little bit of your educational background, please. Where did you graduate from college?
A. I went to -- well, college, I went to Creighton University, medical school at KU. I did my internal medicine training at KU as well.
Q. You are familiar with Thomas J. Price, Jr.?
A. Yes.
Q. And you understand we are here taking your evidentiary deposition for use in a trial, a petition for guardianship and conservatorship filed by his daughter seeking guardianship and conservatorship for Thomas J. Price, Jr.?
A. Understood.
Q. How long has Thomas J. Price, Jr., been your patient?
A. At least 2011. I can't -- we don't

have access to records prior to that.

Q. But you think it may be longer than that even?

A. It may be, yeah. I've been practicing here at Olathe for 35 years.

Q. Would you say that you are very familiar with Mr. Price and his physical and mental statuses?

A. Yes.

Q. Do you recall the last time you saw Mr. Price in a professional setting?

A. He was in the office not too long ago. I don't remember the exact date.

Q. If I suggested to you it was March, would that sound about right?

A. Sounds right, yeah.

Q. As an internal medicine specialist and considering your extensive familiarity with Mr. Price, do you believe that you can accurately state to a reasonable degree of medical certainty the mental capacity and capabilities of Mr. Price?

A. Yes.

Q. What is your opinion as to whether or not Mr. Price requires a guardian and conservator?

A. I don't believe he requires a guardian

or a conservator.

Q. And is that your opinion to a reasonable degree of medical certainty?

A. Yes.

Q. On November 4th, 2022, you completed a Report of Examination and Evaluation. Do you recall that? It's a document before you which has now been marked Schermoly Exhibit 1.

A. Yes.

Q. Do you recall that report, completing --

A. Correct.

Q. -- that report?

A. Yes.

Q. I want to refer you to Item 6(b) of that report that you completed and signed. The question is -- well, let me do this.

MR. BLONGEWICZ: I'm offering Schermoly Exhibit No. 1.

MR. SANDERS: No objection.

MS. BURGE: No objection.

MS. BYRAM: No objection.

BY MR. BLONGEWICZ:

Q. At Question 6(b) on the second page of your report, the question is "Description of proposed

ward's/conservatee's physical condition" -- no, that's (a), I'm sorry. "Description of proposed ward's/conservatee's mental condition," you wrote what, sir?

A. "Mild to moderate dementia."

Q. And what did you mean by that, if you can expand upon that further, please?

A. He has some mild degree of cognitive impairment. My recollection is primarily some difficulty with short-term memory, some difficulty managing medications were the big issues.

Q. Despite the diagnosis of mild to moderate dementia, you stand by your opinion that he is not in need of a guardian or conservator, correct?

A. Correct.

Q. Would it be fair to say, sir, that your concerns with regard to Mr. Price are more of a physical nature than a mental nature?

A. Correct.

Q. What concerns do you have about Mr. Price physically?

A. He has really advanced diabetic neuropathy which severely impairs his balance and gait. He's had a number of falls as a result.

Q. Again referring to Exhibit 1, your

Report of Examination and Evaluation, at 6(c) -- no. Yeah. Would you read what you wrote in response to 6(c), please?

A. "Mild to moderate dementia. He is able to manage all of his activities of daily living with minimal assistance. He is alert and able to clearly communicate his wishes."

Q. I then now want to refer you to the next page, paragraph 8. No, let me back up. If, where he presently is living, he's receiving assistance with his medications, would that alleviate at least part of your concerns for Mr. Price?

A. Yes.

Q. In paragraph 8 on the third page of Exhibit 1 of your report, you checked a box that says "Does not have the capacity to meet essential needs for physical health, safety or welfare, and is therefore, in my/our opinion an adult with an impairment." Do you see that, sir?

A. Uh-huh.

Q. Do you remember checking that box?

A. Correct.

Q. Do you understand that we might think that your checking of the box is inconsistent with what you've testified earlier, that he does not need

a guardian and conservator? So my question to you, sir, is why did you check that box?

A. He has a significant physical impairment related to his balance and gait. Even with use of a walker, he has difficulty. And as such, he is not able to live independently and requires the kind of assistance that he receives at his current assisted living facility.

Q. When you checked that box, did you then try to -- below that, you checked the box that says "Has the capacity to manage the estate."

A. Correct.

Q. That is your opinion, sir?

A. Correct.

Q. Did you -- and with regard to whether or not he can meet his essential needs for physical health, safety, and welfare, did you try to then explain why you checked that box?

A. Correct.

Q. And did you do so by adding a letter which is also attached to Exhibit 1?

A. Correct.

Q. And it's the next page of that exhibit, correct?

A. Correct.

Q. And it's dated 11-25-2022, correct?
A. Correct.
Q. What were you trying -- what are you attempting to do in this letter which is attached to the Report of Evaluation?
A. I -- my intent was to clarify that he does have some physical impairment. He has some mild dementia that requires some mild assistance with medicines, et cetera, but that he otherwise was clearly capable of directing his affairs.
Q. You believe he can still make all important decisions in his life, both medical and financial?
A. Correct.
Q. You believe he just needs to be able to direct others to carry out those directions?
A. Correct.
Q. You have no concerns about his decision-making ability?
A. Correct.
Q. In the letter of 11-25-2022, which is attached to your evaluation and report, you discuss some potential tests that were ordered by Jennifer Watkins, APRN, at Olathe Health Neurology Consultants. Did you -- first of all, do you believe

you referred Mr. Price to Olathe Health Neurology Consultants?

