

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

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: ALEXANDER NEUSTADTER, :
: Plaintiff, :
: v. : Civil No. 273195
: HOLY CROSS HOSPITAL, :
: Defendant. :
-----X

JURY TRIAL

Rockville, Maryland

June 4, 2007

DEPOSITION SERVICES, INC.
6245 Executive Boulevard
Rockville, MD 20852
(301) 881-3344

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

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ALEXANDER NEUSTADTER, :

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Plaintiff, :

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v. : Civil No. 273195

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HOLY CROSS HOSPITAL, :

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Defendant. :

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Rockville, Maryland

June 4, 2007

WHEREUPON, the proceedings in the above-entitled matter commenced

BEFORE: THE HONORABLE LOUISE G. SCRIVENER, JUDGE

APPEARANCES:

FOR THE PLAINTIFF:

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I N D E X

Page

<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
<u>For the Plaintiff:</u>				
Steven Kariya	26	70	87	--
Shahid Shamim	91	121	133	--
Jay Weiner	138	174	189	--
Caroline Williams	195	206	--	--
Christine Canfield	210	--	--	--

<u>EXHIBITS</u>	<u>MARKED</u>	<u>RECEIVED</u>
<u>For the Plaintiff:</u>		
Exhibit No. 1	--	25
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<u>For the Defendant:</u>		
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1 Cross Hospital.

2 SHAHID SHAMIM

3 called as a witness on behalf of the plaintiff, having been
4 first duly sworn, was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. JARASHOW:

7 Q Doctor, please state your full name and address?

8 A First name is Shahid, last name is Shamim.

9 Q And your address, doctor?

10 A It's 507 Longhorn Crescent, Rockville, Maryland.

11 Q Doctor --

12 THE CLERK: Your Honor, may I get the spelling of the
13 witness's name?

14 THE COURT: Do you mind spelling your last name for
15 us?

16 THE WITNESS: Sure, S-H-A-M-I-M.

17 THE COURT: Thank you.

18 BY MR. JARASHOW:

19 Q Doctor, in 2003 you were in a medical practice along
20 with Dr. Nawaz, correct?

21 A Yes.

22 Q And that was the medical practice known as Reer and
23 Altschuller (phonetic sp.)?

24 A Yes.

25 Q You were both internal medicine doctors?

1 A Yes.

2 Q That's sort of general practitioners that take care
3 of the general person, right?

4 A Yes.

5 Q Now, Israel Neustadter was a patient in that
6 practice, right?

7 A Yes.

8 Q And Israel Neustadter was admitted to Holy Cross
9 Hospital by Dr. Nawaz in 2003?

10 A Yes.

11 Q Right. And Dr. Nawaz went on vacation on March 25th
12 of 2003, correct?

13 A Yes.

14 Q And you took over for Dr. Nawaz as it pertained to
15 Mr. Neustadter in the hospital, right?

16 A I was a cross-coverage for Dr. Nawaz.

17 Q So, you then become, became his internal medicine
18 doctor?

19 A Cross-coverage, yes.

20 Q Before Dr. Nawaz left for vacation, you and he
21 discussed Mr. Neustadter's case?

22 A He gave me the sign out before leaving for the
23 vacations, whatever patients were in the hospital, so I can
24 follow up with, follow up on those patients.

25 Q And not only did he give you a sign out, he actually

1 talked to you about Israel Neustadter's case?

2 A Yes.

3 Q And so, you were aware what Dr. Nawaz's treatment
4 goals were?

5 A Yes.

6 Q And you were going to try to follow those same
7 treatment goals, right?

8 A Yes.

9 Q You knew that Dr. Weiner was one of the people
10 assisting in the care of Israel Neustadter?

11 A Yes, along with his group, Dr. Steve Kariya, Dr.
12 Weiner, the whole group.

13 Q Right.

14 A Yeah.

15 Q And primarily the (unintelligible) care by Dr. Weiner
16 and Dr. Kariya in the time you were involved?

17 A Yes.

18 Q And nobody else was involved in his group during that
19 time?

20 A I think one call was given to one of his
21 (unintelligible) doctor, I think it was the night of I think
22 25th.

23 Q And what you found out from Dr. Nawaz was that Mr.
24 Neustadter was getting better at the time you took over?

25 A Yes.

1 Q And you've understood that the plan for treatment for
2 Dr., for Israel Neustadter was to send him to rehabilitation?

3 A That was the plan.

4 Q Now, you examined Israel Neustadter on March 25th,
5 and doctor, let me get you the medical records, and you can
6 refer to them.

7 THE COURT: Is this the joint exhibit, Mr. Jarashow?

8 MR. JARASHOW: Yes, the joint exhibit.

9 MS. WARD: Doctor, it's page 422.

10 THE WITNESS: 422.

11 BY MR. JARASHOW:

12 Q (Unintelligible), and you get to keep that there.

13 A Okay.

14 Q And the pages are numbered in the center on the
15 bottom of the page, do you see?

16 A Yeah.

17 Q And it's organized by section, by progress notes, and
18 other sections of that type.

19 A Page 422.

20 Q Yes, and so give me a chance to turn to it myself
21 here. And doctor, I'm going to put up a copy of it here, so
22 not only can you see it, but everybody else can. And it goes
23 down to the bottom there, so we'll deal with that, but it's
24 readable there. Okay, so let me get my copy to talk about it.

25 All right, doctor, you see in the beginning, you

1 indicated that you were cross-covering for Dr. Nawaz, right?

2 A Yes.

3 Q And then you gave a list here of what Mr.

4 Neustadter's conditions were, correct?

5 A Yes, and this a problem list, short problem list.

6 Q And these were the matters that you were addressing

7 in the hospital for him, correct?

8 A Yes.

9 Q And then, so let's run through these quickly.

10 Bilateral pneumonia, that's one.

11 A Yes.

12 Q No. 2 is dysphasia?

13 A Yes.

14 Q And what's dysphasia, just a quick explanation?

15 A It's difficulty swallowing.

16 Q And then, (unintelligible) tube placement, that's the
17 feeding tube?

18 A He has a feeding tube.

19 Q Right, and then what is this next one, I can't read
20 it quite?

21 A This is (unintelligible) ED, (unintelligible),
22 meaning the increased liver function test, and (unintelligible)
23 which is one of the liver enzymes.

24 Q And HTN, that's abbreviation for hypertension.

25 A Hypertension.

1 Q And then, in No. 6, you said history of respiratory
2 failure?

3 A Yes.

4 Q And that was a reference to his having been intubated
5 and then extubated in the hospital?

6 A Yes.

7 Q Now, doctor, you then did his vital signs at the
8 time?

9 A Yes.

10 Q Why don't you just run through what his vital signs
11 were?

12 A First one is blood pressure 142 over 67, 99 percent
13 is the oximetry the oxygen level in his blood, 75 per minute is
14 the pulse, and then the temperature 98.2.