A. I don't believe I instigated the referral. I don't know whether it was self-referred by the family or whether the family had contacted the office asking for the referral, but it's not something that I remember doing on my own.

Q. Did you discuss with Mr. Price the MRI of the brain and what's called a DAT scan, D-A-T scan?

A. Correct.

Q. You are familiar with those tests?

A. Correct.

Q. And can you relate to us today your discussions with Mr. Price about those tests that were being suggested?

A. We discussed the kind of information that would be potentially gleaned from those results and how they would impact his current treatment and prognosis and what was involved in undergoing those tests, and he was very clear that he did not want to participate in either one of those.

Q. What did you tell him about whether or not those tests would be beneficial to you, him and his care?

A. I did not feel that the results would have a significant impact on his current level of treatment and care or prognosis, and he was very clear, you know, that he was more concerned with current quality of living rather than clarifying more diagnoses.

Q. So you agreed with him that further testing, as suggested with the MRI and the DAT scan, wouldn't be beneficial to Mr. Price?

A. Correct.

Q. It's my understanding there's some concern among family members that Mr. Price may have Parkinson's disease. Do you believe Mr. Price has Parkinson's disease?

A. No.

Q. What is Parkinson's disease?

A. It's a neurodegenerative disorder of the brain for which there is no cure. There's only management of symptoms.

Q. What are the general symptoms of Parkinson's disease?

A. The hallmark symptom is what we call bradykinesia, or a slowness with movement. Many Parkinson's patients will have difficulty with tremor. They can have some cognitive problems,

dementia or hallucinations. They have a number of other problems as it is a progressive deterioration associated with that.

Q. But I take it you don't see any of those symptoms in Mr. Price?

A. Correct.

Q. Does Parkinson's disease impact mental capability?

A. Not early on, certainly. Later on, it can.

Q. Simply because Mr. Price may have a hand tremor, that does not indicate to you -- necessarily mean that he has Parkinson's disease?

A. Correct.

Q. Did it surprise you that Olathe Neurology was recommending a DAT scan?

A. Yes, it did.

Q. And why is that, sir?

A. In 35 years I've only seen a DAT scan done one time, and I've never seen any of our current neurologists ever use one. Most neurologists, when they see somebody with Parkinson's, they recognize it based on the symptoms and the findings. And if there is any doubt, they usually will just give them a trial of Parkinson's medications. If they have a

positive response, then that is sufficient to verify the diagnosis. As I said, I've never seen them use the DAT scan for that purpose.

Q. And that played a role in your discussions with Mr. Price about not having a DAT scan performed?

A. Correct, correct.

Q. Is it your understanding that the DAT scan test itself takes several hours to be performed?

A. Correct.

Q. Do you have an estimate as to how long it takes?

A. I've heard up to like six hours.

Q. At the end of your letter of 11-25-2022, in the last paragraph you state: "At this time I believe Thomas is capable of directing his care and finances. He requires minimal assistance to set out his medication, as well as assistance with ambulation as stated above. He requires assistance with the details of managing his finances. He is capable expressing his wishes and directing such assistance."

Is that still your opinion, sir?

A. Correct.

Q. You don't believe he needs a guardian

and conservator as he can express his wishes and direct someone else to assist him?

A. Correct.

MR. BLONGEWICZ: I don't believe I have any further questions.

MR. SANDERS: Go ahead.

MS. BURGE: Okay.

EXAMINATION

BY MS. BURGE:

Q. I'm Michelle Burge, so I'm Terri Kuhn, the daughter -- I'm her attorney.

A. Okay.

Q. Who I believe you would have met her over the years --

A. Right. Yeah, I think --

Q. -- through visits and everything?

A. Right.

Q. Okay. I'm going to start off within the letter, and then, of course, at various places we're talking here about -- we're calling it progressive onset of dementia or mild to moderate dementia?

A. Uh-huh.

Q. Did you give Mr. Price that diagnosis, or where did that diagnosis came from?

A. I don't know whether I gave him that diagnosis or -- you know, certainly the neurologist's examination was consistent with that diagnosis, but I don't remember where -- when and where that first came.

Q. That was kind of my question, is in the letter, you reference in the next -- that he was evaluated August 19th by Jennifer Watkins --

A. Uh-huh.

Q. -- who is associated with Olathe Health, so that was one. Do you know if there was another neurology appointment or another --

A. My understanding is that's the only appointment that he's had --

Q. Okay.

A. -- with neurology.

Q. Okay. And so then he presented to you in November --

A. Uh-huh.

Q. -- for the purpose of the guardianship or coming up with a report; would that be right?

A. Well, either that or it was just a routine visit. I generally see him at least twice a year, yeah.

Q. Okay. So perhaps it was after the

visit that you put this together? If the visit wasn't for the purpose of putting together this form and this letter --

A. Uh-huh.

Q. -- maybe they just called you and said, you know, we met with you in November, would you be willing to do a report?

A. Yeah.

Q. Do you think that's how it maybe happened?

A. It may have been, certainly, yeah. There were a lot of phone calls --

Q. I understand.

A. -- over this period of time.

Q. I understand. So diagnosing somebody with progressive onset of dementia or mild to moderate dementia, whatever it would be --

A. Uh-huh.

Q. -- how is that done?

A. Well, there's a number of ways to look at it. The neurologist used the mental status exam, and it gives you a numerical score. I believe the score was 22, somewhere in here. You know, I -- and I think the other way that I tend to do it is to look at how they're functioning on a day-to-day basis, you

know. Are they able to bathe, are they able to dress, are they able to manage other activities, you know, on a day-to-day basis?