15 Q Okay. We don't have to do those things you have down
16 below that those are lab test values?

17 A These are all the lab for that day, for that
18 particular day.

19 Q And in the circle, you had 18.1 with an arrow next to
20 it. That's white blood count, isn't it?

21 A That's white blood cell count, yes.

22 Q And you were indicating an arrow indicating at this
23 time it was your assessment that it was going down?

24 A Yes.

25 Q And then, you indicated 99 percent pulse oxygen, that

1 was on a breather mask, was it --

2 A When I --

3 Q Or no mask at that time?

4 A When I reviewed the medical records, it was on the
5 four liter oxygen, it was not on, non-rebreather mask, it was
6 on the oxygen, four liters.

7 Q So, he didn't have a mask on, but he did have an
8 oxygen tube --

9 A Oxygen tube.

10 Q -- that he was able to breath through?

11 A Yeah.

12 Q And you indicated here, well, in your assessment
13 here, he was under no respiratory distress here, was he?

14 A No.

15 Q And this is a very stable picture for him at this
16 time, isn't it?

17 A At that present time, yes.

18 Q Do you know what time you saw Dr., you saw Mr.
19 Neustadter that day?

20 A My note is not timed, but usually I would round in
21 the afternoon when I get some break between the patients and
22 the office, would come to the hospital and round it. So, I'll,
23 I'll say somewhere around noon time.

24 Q All right. And the fact that his white blood count
25 was trending down was a promising sign for his recovery, wasn't

1 it?

2 A Yes.

3 Q And so, you didn't see any different goal for the,
4 that you had talked to Dr. Nawaz about, that he was in toward
5 rehabilitation?

6 A At that moment, the, the numbers were looking good
7 except for the liver functions, and (unintelligible) had the
8 whole plan for the day, what I planned to do.

9 Q Okay. We'll go ahead and talk about that in just one
10 second. If we go down, let me, we'll stretch this down like
11 this, so you can see the bottom part of your record here. Your
12 section here with, I'm trying to reach and see this on the
13 screen, talk about your section here. You did an examination
14 from him, and this is a further examination of what you did?

15 A Yes, these are the examinations.

16 Q And the first one is the examination of what?

17 A It's a cardiovascular examination, and talking about
18 the pulse and heart rate.

19 Q And then, here you did a chest examination, right?

20 A Yes.

21 Q And you indicated bilateral crackles?

22 A Yes, sir.

23 Q That's sounds in the chest that still, meaning he was
24 recovering from pneumonia?

25 A It's, it's still a sign of pneumonia

1 (unintelligible).

2 Q And so, you were under the impression at that time
3 that he still needed some recovery, but he was recovering well?

4 A He was recovering well, yes.

5 Q This is your abdominal exam, isn't it?

6 A Yes.

7 Q And that indicates he had a PEG tube in for feeding?

8 A Yes.

9 Q And then, your last one is your extremities
10 examination, right?

11 A Yes.

12 Q And that means your arms, and his legs?

13 A Mostly legs.

14 Q It indicate, indicated he had some swelling?

15 A It says negative edema meaning no swelling.

16 Q Okay. So, negative that's that little sign right
17 there --

18 A Yes.

19 Q -- which indicates that there was none of that there?

20 A Yeah.

21 Q And then, in the bottom part of this is your plan for
22 treatment, is that what this is referencing?

23 A Yes.

24 Q And these were the items that you still thought had
25 to be addressed?

1 A Yes.

2 Q And so, No. 1 was continue the IV antibiotics?

3 A That's true.

4 Q And ABX, if I can get myself organized here, ABX is
5 an abbreviation often used for antibiotics?

6 A Antibiotics, yes.

7 Q Right. No. 2 was a checkmark, whoops, there?

8 A Yes.

9 Q And that was to check the liver function and the gall
10 bladder (unintelligible) with ultrasound?

11 A Yeah, it says check ultrasound of the liver, gall
12 bladder.

13 Q And that's the US is an abbreviation for ultrasound?

14 A Ultrasound.

15 Q And liver and gall bladder, of course. And that's in
16 connection with the lab values that you looked at?

17 A Yes.

18 Q And you wanted to do further investigation of that?

19 A Further investigation.

20 Q You then said for No. 3 that his prognosis is
21 guarded?

22 A Yes.

23 Q And the reason you said that was, he was still
24 recovering from --

25 A Still recovering from pneumonia.

1 Q But you were hopeful that he would be ready to
2 discharge soon?

3 A Depending upon his progress, yes.

4 Q But that was the picture you had at this point in
5 time, is that he was headed for discharge out of the hospital?

6 MS. WARD: Objection.

7 THE COURT: Overruled.

8 THE WITNESS: Yeah, No. 4 is the, the long term plan
9 is still that rehab placement.

10 BY MR. JARASHOW:

11 Q And there we go, No. 4 was still you're aiming
12 towards sending him out to outpatient, to placement out of the,
13 into rehabilitation?

14 A Yes.

15 Q But that would mean he would leave the hospital,
16 maybe go home, or go to another facility for rehabilitation.
17 That was the goal and expectation at that point in time?

18 A There were multiple factors too, depending upon his
19 how medical condition is, or how he progresses with the
20 physical therapy. And the long term plan would be to rehab
21 placement.

22 Q Okay. Now, you also found out from, that the Jewish
23 faith and Jewish principles were very important to his patient
24 and to his son, Alexander Neustadter, who was the surrogate for
25 decision-making, right?

1 A Not on that particular day.

2 Q Well, you found out the next day?

3 A Next day, yes.

4 Q Yes. And what you found out, you found out, because
5 there was a notation in the chart by an intern at the hospital,
6 or an internal medicine person at the hospital, right?

7 A Yes.

8 Q And so, I'll put that up here. It's on page 423.
9 And so, if we look here, let me get this one organized, and see
10 if I can get it on here in a readable fashion, whoops. Okay,
11 so this note is the note you were talking about, correct?
12 Sorry, it moved around there.

13 A Yes.

14 Q And feel free to look into the book if you want to,
15 but just in organization, it's right below the March 25th note
16 of Dr. Kariya, isn't it?

17 A That's true.

18 Q So, if you look at this note, this was a note by a
19 resident at Holy Cross Hospital?

20 A Yes, resident (unintelligible).

21 Q And a resident doctor who is somebody whose come out
22 of medical school, but is working at the hospital, and caring
23 for patients as the house doctor, isn't he?

24 A Yes.

25 Q And I know that the date is missing over here,

1 because the holes from the loose leaf went into it, but that is
2 the date of 3-25, isn't it?

3 A That, that's true.

4 Q And in that note, what is it that you found out that
5 made you recognize that the Jewish principles were important to
6 the care of this patient?

7 A In the last paragraph.

8 Q In the last paragraph --

9 A The last --

10 Q -- is this one you're referring to, correct?

11 A Yes.

12 Q And there you found out that the son had discussed
13 intubation, but he had to rely upon Jewish principles, and talk
14 to his, he wanted somebody to talk to his Rabbi, right?

15 MS. WARD: Objection, Your Honor.

16 THE COURT: Basis?

17 MS. WARD: I don't believe it's, I don't think the
18 note has been read correctly.

19 THE COURT: Well, the note's in evidence, it can
20 speak for itself.

21 BY MR. JARASHOW:

22 Q Doctor, you found out about this, correct?

23 A From this note, yes.

24 Q Did you find out, did you talk to Mr. Neustadter
25 about those Jewish principles that were important?

1 A We never had that discussion.

2 Q You never discussed it with Mr. Neustadter?

3 A These, yeah, with Mr. Neustadter.

4 Q All right. Your next contact with this patient was
5 your note, I'm sorry, let me just get myself organized here.
6 Before I go onto that, I'll come to the 26th. At the time that
7 you were caring for Israel Neustadter, he was a full code
8 patient?

9 A Yes, that was my understanding.

10 Q You never thought, or never knew of any DNR order, do
11 not resuscitate order that applied to him?

12 A No.

13 Q Let me go back to this note, I didn't ask you one
14 question about it. This note by the resident makes a reference
15 to a phone call with you, you see right in here, it says
16 contacted Dr. Shamim, and discussed, is that possibility of
17 intubation, is that what that is a reference to?

18 A That's what the note says.

19 Q And do you have any recollection of that phone call
20 from the resident?

21 A I don't have that recollection.

22 Q Now, we go to your note of March 26th, and that's on
23 page 425 of those records if you wanted to look at it.

24 A Yes.

25 Q And again, it's a little bit larger than the page

1 here, so we'll start out up at the top here. Okay, doctor, and
2 get my copy here, again, you do not have a time noted here as
3 to the time you made your note, do you?

4 A No, I don't see a time.

5 Q And again, do you have a recollection of the time at
6 which you made this note?

7 A I think we go back to the same thing I used to round
8 in between the patients, it was probably afternoon.

9 Q Now, in this note you talk about noting here the
10 events of last night were noted, right?

11 A Yes.

12 Q But you don't have any detail as to what that, those
13 events were?

14 A (Unintelligible) No, I --

15 Q You didn't write anything.

16 A I didn't, I did not rewrite the whole thing.

17 Q Okay. And you didn't indicate here even the subject
18 matter of the events of last night?

19 A No.

20 Q Do you have a recollection of what that was
21 addressing?

22 A I'm sorry, can you rephrase it?

23 Q In other words, do you remember as you sit here today
24 exactly what this was in reference to?

25 A I can go back to the page where the resident, or the

1 intern came back to assess the, assess Mr. Neustadter.

2 Q You know you can certainly go back in the records and
3 look at that, yes.

4 A Yeah.

5 Q So, you're talking about this note here?

6 A Yes, that's the note I was referring to that events
7 of the last night. The time was there, 8:30 p.m. that the
8 resident was called in to evaluate the patient for the low
9 pulse ox, he was oxygenating only 83 percent.

10 And on entering the room, his heart rate was 113, his
11 blood pressure is noted, heart rate and the respiratory rate is
12 noted. And the stat ABGs were done, which (unintelligible)
13 blood gases to see how much he's oxygenating. And he was put
14 on 100 percent non-rebreather.

15 He was at that point, he was put on 100 percent non-
16 rebreather mask. And the, below that there are some ABG
17 results here, see how much he's, how much oxygen he has in the
18 blood. And he was aspirating 100 percent on the non, non-
19 rebreather mask.

20 So, these are the events which, which I looked at,
21 and it says contacted Dr. Shamim, and discussed possibility
22 intubation, and to patient. And something that the ICU
23 coverage with Dr. Kariya was also consulted, the ICU doctor
24 coverage for Dr. Kariya was also consulted.

25 And at this point, plan was to continue the oxygen,

1 keep the patient on 100 percent non-rebreather, and on section
2 PRN, and then the section on the discussion with the son.

3 Q And did you, when you came in on the 26th address the
4 code status again at all?

5 A I did not address the code status.

6 Q Did you address the issue of intubating, or
7 reintubating Mr. Neustadter in, on March 26th?

8 A We did not discuss that.

9 Q And in your note here, you indicate that there was,
10 is this recurrent aspiration hypo, what's that word there?

11 A Hypoxemia.

12 Q Hypoxemia.

13 A Hypoxemic.

14 Q Yes.

15 A Meaning low oxygen.

16 Q And that's why he was then put on the rebreather mask
17 (unintelligible) to get oxygenation?

18 A And he was already on a non-rebreather mask, and I
19 was just wanting to watch that.

20 Q Now, you've noted here that his white blood count,
21 isn't that in the circle, the 376 (unintelligible) white blood
22 count was at that time?

23 A Yes.

24 Q That it increased to 37.6?

25 A Yes.

1 Q That was quite an increase from the prior day?

2 A It was.

3 Q And what did that indicate to you, that there was an
4 infection going on?

5 A Yes, as I mentioned in my note, hypoxemic and
6 possibly, and recurrent aspiration. So, it's possibly an
7 aspiration again.

8 Q And the ABG, the blood gases that were taken the day
9 before --

10 A Yes.

11 Q Was that an indication of a need for intubation?

12 A At that point, he was close to, if you look at the
13 respiratory rate, he was saturating 100 percent at that point.

14 Q Go back to this note --

15 A A night before, yeah.

16 Q Okay.

17 A If you look at it, 7.504, 32.9, 58.5, and he was
18 still saturating 93 percent on non-rebreather. His oxygenation
19 was still at about 90 percent.

20 Q And if (unintelligible), ABGs, the blood gases showed
21 a worsening of the condition --

22 A Yes.

23 Q Then that would be an indication for intubation,
24 wouldn't it?

25 A Discussing with the family what is, what he wants to

1 be done, yes.

2 Q And the question of intubation at that point if it
3 was, if the blood gases indicated that it was unnecessary, that
4 would be pretty much a judgment for the family to make,
5 wouldn't it?

6 A I believe so.

7 Q Now, on March 26th, you switched antibiotics, isn't
8 that one of the things you did?

9 A Yes.

10 Q Now, why did you do that?

11 A Because of the sudden change in his condition from
12 25th to 26th. His white blood cells count jumped from 18,000
13 to 37.6,000.

14 Q And were you switching antibiotics to give some
15 broader coverage for the coverage of the, what had been given
16 before?