Q. And how do you receive that information? Is that just self-reported, I suppose, from the patient?

A. It's self-reported mostly from the patient, but also from the family. And if he's in an assisted living situation, sometimes we get calls from the staff, you know, that they're having trouble with this or that.

Q. Okay.

A. So it's sort of a combination.

Q. Okay. So prior to making the report or writing the letter, you yourself, did you do any sort of mental assessment or mini mental exam or any of that kind of work with Mr. Price?

A. I don't -- I don't remember having that. I'd have to look at the record, though. But I don't remember having done that.

Q. We don't have a copy of it, which makes me think it probably would have been provided with some of this as medical records. So when -- so if Mr. Price would have come in in November, and it wasn't for the purposes of a guardianship evaluation

or whatever --

A. Uh-huh.

Q. -- how would you have done a mental assessment or how do you typically do that for a patient if they're there for other purposes? So if he was there for a regular checkup.

A. Oh, there's a -- there's a fairly standard group of questions that you ask, you know. Are they oriented to time and place and date, you know, and it goes on from there --

Q. Okay.

A. -- yeah.

Q. But there's not -- there was not typically -- just like when he would have presented to you on November 4th, there's not a process by which there's a deeper evaluation like the mini mental or going into executive functioning or that type of --

A. Correct, correct. Usually you can get a pretty good idea just talking to them and asking how they think they're functioning, you know. Are they having trouble with their memory? Are they having trouble with, you know, activities? And I think he was having trouble remembering to take his medicines, you know, and so clearly had some

short-term memory issues.

The mini mental status exam is the -- probably the easiest one to do in the office setting with the time constraints in the office. There are, you know, hours' worth of neuropsych testing that you can do for folks, but the -- those are rather time-consuming.

Q. Well, and that was my next question, just to be clear --

A. Yeah.

Q. -- which I think we all are, but just -- those weren't done --

A. Right.

Q. -- prior to this report that was done --

A. Correct.

Q. -- based on this November 4th visit?

A. Correct.

Q. So this was just he was in your office and you did -- this is not a criticism of you. You did a standard running through the questions in your head --

A. Uh-huh.

Q. -- trying to assess how he's doing?

A. Right.

Q. And there wasn't some extra step to go in and do some sort of evaluation for the purposes of a guardianship or conservatorship or some type of neurological, like you were saying --

A. Correct.

Q. -- that take hours for exams?

A. Correct.

Q. Is it possible for a patient to misreport how they're doing, either out of pride --

A. Oh, sure.

Q. -- or maybe because of a disease?

A. Sure.

Q. And does that happen often?

A. I think the advantage in Tom's case is I know him well. And so, you know, one, I don't think he would mislead me; and two, I have a pretty good idea of what his function should be on any given day when he comes to see me. And he never came -- or at least I -- not never, but in the recent past, he's always come with family. And so I have that as my second opinion on how he's doing when we're going through the visit.

Q. Through the visit? Okay. And again, going back to this term, when we say that it's progressive onset dementia, can you tell us kind of

what "progressive" means or how dementia displays itself?

A. Oh, you know, most people sort of start off with -- the thing that they notice the most is difficulty with short-term memory. And, you know, from there, you get into more trouble with, you know, things like medications. And if it continues to advance, they -- they might have trouble remembering to take a shower, have trouble with dressing, have trouble with meal preparation, things on a daily basis.

Q. Well, and in terms of finances or managing your life or your estate --

A. Uh-huh.

Q. -- do those things kind of start to fall by the way as well?

A. Oh, yeah, they can. And I think in Tom's case, he -- when we talked about that, he clearly expressed frustration in dealing with some of the executive or executing things related to his finances. He knew what he wanted to have done, but he didn't want to sit there and write checks out, you know. And that's probably a sign of the dementia, that you just don't have the patience to sit there.

Q. Okay. And in my practice, that term

"executive functioning" is used too much all the time. So the way I've always understood that is that a person can answer a question, a person can say they're oriented to time and place, but when you dig deeper and ask follow-up questions or more information about the facts, they're not able to answer. Is that your understanding?

A. It can happen that way.

Q. And isn't that why sometimes a person will have a more broad neuro evaluation or something like that, to try to determine if their executive functioning has been affected by dementia?

A. I think that the difficulty with those is those kind of advanced testing that the neuropsych people do is -- one, is limited by your baseline intelligence. They're extremely involved. I mean, I think they take at least four or five hours to do.

And the question is, in a sense, what are you looking for, you know. If you're looking for something that's going to say do you have a depressive overlay that is being manifested as dementia, that's the big one, you know, people who have concomitant difficulty with cognitive function and mood overlap.

If it's merely an exercise to see how

well your executive function is, that doesn't really translate into beneficial information. You know, it's -- you know, how are you doing paying your bills? Well, you can look and see. How are you doing dressing? How are you doing bathing, taking your medicines? You don't need four hours of grueling testing to tell you that.

And so that's the way I often approach it, is I'm more interested in how they're performing on a day-to-day basis, you know, and getting the opinion of family members who come with them rather than try to do the neuropsych testing.

Q. Is it possible that a family member could also misreport?

A. Oh, I suppose. I mean, you know, they're not living with the patient necessarily, but --

Q. Well, and as an individual who has mild to moderate dementia, or frankly, anybody aging and with a series of health problems, are they more susceptible to influence or exploitation?