17 A Yes.

18 Q He was on levaquin and rocephin, correct?

19 A Yes.

20 Q And you started him on which antibiotics?

21 A As is in my notes, I started him on rocephin and
22 levaquin combination.

23 Q And what were you trying to cover, what kind of
24 bacteria were you trying to cover with that?

25 A With the aspiration, you are basically thinking of

1 all the different bacterias, gram positive, gram negative,
2 anaerobics, as broad a coverage as much as possible.

3 Q Now, you did an examination here, correct?

4 A Yes.

5 Q Let's see if, pull this up here. You said that he
6 was in, pardon me, (unintelligible) short of getting, there we
7 go, patient acute respiratory distress, correct?

8 A Yes.

9 Q And that was his condition at the time?

10 A Yes.

11 Q You, your, we talked about that already, and you,
12 here we go, your examination of the chest still showed
13 bilateral crackles?

14 A It's actually R in the circle. It's mentioning from
15 the right side rales and crackles.

16 Q I'm sorry, there we go.

17 A Yeah.

18 Q Okay, good.

19 A It's R.

20 Q That was an indication that his pneumonia was still
21 present?

22 A Indication that you can hear more rales and crackles
23 when referring more to what's the possible aspiration pneumonia
24 on the right side.

25 Q And then, the last section here, what is that a

1 section for?

2 A It's A and P, assessment and the plan. And No. 1 is
3 discussed with son. No. 2 starts recophin and levaquin. No. 3
4 suction two, two to three hours as PRN.

5 Q Okay. Why don't we stop there, because those are
6 medical terms just --

7 A Okay.

8 Q -- so everybody knows what's two, one to two hours
9 mean?

10 A Every two to three hours, and PRN is as needed.

11 Q And PRN means as needed --

12 A As needed.

13 Q -- when you wanted him suctioned?

14 A Yeah.

15 Q And then No. 4 is?

16 A Called Dr. Kariya, and --

17 Q And below that it says --

18 A -- below that is ICU consult.

19 Q Did you talk to Dr. Kariya, and tell him about the
20 patient's condition getting worse?

21 A I recall I gave a, after examining Mr. Neustadter, I
22 did give him a call at his office trying to figure out who's
23 the, who's the, who's the person who was coming and seeing the
24 patients in the hospital, because it's a part of the group,
25 three or four physicians there. I spoke with them, and he told

1 me Dr. Weiner would be the one who would be rounding that
2 afternoon.

3 Q Now, one other note here is this entry here, that's
4 tachy?

5 A Yes.

6 Q Explain what that is?

7 A It's a short term, or short abbreviation for
8 tachycardia, meaning, meaning increased heart rate.

9 Q And is that also an indication as to, for intubation
10 in a patient like Mr. Neustadter?

11 A It's a non-specific, it's basically, it just means
12 increased heart rate that have to be combined with other
13 symptoms to basically judge what exactly is going on.

14 Q In Mr. Neustadter's condition as we see reflected in
15 your note --

16 A Uh-huh.

17 Q Was he worsening in a significant way from the prior
18 day?

19 A Yes.

20 Q In his, did you have an expectation from your
21 examination on this day that he would continue to get worse?

22 A According to this, yes.

23 Q And you wanted Dr. Kariya, or Dr. Weiner to come and
24 consult, because that, their pulmonary lung specialists, right?

25 A Pulmonary and critical care specialist, yeah.

1 Q Now, did Dr. Weiner come on March 26th?

2 A Yes.

3 Q And did he come there to evaluate Israel Neustadter's
4 condition?

5 A Yes.

6 Q Did he actually, were you there when he did evaluate
7 Mr. Neustadter's condition?

8 A I know he was there as I was examining and doing a
9 lot of different things at the same time for Mr. Neustadter, I
10 saw him in the room.

11 Q And you know he examined Israel Neustadter when he
12 was there?

13 A I have not seen actually examine the patient, but
14 I've seen him talking to his son.

15 Q To Mr. Neustadter --

16 A Mr. Neustadter, yeah.

17 Q Alexander Neustadter. And he was there in response
18 to the phone call that you had made asking for a consult,
19 right?

20 A Yes.

21 Q Now, you left the room while Dr. Weiner was there to
22 go out and order more testing, right?

23 A Yes.

24 Q You were ordering air blood gas tests?

25 A Yes.

1 Q Like we talked about in the internal medicine note of
2 the day before, you were trying to find out about the blood
3 oxygen saturation?

4 A Yes.

5 Q And you were trying to find out, that was important
6 to you as to whether he needed to be intubated or not, right?

7 A Yes.

8 Q And in fact, you thought that the ABG, the air blood
9 gas was a really critical factor in deciding whether to
10 intubate or not intubate?

11 A It is a critical factor, yes.

12 Q You went out to the nurse's station to made the
13 orders for those, that test to be done?

14 A Yes.

15 Q And when you ordered that test, you said for those
16 results to be sent to Dr. Weiner, didn't you, in this, didn't
17 you do that, or do you recall? Let me try to find it if you
18 don't remember right off.

19 MS. WARD: Page 367.

20 MR. JARASHOW: Could you repeat that?

21 MS. WARD: Sorry, page 367.

22 MR. JARASHOW: 367, thank you. I'm trying to do two
23 things at once.

24 BY MR. JARASHOW:

25 Q Here we go. Let's see if I can put that list on top.

1 Now, is that your order for the ABGs to be done?

2 A Yes.

3 Q And let's just talk generally about this. This is
4 something called the physician order form?

5 A Yes.

6 Q And doctors, when they give orders for a patient,
7 they typically get it recorded onto this type of a form, right?

8 A Yes.

9 Q And it's required to have your name on it, right?

10 A Yes.

11 Q But it's not dated or timed over here, is it?

12 A It's not.

13 Q Do you have a recollection of when you did this?

14 A Don't have the recollection, but I can see the date
15 and the time on the order sheet, right here by the --

16 Q That's what I was going to go to next.

17 A Yeah.

18 Q Right down here?

19 A Yes.

20 Q So, what kind of entry is this entry, who writes
21 that?

22 A It's the unit secretary who writes it.

23 Q And this is an indication that (unintelligible) when
24 the order was processed typically?

25 A Yeah, that's when she, the unit secretary takes the

1 order, she puts, puts the date and time over there.

2 Q So, that would be an indication of the time that this
3 was taken by them?

4 A Yes.

5 Q You ended up, of course as we just said
6 (unintelligible) to call Dr. Weiner or Steve Kariya with the
7 results, right?

8 A Yes.

9 Q And you had a notation here that says stat?

10 A Yes.

11 Q Can you tell us again what stat means?

12 A Stat means immediately, right away.

13 Q Now, doctor, you've looked at this record before,
14 because I took your deposition before. Are you aware that Dr.
15 Weiner has no note of being in the, seeing Mr. Neustadter on
16 March 26th in this record?

17 A I reviewed the records. I saw he has no notes there.

18 Q And do you, did you follow up to find out what
19 happened with these ABG tests that you ordered?

20 A I did not call back.

21 Q Do you have any idea whether the ABGs were taken?

22 A Uh-huh.

23 Q Do you know if they were taken?

24 A Looking at these records, I have no recollection

25 whether --

1 Q There's no indication of them in here is there?

2 A There's no indication, yeah.

3 Q Do you have any indication that they, that the ABGs
4 were called to Dr. Kariya or Dr. Weiner?

5 A No.

6 Q Do you have any indication that Dr. Weiner or Dr.
7 Kariya contacted to find out about the ABG test?

8 A No, no, I have no way of knowing that.

9 Q Now, through here, when you ordered these tests, you
10 went back into the room for Mr. Neustadter, correct?

11 A Yes.

12 Q And you saw Dr. Weiner still in there talking to Mr.
13 Alexander Neustadter?

14 A Yes.

15 Q You did not overhear what they were talking about?

16 A No.

17 Q You didn't stay to find out what they were talking
18 about?

19 A No.

20 Q At this point in time, you determined that the
21 question of intubation was really the central question, wasn't
22 it?

23 A In overall management, yes.

24 Q And you turned that matter over to the pulmonologist,
25 that is Dr. Weiner who was there, correct?

1 A Yes.

2 Q You determined that it was in, within their area to
3 work on, and you backed out of it, right?

4 A Yes.

5 Q And in fact, you left the room?

6 A Yes.

7 Q You don't know what Dr. Weiner determined in his time
8 he was there, do you?

9 A No.

10 Q You didn't follow up with Dr. Weiner to find what he
11 had done?

12 A Not particularly, not, not that day, no.

13 Q And you actually left the hospital at that time?

14 A Yes.

15 Q You didn't come back in on March 26th to see Mr.
16 Neustadter?

17 A No.

18 Q Then,

19 sorry, the problem with getting pages out of the book, I lose
20 track of where they've gone, sorry. Okay, so on March 27th you
21 were back in to see Mr. Israel Neustadter, correct?

22 A Yes.

23 Q And you saw him just after this date on March 27th
24 after Dr. Weiner, that's his notations --

25 A His notation, yes.

- Attending physician finds his full-code patient critically ill in respiratory distress.

- He hands off all care to Dr. Weiner and leaves hospital without participating in any way or checking back. Hand-off is undocumented.

- No documentation of Dr. Weiner seeing patient; no progress notes, no nursing notes, no record of any decision to withhold life-sustaining treatment.

- So who was taking care of dying patient? Who made the decision?

1 Q -- of pulmonary consult, and that's his signature
2 there?

3 A Yes.

4 Q So, let's talk about your examination on this day.
5 You were in this time at 12:15 p.m., correct?

6 A Yes.

7 Q And you indicated that the patient appears in
8 respiratory distress?

9 A Yes.

10 Q And you noted terminal --

11 A Yes.

12 Q Right, that's what that word is right there?

13 A Terminal, yes.

14 Q And you indicated that this was appreciated by Dr.
15 Jay Weiner?

16 A Actually, I was referring to his health the previous
17 day.

18 Q Okay. Another, seeing the patient's condition the
19 previous day?

20 A Yeah.

21 Q And then you determined in your examination, you took
22 vital signs, right?

23 A Yes.

24 Q And you he was, this 121 is an indication of what?

25 A It's a heart rate.

1 Q And you said tachycardia?

2 A Yes.

3 Q That's very fast, isn't it?

4 A It is.

5 Q Yes. And the 37 slash mm, what's that?

6 A 37 per minute, that's the respiratory rate.

7 Q Yes. Now, doctor, you circled here, is that the
8 white blood count indication?

9 A Yes.

10 Q It's up to 43 at that point in time?

11 A 43,000.

12 Q And in your closing here, you indicated, and this is
13 your impression, right, that he was one terminal?

14 A Yes.

15 Q And that he had, respiratory failure was in
16 impending?

17 A Yes.

18 Q That, what's No. 3 say?

19 A IVFS, meaning IV fluids/electrolytes abnormal.

20 Q And lastly, you indicated you discussed this
21 condition with the son?

22 A With the son.

23 Q Mr. Neustadter then died at 2:15 p.m.?

24 A Yes.

25 Q And you ended up signing the death certificate with,

1 for Mr. Neustadter?

2 A Yes.

3 Q In this day, on March 27th, you did not discuss
4 intubation with Mr. Alexander Neustadter, did you?

5 A No.

6 MR. JARASHOW: I have no further questions.

7 CROSS-EXAMINATION

8 BY MS. WARD:

9 Q Good afternoon, Dr. Shamim?

10 A Good afternoon.

11 Q Doctor, I'd like to show you a copy that's been
12 marked as Defendant's No. 3. It's a copy of your curriculum
13 vitae, or your professional resume. Could you take a look at
14 that, and let us know if that appears to be accurate and up to
15 date, please?

16 A It's still missing the current, the current job
17 status.

18 Q Okay. Can you tell us what are you currently doing?

19 A Just professional experience 2004 to present,
20 hospitalist, Holy Cross Hospital. I was hospitalist from 2004
21 to 2005 at the Holy Cross Hospital. Since 2005 to present I'm
22 a hospitalist specialist at Washington Adventist Hospital.

23 Q Doctor, what is a hospitalist, so the jury is
24 familiar with that, what that term means?

25 A It's a medicine doctor who practices medicine in the

1 hospital, solely in the hospital.

2 Q Solely in the hospital?

3 A Solely in the hospital.

4 Q And doctor, have you ever been an employee of Holy
5 Cross Hospital?

6 A No.

7 Q Have you ever represented to any person that you were
8 an agent, or held yourself out as an agent of Holy Cross
9 Hospital?

10 A No.

11 Q And doctor, you are board certified in internal
12 medicine, correct?

13 A Yes.

14 Q And you received that board certification in 1996?

15 A '97.

16 Q Oh, I'm sorry, it says '96 on it, it's not a big
17 deal.

18 A It's '97.

19 Q Okay. And you are currently licensed to practice
20 medicine in the State of Maryland, correct?

21 A Yes.

22 Q Doctor, you were questioned by Mr. Jarashow, I'd like
23 to refer you to the big binder of records that you have, it's
24 page 90 under the lab report.

25 A Yes.

1 Q Doctor, can you tell the members of the jury what is
2 this report, what does it reflect generally?

3 A Page 90 is the arterial blood gases, which indicates
4 the oxygenation in the blood.

5 Q And doctor, if you look, I apologize for standing
6 here, but I don't have another copy, if you look at the date in
7 the first row, March 26th, 16:00 what time is that?