MR. SANDERS: I'm going to object to that as lack of foundation. But go ahead and answer, Doctor.

BY MS. BURGE:

Q. It's just an "in general" question. I don't mean --

A. I --

Q. In general, does dementia at times make a person more vulnerable to influence or exploitation?

A. I don't know that it does. It's not --

Q. Well, if your executive functioning is lowered, so your ability to process and make decisions, would it be more possible for somebody to come in and influence you?

A. I think it depends on where you are at that stage.

Q. That's fair. Okay. And I guess that's my next question. So if Mr. Price has progressive dementia, isn't it possible that -- this report was done in November and that he's in a different -- that it's progressed and his --

MR. SANDERS: Go ahead and finish the question.

BY MS. BURGE:

Q. -- and that the condition is different now in June?

MR. SANDERS: I'm going to object. I

think the term was -- I don't have it in front of me, but "progressive onset of dementia," not "progressive dementia." That's my objection.

BY MS. BURGE:

Q. Mild to moderate dementia, or a diagnosis --

A. Right.

Q. -- like Mr. Price has, is that inherently progressive?

A. Right. Dementia is inherently progressive over the course of the illness. The rate of change is not standard. I mean --

Q. Right.

A. -- it can be quite variable. I can say that as of March, which was the last time I saw him, I don't think there's been any significant change in his condition. He's still very aware of everything that's going on and very clear in his wishes, which haven't changed over the years, I mean. And so there really hasn't been any sign of a significant change.

Q. Okay. And when he came then in March, was that -- you said he usually comes a couple of times a year.

A. Correct.

Q. Was it just a --
A. Correct.
Q. -- I don't want to say just a checkup, but a biannual visit, whatever it may be?
A. Correct.
Q. During that visit, did you do any sort of additional assessment or neurological testing or anything like that?
A. I don't believe so.
Q. So it's --
A. I don't have my notes, but I don't believe so.
Q. It was just regular conversation, again --
A. Uh-huh.
Q. -- that you're trying to make a mental assessment?
A. Uh-huh.
MR. BLONGEWICZ: She cannot take that answer down. You need to answer more verbally.
MS. BURGE: Oh, I'm sorry.
A. Yes.
MR. SCHARNHORST: You were saying "uh-huh." You want to say "yes."
A. Yes, yes.

MS. BURGE: Thank you.

A. Now, if I remember correctly, he was there with his son at the March visit and, you know, we clearly discussed the issues related to what he wanted done and what he didn't want done as far as testing, medications, end-of-life wishes, and he was very clear about all of that.

BY MS. BURGE:

Q. And he again said that he didn't want to do any testing, any medications at all?

A. Correct.

Q. So he's not taking any medications then for Alzheimer's or dementia, which in my mind is like Aricept?

A. I don't have -- I don't have his chart.

(Reporter clarification.)

BY MS. BURGE:

Q. I'm sorry. Aricept, those type of medications --

A. Yeah.

Q. -- he's not taking anything like that?

A. I don't -- I don't have his current chart and so I can't answer that, but I -- I don't believe so. There are problems with those medicines.

They're not very well tolerated by most people. They're not always terribly effective either, but I don't have his chart.

Q. Okay. And do you know if he has been to see a neurologist at all since that August appointment?

A. I'm not aware of any follow-up visits.

Q. Okay. You know, in the letter, you used the phrase "direct his finances or express his wishes." Can you explain what -- I mean, here's what I'm trying to get at. Here's what my question is. Sometimes a person who is impaired could still express their wishes or direct their finances, right?

A. Uh-huh.

Q. Which you would see --

A. Correct.

Q. -- because it's a sliding scale at various times. So what do you mean by "express his wishes or direct assistance"?

A. I think he certainly has the capacity to communicate what he wants done and to communicate how he wants assistance to manage those things. As I said, he gets a little frustrated with the nitty-gritty details of things, but he certainly has the capacity to say this is what I want to do and

this is how I want to get to that point, okay, who I want to help me.

Q. And you feel totally confident in that opinion without him performing additional testing --

A. Oh, yes.

Q. -- to see about --

A. Oh, sure.

Q. Just on the conversations in his office?

A. Yes, uh-huh.

Q. And there's nothing he displayed to you that would demonstrate that he's susceptible to influence or not able to make good decisions?

A. Correct. He was adamant, would be the word I would use, and -- when he was expressing his wishes.

Q. His wishes about not continuing testing or not continuing --

A. I mean -- yes.

Q. -- tests?

A. Yes, and what he wanted done.

Q. Is it ever possible that that in and of itself -- does it cause you to pause and wonder if a person is properly processing or thinking through? And I don't mean in Mr. Price's -- I mean just in

general. Is sometimes the refusal to test or do testing alone --

A. I think -- I think it depends on what they're refusing, you know, or what they're concerned with. I mean, most of the time, my experience is when people have dementia and get to that state of agitation and denial and refusal --

Q. Yeah, yeah.

A. -- it's on inappropriate things, where that's not the case here.

Q. And why is that not the case here?

A. Well, we had -- we had an ongoing discussion about things like the benefits and risks and so forth of the testing, and clearly he understood all of those different factors and then made that decision to not proceed --

Q. Okay.

A. -- yeah.

Q. And both of the times, then, that you've seen him recently, which I think would be November 4th and then when we, again, referenced this March visit, was his son with him for those visits?