8 A The, the first one the March 25th?

9 Q The 26th.

10 A 26th, 16:00 is 4:00, 4 o'clock.

11 Q 4 o'clock in the afternoon?

12 A 4:00 in the afternoon.

13 Q What is the patient's PH at that time?

14 A 7.5.

15 Q And how about his O2, or oxygen saturation?

16 A Oxygen saturation, 95 percent.

17 Q And that O2 saturation of 95.3 percent is better than
18 it was on the prior day, the 25th when it was 92.8, correct?

19 A Yes.

20 Q So, doctor, we can agree then by looking at this test
21 result that the blood gases indeed that you had ordered were
22 actually done on the 26th, the time is at 4:00 p.m., correct?

23 A 4:00 p.m.

24 Q So, those tests were done?

25 A Yes.

1 Q Okay. I'd like to ask you to turn to page 367 of the
2 large medical exhibit. And direct you to your order at the top
3 of that page that Mr. Jarashow was questioning you about.

4 A Yes.

5 Q And you told the jury that it is noted at 3:26, 3:51
6 p.m., and that means that it was noted, and then the order was
7 placed, it was subsequently done, right, that the order was
8 actually noted, in other words, taken down and acted upon,
9 correct?

10 A Yes.

11 Q At 3:51, and then it was done at 4 o'clock?

12 A Yes.

13 Q And doctor, at any point in time, when you were
14 caring for Israel Neustadter, was any treatment withheld or
15 refused to your knowledge?

16 A No.

17 Q Do you have any knowledge of any type of alleged
18 conflict between Dr. Weiner and the patient's son, Alexander?

19 A I was not aware of that.

20 Q And doctor, there is an ethics committee at Holy
21 Cross Hospital, correct?

22 A Yes.

23 Q Was this a case based upon your treatment of Israel
24 Neustadter that should have been, or considered to be sent to
25 the ethics committee?

1 A No.

2 Q Can you tell us briefly why that is?

3 A During the, the time period when I was treating Mr.
4 Neustadter, the treatment was still continuing, and we were
5 discussing with Mr. Neustadter's son all that was being done,
6 what we are treating, aspiration pneumonia according to his
7 wishes, and to my knowledge, it was no conflict in the, in the
8 treatments.

9 Q And doctor, I believe that you testified that there
10 was a significant change in the patient's condition between the
11 25th and 26th, and that came into play as to why you adjusted
12 them, the antibiotics and added in the (unintelligible),
13 correct?

14 A Yes.

15 Q And you said that you recall Dr. Weiner being in the
16 room on the 26th, but is it accurate to say that you did not,
17 you were not present for any conversations between Alexander
18 Neustadter and Dr. Weiner, is that correct?

19 A Yes.

20 Q Doctor, is it also correct that no one at the
21 hospital ever told you, strike that. That, is it accurate to
22 say that no one ever told you that Alexander had requested Dr.
23 Weiner to reintubate his father?

24 A I was not aware of that.

25 Q And it's fair to say also that at the time that you

1 saw Dr., I'm sorry, Mr. Neustadter on the 27th of March, you
2 noted that he appeared in respiratory distress, and that you
3 determined he was in terminal condition at that time?

4 A Yes.

5 Q Doctor, you've treated other patients than Mr.
6 Neustadter who had aspiration pneumonia, correct?

7 A Yes.

8 Q And is it fair to say it's not uncommon during the
9 course of that aspiration pneumonia that the patient may come
10 into the hospital, be very ill, may improve for a while, and
11 then may decline?

12 A Yes.

13 Q I want to be clear for the jury's sake, doctor. Can
14 you look at your notes from 3-26 of '03, and that is page 425
15 in the large book? Do you see that note?

16 UNIDENTIFIED SPEAKER: (Unintelligible).

17 MS. WARD: Oh, I'm sorry.

18 THE COURT: I can, but she can't. Thank you for
19 asking though. It's okay to do that, anytime if you can't see
20 then let us know.

21 BY MS. WARD:

22 Q Doctor, you noted on that date, the 26th that the
23 patient was hypoxemic. Can you just give a very brief
24 description to the jury what that meant?

25 A Hypoxemic means low oxygen, and basically it

1 determines the oxygenation in the blood. It could be by pulse
2 oximetry, putting a glove on the finger, or by the arterial
3 blood gases, you can look at the, how much oxygenation a person
4 has in his blood.

5 Q Doctor, do you recall that your deposition testimony
6 was, your deposition was taken in this case, and certain
7 questions were asked of you?

8 A Regarding?

9 Q Generally, I'm sorry, poor question. I'll, let me
10 rephrase that. Do you recall having your deposition taken in
11 this case?

12 A Yes.

13 Q Okay. And do you remember at that time that you
14 testified that you believed that Alexander Neustadter, the son,
15 was unable to make up his mind with regard to treatment of his
16 father?

17 MR. JARASHOW: I object, Your Honor.

18 THE COURT: You want to approach?

19 MR. JARASHOW: Yes.

20 (Bench conference follows:)

21 MR. JARASHOW: Your Honor, his, the use of a
22 deposition is only appropriate when you're impeaching a
23 witness.

24 THE COURT: What are you using it for?

25 MR. JARASHOW: But I, that's why I don't know where

1 this is heading. He can't just repeat his deposition
2 testimony.

3 MS. WARD: I'll be happy to hand it to him, and ask
4 him to --

5 THE COURT: Pardon?

6 MS. WARD: I'll be happy to hand it to the doctor,
7 and ask him.

8 MR. JARASHOW: But he needs to answer a question
9 first, and --

10 THE COURT: What purpose are you using it for is what
11 the objection is going to.

12 MR. JARASHOW: Are you trying to refresh his
13 recollection, or are you trying to --

14 MR. LEVIN: All right, we're going to get
15 hypertechnical, I'll tell her what to do.

16 MR. JARASHOW: It's not a problem, it's just
17 because (unintelligible).

18 MR. LEVIN: I frankly, can't understand, I recognize
19 Your Honor ruling, but I can't understand why he's being
20 allowed, was allowed to lead this guy. He was never a
21 defendant, he doesn't work for Holy Cross, and --

22 THE COURT: You agreed to it at the start.

23 MR. LEVIN: I didn't agree to it.

24 THE COURT: At the beginning of the trial.

25 MR. LEVIN: If I did, I apologize.

1 THE COURT: Nor, did anyone object on the basis of
2 leading.

3 MR. LEVIN: But I haven't objected, but if we're
4 going to get technical, I'll handle it. I'll tell her what to
5 say --

6 THE COURT: It's my understanding that --

7 MR. JARASHOW: We didn't know where it was going.

8 THE COURT: Let me just clarify. It's my
9 understanding that there was an agreement that he was going to
10 lead these doctors.

11 MR. JARASHOW: And --

12 THE COURT: And that she was going to lead them as
13 well, unless he --

14 MR. LEVIN: And that's what we're doing. And now
15 we're getting technical. It's not a problem, Ron. I'll, you
16 know, have witnesses to deal with --.

17 MR. JARASHOW: Well, I just, I didn't know where it
18 was going to head, so I just wanted to make sure that there
19 should be a same answer to the question if you ask him, that's
20 all.

21 MS. WARD: Actually Ron --

22 MR. JARASHOW: Yes.

23 MS. WARD: I just want to clarify before we get into
24 the (unintelligible) witnesses this afternoon, I need to be
25 clear on Your Honor's ruling as far as Caroline Williams, and

1 Nurse Canfield. Are you going to allow Mr. Jarashow to ask --

2 THE COURT: I don't know that anyone's asked me about

3 that.

4 MR. JARASHOW: Well, I do know that --

5 MS. WARD: They're employees at the hospital.

6 MR. JARASHOW: They're employees at the hospital. I

7 think I'm clearly entitled by the rules to lead them.

8 MR. LEVIN: You are?

9 THE COURT: I think so.

10 MR. LEVIN: That means that you can lead any witness

11 who works for anybody.

12 THE COURT: No, only if it's an adverse party.

13 MR. LEVIN: Well, I thought it was a discretionary

14 ruling that --

15 THE COURT: We could pull out the rule right now, but

16 I recall the rule without having read it right this second.

17 You are allowed to ask leading questions of an adverse party.

18 MR. LEVIN: Of an adverse party, but this is a

19 corporation. Does that mean that you can ask leading questions

20 of anybody that works for General Motors if you're suing

21 General Motors? I, that's all, I, whatever you rule you rule.

22 But I think, with all due respect --

23 THE COURT: Well --

24 MR. LEVIN: I think it's a discretionary ruling when

25 you're talking about an employee of a corporation. And with

1 respect to a director, or an officer, clearly the statute
2 provides. The moment we go beyond that statute, it is a
3 discretionary ruling on your part.

4 THE COURT: I'm going to allow it as to Caroline, and
5 who's the other one?

6 MR. LEVIN: Nurse Canfield.

7 THE COURT: And as to Nurse Canfield.

8 (Bench conference concluded.)

9 MR. LEVIN: Thank you.

10 BY MS. WARD:

11 Q Doctor, can we agree that during the time of your
12 care and treatment of Israel Neustadter that, based on your
13 observations, that Alexander Neustadter, the son, was having,
14 or was unable, or was having difficulty making up his mind with
15 regard to treatment decisions of his father?

16 A I think only from, only from the note from the
17 resident, or the intern on 3-25, 8:30 p.m., that's on page 423.
18 The last paragraph, I think refer to, that's where I thought he
19 had difficulty making up his mind.

20 MS. WARD: Your Honor, may I approach the witness?

21 THE COURT: Yes.

22 MR. JARASHOW: What page is that?

23 MS. WARD: Page 65 of Dr. Shamim's deposition.

24 MR. JARASHOW: Thank you.

25 BY MS. WARD:

1 Q And forgive me for standing over you, doctor.

2 A That's okay.

3 Q I just wanted to give counsel a minute to get to that
4 page.

5 A This one?

6 Q And --

7 A Think that was in response to these questions?

8 Q Yes. Doctor, does that help to refresh your
9 recollection with regard to an understanding you may have had
10 from any source as far as the son having some difficulty or
11 unable to make up his mind, and take your time to read it?

12 A I, yes, I said that --

13 Q At the time of your deposition?

14 A At that time, yes.

15 Q And doctor, one more question about this page. You
16 were asked a question, the question was asking if --

17 MR. JARASHOW: Do you have a page and line number?

18 MS. WARD: Same page.

19 MR. JARASHOW: Same page.

20 BY MS. WARD:

21 Q Line 13, there was a question asked, and can you take
22 a look at the question, and tell the members of the jury, and
23 you're welcome to read the question and the answer, but I'd
24 like the jury to hear what your answer was.

25 MR. LEVIN: Can you read the question, so we know

1 what it is (unintelligible)?

2 BY MS. WARD:

3 Q You can feel free to read the question, or I can read
4 it.

5 A The question was asked was, now based on, upon the
6 section of the note from 8:30 p.m., that was referring to the
7 3-25, "Did you have an understanding as to whether Mr.
8 Alexander Neustadter wanted, or was saying that Mr. Israel
9 Neustadter should not be intubated, or was he saying something
10 different." And my answer was, my understanding from the note,
11 was that Mr. Alexander was unable to make up his mind at that
12 moment.

13 MS. WARD: Thank you, doctor, that's all the
14 questions I have.

15 THE WITNESS: Thank you.

16 THE COURT: Any redirect?

17 MR. JARASHOW: Let me just see, Your Honor. Yes.

18 REDIRECT EXAMINATION

19 BY MR. JARASHOW:

20 Q Dr. Shamim, you said that he was hypoxemic, I don't
21 know if it's in this note, or one of the others, here it goes.
22 It's the note that Ms. Ward left up here.

23 A Yes.

24 Q It's, this showed your note of 3-26, right?

25 A Yes.

1 Q And he's hypoxic, or hypoxemic?

2 A Hypoxemic, yeah.

3 Q Which means he was not getting blood in his, getting
4 a proper oxygenation of his blood, right?

5 A Yes.

6 Q The blood tests that were taken on March 25th, and
7 March 26th as is pointed out here, shows at least by the ABG in
8 the oxygenation up at, on the 25th at 92.8 percent, and then
9 95.3 percent, right?

10 A From, yes, 92.8 to 95.3, yes.

11 Q Right. But he was still hypoxemic, or hypoxia,
12 hypoxic, right?

13 A According to the ABGs, but we have to look at the
14 whole picture also. On the 25th, he was only on four liters of
15 oxygen, on 26th he was 100 percent oxygen. So, that was the
16 difference between the two. So, my note was reflecting the
17 change in condition on 26th.

18 Q He was still not getting enough oxygen at the time,
19 correct? He was hypoxic?

20 A He, but we corrected it with the 100 percent oxygen.
21 We were giving him 100 percent oxygen.

22 Q He was not intubated in March 24th, 25th, 26th time
23 period, and that was treatment that was not given to Mr.
24 Neustadter, right?