A. I believe so, yes.

Q. And do you think his son -- did he drive him there?

A. I would assume so.

Q. Right. Okay. Was he active in the participation of the conversation?

A. Yeah, yeah.

Q. Okay.

MS. BURGE: I don't think I have any more questions for now.

MR. SANDERS: Do you want to go ahead?

MS. BYRAM: Sure.

MR. SANDERS: I don't have very many.

EXAMINATION

BY MS. BYRAM:

Q. Doctor, I'm a guardian ad litem so I'm just here listening. I don't represent anybody. I'm just reporting to the Court what I find out.

A. Okay.

Q. Can you walk me through the history of his appointments with you? So the most recent one was March, right?

A. That's my understanding. I don't have a chart.

Q. Sure.

A. But I usually see him on an every-six-month basis because of his diabetes and hypertension and all of his, you know, associated

health issues. And so that sounds about right, from November to March.

Q. Okay. March, 2023?

A. Uh-huh.

Q. So you haven't seen him since that last appointment?

A. Correct.

Q. And then prior to that was the November appointment?

A. I believe so.

Q. November, 2022. So no appointments in February or January or December?

A. Correct.

Q. And then prior to that November, 2022 appointment, do you know when the next following appointment was?

A. It was in -- I believe it was in the summer. But again, I don't have a chart with me.

Q. Do you think like six months prior or -- give me your best guess.

A. It would have been six months.

MR. BLONGEWICZ: I'm going to object to the physician -- the witness guessing.

MR. SCHARNHORST: Go ahead.

BY MS. BYRAM:

Q. You can still answer.
A. It would have been within six months.
Q. Six months prior to that?
A. Yeah.
Q. Do you remember if you had an appointment with him in October?
A. No, I don't.
Q. Would it be fair to say you probably did not?
A. I said I don't know.
Q. Oh, you don't know? Do you know if you had an appointment with him in September or in August?
A. I don't believe so. There was numerous phone calls back and forth during that period of time, and not with Tom, but with the family. And I believe November was the first visit we had.
Q. When you say numerous phone calls with the family, not with Tom, who was calling?
A. Both the son and the daughter.
Q. And what were they calling about, do you remember?
A. There was a couple calls regarding who was Durable Power of Attorney for health care.

Q. Who was calling about that?
A. Both.
Q. Both of them? What other issues were they calling about?
A. The testing was an issue.
Q. Do you remember who was his agent under the health care Power of Attorney? Did you ever have a copy of that?
A. I know we have a copy. And currently, it's his son. And --
Q. Do you know --
A. -- I don't know whether that changed somewhere.
Q. Do you remember if that changed?
A. I don't know.
Q. Do you know when the son became the health care agent?
A. No, I don't know. I'd have to look at that.
Q. Do you remember when it came to your attention that he was the health care agent based on these calls?
A. Somewhere between August and November.
Q. Okay. You described that he has short-term memory concerns or issues --

A. Uh-huh.
Q. -- am I stating that correctly?
A. Correct.
Q. Describe what that means for Tom.
A. It means he can't remember if he took his pills that morning.
Q. What else would he have?
A. That was probably the big one.
Q. Anything else? What other short-term memory concerns? Because I can't remember half the crap I did this morning, and I hope people aren't saying I have short-term memory loss. I mean, that's a pretty significant concern, right?
A. Right. And that was really my -- my big one.
Q. Okay. Any other short-term memory concerns?
A. Huh-uh.
MR. SCHARNHORST: You need to say --
A. No. I'm sorry.
BY MS. BYRAM:
Q. So you described the March and November visits, both having his son in attendance; is that right?
A. Correct.

Q. Was his daughter in attendance at either of those visits?

A. No.

Q. And you've commented that oftentimes, you get information reported to you by family. At the visit in March, did the son provide or report any information to you about Tom?

A. I mean, I asked him, I mean, as I usually would.

Q. You asked the son?

A. Sure.

Q. And what did you -- do you remember what you asked him?

A. Well, I just -- you know, give me his impression of how Tom was doing.

Q. So he described to you generally kind of what Tom --

A. Yeah.

Q. -- was doing?

A. Correct.

Q. And is that where you were able to ascertain your opinion that he was doing okay?

A. It was part of it, yeah.

Q. Okay. In the November appointment, same question, did you ask the son to provide any

information --

A. Uh-huh.

Q. -- about his father?

A. Correct.

Q. And did he report to you general ongoings?

A. Correct.

Q. And did you base your opinion on his well-being based on what his son was reporting to you?

A. In part, yeah.

Q. What types of information did Tom report to you then?

A. Again, I don't have my records, but, you know, typically I asked him how he's doing, if he's falling, how is his blood sugars, how is his appetite, you know, and just kind of the normal office visit.

Q. Okay. Does the discussion ever come up about finances during these visits?

A. No.

Q. No discussions about finances? Okay. So when you filled this report out about having the capacity to manage his finances, what did you base your opinion on if there weren't any discussions

about finances or his estate?

A. They -- I guess I was direct questioning of Tom. And at one point, I guess the only discussion I've had with him on finances was he was in assisted living, and all of his accounts were frozen and he was having trouble getting his bills paid.

Q. So then there was a discussion about finances?

A. Yes. I guess there was, yes.

Q. Okay.

A. And so, you know, the question is how -- what did he want to do. And he clearly directed me to -- that this is what he wanted done as far as having his son assist him in managing those affairs.

Q. And when you are asking these questions, who answers at these visits with both of them present?

A. Tom.

Q. Tom? Do you have any knowledge about his financial affairs?

A. No.

Q. How long are these visits that you have with him? Like in March, how long --

A. 30-minute visits.
Q. 30 minutes --
A. Uh-huh.
Q. -- with you actually there talking with him?
A. Uh-huh.
Q. And in November, how long are the --
A. 30 minutes.
Q. 30 minutes? Okay. So in your letter, you talk about how he declined the MRI and the DAT testing; is that right?
A. Correct.
Q. So he never underwent those tests?
A. Correct.
Q. Are those tests that would tell you whether or not he has Parkinson's?
A. The MRI, no, would not. The DAT, that's the purpose of the DAT. But again, I've never seen anybody actually use that for that purpose. Usually you can tell if somebody has Parkinson's. And if there is a question, you try them on the medicine and see if it helps and that would confirm it. To do the DAT, which is a very time-consuming and, I assume, expensive test -- I don't know how much it costs -- nobody does that.

Q. So I think you said you don't think Tom has Parkinson's; is that right?

A. Correct.

Q. But there's not been any formal testing to make a decision about whether he actually does?

A. You don't need to do formal testing to see if somebody has Parkinson's. It's, you know, the old phrase, if it looks like a duck and it quacks like a duck, it's probably a duck. And that's the way you approach Parkinson's. If they have symptoms of Parkinson's, if they have physical signs of Parkinson's, you know, that makes the diagnosis.

Q. And this is something you would see in every individual? That doesn't vary from person to person, the symptoms?

A. There's some variability, depending on the stage of the illness, because it is a progressive illness.

Q. Did you write a letter about Tom's capacity back in September?

A. I don't know if I did or not. As I said, there was a lot of phone calls and stuff.

Q. You don't remember doing that?

A. I don't remember.

Q. I thought this would come up so I didn't make a bunch of copies, but I want to ask you about this. And I guess maybe we can all make copies. I don't know if you guys have seen this. I assume that you have.

MR. SANDERS: I have copies of it if you need it.

MS. BYRAM: Do you have copies of it?

MR. SANDERS: Yeah. Extra copies, too.

MS. BYRAM: Okay.

BY MS. BYRAM:

Q. Do you remember writing this --

MR. BLONGEWICZ: Why don't we mark it if you're going to discuss it.

MS. BYRAM: Yeah, let's mark it. Exhibit C, are we on C?

MR. BLONGEWICZ: We're on 3.

MS. BYRAM: 3.

(Deposition Exhibit No. 3 was marked for identification.)

A. Yes. The letter says: "Thomas J. Price, Jr., date of birth 2-7-1936, has been a patient in my practice for many years. He has required increased assistance from family members to

manage his daily affairs. He is still able to make sound judgments. He is able to appropriately direct family members regarding financial matters."

BY MS. BYRAM:

Q. And do you remember why you wrote this letter?

A. I assume that was after he was seen in the office and they were trying to unlock his finances.

Q. So I'd asked you kind of generally when you remembered seeing him. I think you said sometime over the summer prior to the November appointment, but I understand --

A. Yeah.

Q. -- that you don't have your records in front of you, and maybe we need to get a copy of those. But you think there was a visit close in proximity --

A. Correct.

Q. -- to the writing of that letter?

A. Correct.

Q. And who requested that letter?

A. I believe his son requested that letter.

Q. And did he say why he wanted that

letter?

A. Because he couldn't pay his bills.

Q. And it appears to have been folded. Was that letter -- how was that --

A. It was.

Q. -- sent to them?

A. I don't know. I write it on a computer and I give it to my staff and --

Q. I'm just curious about the time of it, because I believe it's dated September 15th. And I'm just trying to wonder how it was remitted to them and when maybe Tom or his son received that. But you have no idea?

A. I wouldn't know.

Q. Okay.

MS. BYRAM: Okay. I don't think I have any more questions. Oh, I do have one question.

BY MS. BYRAM:

Q. One last question. You've commented that sometimes a patient or family can misreport. How would you know if a patient or a family member is misreporting information to you?

A. Well --

Q. It would be hard to know, right?

A. It can. I think in Tom's case, since

he was in assisted living, we would get calls from the assisted living if there was a problem, so sort of an outside source. And I think some of it is, in part, knowing Tom for all these years. And if behavior was out of the ordinary, I mean, you would recognize that.

Q. Okay.

A. So yeah.

MS. BYRAM: No further questions.

MR. SANDERS: I have a few questions, Doctor. I'm going to wrap this up very quickly.

EXAMINATION

BY MR. SANDERS:

Q. Are you aware where Tom Price is currently residing?

A. I believe it's Benton House.

Q. Are you generally familiar with that facility?

A. I've had other -- I've never been there, but I've had other patients that live there.

Q. And the reason I bring that up, the Benton House, that is an assisted living care facility, is it not?

A. Uh-huh.

MR. SCHARNHORST: You need to --

A. Yes. Sorry.

MR. SCHARNHORST: You're getting it.

BY MR. SANDERS:

Q. And I think you've said several times throughout this deposition this afternoon that one of your concerns -- or chief concerns, I think you've testified to, as to Mr. Tom Price is his ability to remember to take -- short-term memory to take his medications --

A. Correct.

Q. -- for example, in the morning?

A. Correct.

Q. Did I fairly state that? That's basically your chief concern as to his cognitive ability?

A. Correct.

Q. Are your concerns alleviated to some extent inasmuch as Mr. Price is now living -- in the last three or four months has been moved into Benton House, which is an assisted living facility?

A. Correct. My understanding is that they manage his medications.

Q. Yeah. So that's not as big a concern as it used to be, is it not, Doctor?

A. No.

Q. All right. Thank you. If I understand the chronology that was just went through by the guardian ad litem, you would have examined -- routine examinations of Mr. Price in the summer, in or about August of 2022, you would have seen him next in November of 2022, and the last visit would have been in March of 2023; is that correct?

A. Correct.

Q. Did you notice any appreciable cognitive decline from that visit in late summer or August of '22 through March of '23?

A. No.

Q. Was it pretty much stabilized?

A. Correct.

Q. And going to Exhibit No. 3, which I believe is before you, apparently that short letter --

A. Uh-huh.

Q. -- you had written in response to, apparently, Mr. Price's accounts at Edward Jones being frozen?

A. I believe that's correct.

Q. All right. And he was having problems getting bills paid at the time; is that correct?

A. Correct.

Q. And there was a request made to you to write a letter as to his cognitive abilities; is that correct?

A. Correct.

Q. And in response, you write: "He is still able to make sound judgments."

Doctor, what did you mean by that?

A. I meant he was able to make sound judgments. He had the ability to, you know, direct what he wanted done with his finances, with his health care, you know, with his daily life.

Q. Then you continue to write, Doctor: "He is able to appropriately direct family members regarding financial matters."

Please explain what you meant by that.

A. It was his choice to have his son manage his affairs.

Q. And what type of affairs?

A. Whether it be health care or financial.

Q. On these last visits, and I'm talking about the last visits over the course of the last year -- we're now almost into July of '23 -- who accompanied Mr. Price?

A. His son.

Q. How often in the past did his daughter, Teresa Kuhn, accompany Mr. Price to doctor visits?

A. I know -- I know of one occasion where she was there in 2022, but I don't know the date of that visit.

Q. All right.

A. It was sometime in the summer. But generally speaking, he came alone.

Q. By himself?

A. Uh-huh.

Q. Okay.

MR. SCHARNHORST: Answer verbally for her.

A. Yes. Sorry.

BY MR. SANDERS:

Q. You mentioned something about if there was a problem -- I don't know if it was just unique to Mr. Price or not, but some of your other elderly patients, you have on occasion gotten calls from assisted living facilities concerning some of your patients.

A. Correct.

Q. Do you recollect in the last year receiving any calls -- I mean, I'm talking about

calls of concerns from Cedar Lake Village, where Mr. Price used to live, or Benton House?

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

Q. Do you recall getting any calls at any time from any assisted living or independent living concerning Mr. Price?

A. No.

Q. Based over the last -- course of the last year, do you believe Mr. Price's cognitive ability is pretty much stabilized?

A. Correct.

Q. You haven't noticed, therefore, any noticeable decline; is that correct?

A. Correct.

Q. And based on your examinations of Mr. Price in the course of the last year, he is certainly familiar with who his immediate family are?

A. Correct.

Q. That would be his daughter, Teresa Kuhn, and his son, Jeff Price; is that correct?

A. Correct.

Q. And just to be absolutely clear, assuming that a DAT scan has been arranged for July, let's say, it's your recommendation that Mr. Price not undergo that DAT scan?

A. I don't think it's necessary.

Q. All right. Thank you. Let me look at my notes. That may be it.

I think you testified -- just kind of a quick follow-up -- that he has ability to direct others to manage his financial affairs. I'm looking back at some responses to Miss Burge's questions. You said something to the effect Mr. Price, Mr. Tom Price, doesn't like writing checks, correct?

A. He doesn't -- he doesn't like the amount of detail that you have to go through to do some of the financial things.

Q. But a lot of that would be related to just simply like writing checks, making sure the bills get paid?

A. Correct.

Q. But you believe he can certainly direct others to do that simple task?

A. Correct.

Q. Which is essentially no more than a bookkeeping task, correct?

A. Correct.

Q. As to his ability to understand his overall finances, you're confident he has the ability to do that?

A. Correct.
Q. When are you scheduled to see him again, if you know?
A. Should be around September, six months.
Q. Is that just going to be another routine follow-up visit?
A. Yes.
Q. And primarily, what are you most -- look at when he comes in on these routine visits? What's your primary concerns you want to focus on?
A. Well, I focus on his safety. And for him, that's a concern with his fall risk. Medications, control of blood pressure, diabetes, you know, appetite, we do it all.
Q. Those are your chief concerns?
A. Yeah. And, you know, we look -- and for him, I'll look at and see whether or not there's been a change in cognition. You know, hopefully the family will be there again and use their input as well.
MR. SCHARNHORST: Have you got to get that? Because it's been going off.
MR. SANDERS: One last question.
THE WITNESS: Yes.

BY MR. SANDERS:

Q. You used the term, in response to one of the questions, "alert as to person, place, and time," I believe.

A. Uh-huh.

Q. Yes?

A. Correct.

Q. Can you define to the Court or the jury what that means, "alert as to person, place, and time"?

A. Well, the way those questions go, do you know where you are? Do you know what day of the week it is? Do you know what month, what year? You know, that kind of orientation.

Q. Over the course of the last year when you have examined Mr. Price in your office, has he been always alert as to person, place, and time?

A. I don't know that I have specifically asked him those questions on our routine visits, but he has always been alert at all the visits.

MR. SANDERS: Thank you, Doctor.

THE WITNESS: Uh-huh.

MS. BURGE: Can I ask a quick follow-up, maybe two questions?

MR. SCHARNHORST: Well, do you need to

get that page?

THE WITNESS: No, it's fine.

MR. SCHARNHORST: Okay.

EXAMINATION

BY MS. BURGE:

Q. Okay. During the guardian ad litem's questions, you talked about in one of the visits, probably in the fall of 2022, there was a discussion about the Edward Jones account being frozen --

A. Uh-huh.

Q. -- and that was the need for the letter.

A. Correct, uh-huh.

Q. Can you recall what was said during that? Did you ask why?

A. I probably asked why and then became aware of all this during that visit. And as I said, we'd had a number of phone calls that -- you know, regarding the Durable Power of Attorney and so clearly, I mean, I was aware that there was something going on between the family members. And if I remember correctly, at that point he, I believe, was living in Cedar Lake and they were having trouble getting his bills paid. And I -- you know, my concern was that for him to live somewhere other than

an assisted living --

Q. Sure.

A. -- was not going to be a good idea.

Q. But as to why the account was frozen or the problem itself, did they have -- did he or his son talk to you about what happened --

A. Oh, I --

Q. -- or what the financial issue was?

A. Oh, I knew that there was the guardianship issue. And as a result of that, the accounts were frozen. That's my understanding, but I don't know.

Q. But if they reported that incorrectly and that's not how that happened or their reporting of the financial information was off, could that possibly mean he didn't understand his financial affairs?

MR. BLONGEWICZ: I'm going to object to the form --

MR. SANDERS: Object to foundation.

MR. BLONGEWICZ: -- of the question and foundation.

MR. SCHARNHORST: Go ahead.

A. You're going to have to say it again because I --

BY MS. BURGE:

Q. Well, I'm just saying if what they reported was wrong and the ultimate question here is if he can make his own financial decisions, wouldn't falsely reporting what happened or wrongfully reporting this huge crisis and this -- what precipitated all of this, couldn't that mean he didn't understand what was going on with his finances?

MR. SANDERS: Object --

MR. BLONGEWICZ: I'm going to object to the form of the question. I object to foundation. And I don't believe the doctor has stated that he has knowledge concerning what was reported as to why accounts were frozen.

MR. SANDERS: Further requires him to speculate. But go ahead.

MR. SCHARNHORST: Go ahead.

A. It doesn't change my opinion that he was alert and aware of the situation and able to direct others on his behalf.

BY MS. BURGE:

Q. Even if he didn't know why?

A. It doesn't change my opinion.

MR. BLONGEWICZ: Object to the form of

the question. Lack of foundation. Speculation.

MR. SCHARNHORST: Go ahead.

A. As I said, it doesn't change my opinion.

MS. BURGE: Okay.

MR. SCHARNHORST: You guys done?

MR. BLONGEWICZ: I need to do one last thing. It occurs to me that in the course of my direct examination, I failed to offer --

MS. BURGE: I think you're right.

MR. BLONGEWICZ: -- Exhibit 2, which is the notes of Olathe Health Comprehensive Neurology, so I would do that and now offer those -- that Exhibit 2 into evidence.

MS. BYRAM: No objection.

MR. SANDERS: No objection.

MS. BURGE: Yeah, no objections.

MS. BYRAM: And I think I likewise failed to offer Exhibit 3 into evidence.

MR. BLONGEWICZ: No objection.

MR. SANDERS: No objection.

MS. BURGE: No objection.

MR. BLONGEWICZ: Sir, you have the right to review what's been taken down here today and sign it, or you can waive that right, whichever.

It's your choice.

MR. SCHARNHORST: Well, do you guys have a trial date?

MR. BLONGEWICZ: We do not.

MR. SCHARNHORST: Okay.

MR. SANDERS: We may have one in two hours.

MR. SCHARNHORST: So you have a right to read the transcript and see if you want to make changes, or you can waive your signature and be done with it today. And she's a good court reporter.

THE WITNESS: I'll waive --

MR. SCHARNHORST: Perfect.

THE WITNESS: -- that right.

MR. BLONGEWICZ: Thank you very much for your time, sir.

(Deposition concluded at 1:07 p.m.)

(Whereupon, it was stipulated by counsel and the witness that submission of the transcribed deposition to the witness for examination, reading and signing is waived and that said deposition shall possess the same force and effect as though read and signed by the witness.)

C E R T I F I C A T E

I, Sharon R. Larrick, a Certified Court Reporter, do hereby certify:

That prior to being examined the witness was by me duly sworn;

That said deposition was taken down by me in shorthand at the time and place hereinbefore stated and was thereafter reduced to writing under my direction;

That I am not a relative or employee or attorney or counsel of any of the parties, or a relative or employee of such attorney or counsel, or financially interested in the action.

The original transcript is in the custody of:

MR. JON A. BLONGEWICZ
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WITNESS my hand and seal this 20th day of June, 2023.

Sharon R. Larrick

SHARON R. LARRICK
STATE OF KANSAS
CSR No. 767
STATE OF MISSOURI
CCR No. 765
CERTIFIED COURT REPORTER

Sharon R. Larrick
CCR NO. 765, CSR NO. 767

In the Matter of the Guardianship and Conservatorship of: THOMAS J. PRICE, JR.

Y