25 MS. WARD: Objection.

1 THE COURT: Overruled.

2 THE WITNESS: I think it's a very broad question,
3 because the situation was quite different in 24th, 25th, and
4 different in 26th and 27th. And we have a note from, from the
5 resident on 25th that it was offered to be intubated at that,
6 on the night of 25th, I'm sorry, yeah, night of 25th at 8:30
7 p.m. And the last --

8 BY MR. JARASHOW:

9 Q So, let's look at --

10 A Yeah, go ahead.

11 Q Let's look at that note, okay, rather than talk about
12 it in the abstract here. This is note of Dr., of the resident
13 at the hospital, whoops, we're going the wrong direction,
14 sorry. And the paragraph you're talking about is this last
15 paragraph here, right?

16 A Last paragraph, yes.

17 Q And there it says that patient's son expressed he
18 doesn't want reintubation, but he's bound by strict Jewish law,
19 right?

20 A Yes.

21 Q Doesn't that say he's bound by strict Jewish law to
22 intubate his father?

23 MR. LEVIN: Your Honor, it speaks for itself.

24 THE COURT: Sustained.

25 MS. WARD: (Unintelligible).

1 MR. LEVIN: That's not the end of the sentence.

2 MS. WARD: It's only a partial part of that sentence.

3 MR. LEVIN: That's a comma.

4 MR. JARASHOW: I'm going to go to the next part of
5 the sentence. This was something he's testified to, I'm cross-
6 examining on it.

7 THE COURT: Well, I sustained the objection in that I
8 think it speaks for itself. And the whole sentence has to be
9 read.

10 BY MR. JARASHOW:

11 Q It's your understanding that that sentence there
12 meant Mr. Alexander Neustadter didn't want his father to be
13 reintubated, rather than he may not, he want, but he's bound by
14 strict Jewish law to reintubate his father?

15 MS. WARD: Objection.

16 BY MR. JARASHOW:

17 Q That was your understanding?

18 MS. WARD: Objection.

19 THE COURT: Overruled.

20 THE WITNESS: My understanding was that patient's son
21 does not want the reintubation. He's bound by the strict
22 Jewish law, that's why he wanted to go back to his Rabbi to
23 discuss this issue further.

24 BY MR. JARASHOW:

25 Q Let's talk in the second part of that sentence. He

1 wasn't asking that he go back to his Rabbi, he was asking if
2 we, the hospital personnel could speak with his Rabbi to
3 readdress the code issue, right?

4 A Yes.

5 Q Do you know if Mr., if this doctor ever talked to the
6 Rabbi?

7 A I'm not sure.

8 MR. JARASHOW: I have no further questions.

9 MS. WARD: Nothing further, Your Honor.

10 THE COURT: Any other questions for this witness?

11 MS. WARD: No, Your Honor.

12 THE COURT: Thank you, you can be excused.

13 THE WITNESS: Thank you.

14 (Witness excused.)

15 MR. JARASHOW: Okay.

16 THE COURT: Who's the next witness?

17 MR. JARASHOW: Dr. Jay Weiner.

18 THE COURT: And is Dr. Weiner here?

19 MR. JARASHOW: Yes, he is.

20 THE COURT: Shall we take a short recess before we
21 start the next witness? Five, 10 minutes, in that range. I
22 want to find out why those lights are flashing. It just
23 worries me.

24 MR. LEVIN: Lightning's outside.

25 MR. JARASHOW: I can see --

1 MR. LEVIN: Lightning's out --

2 MR. JARASHOW: I can see that there's a storm coming
3 outside, Your Honor.

4 THE COURT: Is it storming?

5 MR. LEVIN: Lightning does that.

6 THE COURT: A little dark out there.

7 MR. LEVIN: It's not (unintelligible).

8 THE COURT: Sometimes when that happens, it messes up
9 the recording system and the computers. I just want to do a
10 quick check back in the office.

11 MR. LEVIN: I got an e-mail that said there was a
12 tornado watch.

13 MS. WARD: In Annapolis.

14 MR. JARASHOW: In Montgomery County?

15 THE COURT: All right.

16 So we'll take a 10 minute recess while we check on
17 our --

18 (Recess)

19 THE COURT: (Unintelligible) witness?

20 MR. JARASHOW: Yes, ready?

21 THE CLERK: Yes, we're back on the record.

22 THE COURT: Good afternoon. Would you remain
23 standing and raise your right hand.

24 JAY WEINER

25 called as a witness on behalf of the plaintiff, having been

1 first duly sworn, was examined and testified as follows:

2 DIRECT EXAMINATION

3 BY MR. JARASHOW:

4 Q Please state your full name and address?

5 A It's Jay Weiner, and my home address or my --

6 Q Your office address is fine.

7 A 10605 Concord Street, Kensington, Maryland.

8 Q And we hope you don't have to testify in the dark.

9 It's a --

10 THE COURT: Actually, if it gets dark, I'm drawing
11 the line, that's it, we're going home.

12 THE WITNESS: It looks pretty bad out there.

13 MS. WARD: He has flashlights.

14 MR. JARASHOW: Well, we're safe in here up until.

15 Good authority, the Judge.

16 BY MR. JARASHOW:

17 Q Anyways, doctor, you're a pulmonologist by practice?

18 A Yes.

19 Q And a critical care doctor?

20 A Yes.

21 Q And you practice in a group that includes Dr. Kariya,
22 Dr. Ball, and Dr. Hines?

23 A Yes.

24 Q And they all saw Mr. Israel Neustadter in this case?

25 A Yes.

1 Q But you and Dr. Kariya were the primary ones for your
2 office that saw Mr. Neustadter, correct?

3 A That would be correct.

4 Q Now, in 2003, you considered yourself on staff with
5 Holy Cross Hospital?

6 A Well, I have, I have privileges at Holy Cross
7 Hospital, I'm on staff, whatever that terminology is.

8 Q You make no distinction between either just having
9 privileges or being on staff?

10 A That's correct.

11 Q Now, when you're in the, when you were in the
12 hospital taking care of patients in 2003, did you wear an I.D.
13 badge that identified you as a doctor at Holy Cross Hospital?

14 A Yes.

15 Q Now, when you saw Israel Neustadter in 2003, you took
16 charge of the more difficult aspects of Mr. Neustadter's care,
17 didn't you?

18 A Well, I would say Dr. Kariya and I shared in, in
19 those difficult aspects.

20 Q And those included decisions about whether he needed
21 to be on a ventilator?

22 A Yes.

23 Q Included whether he had to be intubated in order to
24 be on a ventilator?

25 A Yes.

1 Q You also made the decision in this case with regard
2 to any extubating, as taking the breathing tube out, right?

3 A Well, let me, let me be clear on a couple of those
4 questions. The decisions that, when you say that, just so I
5 can be clear for the jury, when you say I made those decisions,
6 those decisions are made with the family. That's how an
7 intensivist makes decisions.

8 So, if you're asking, if the question is was I the
9 one responsible for imparting the information onto the family
10 about the condition of the patient, and, and the need, or need
11 for intubation, or whether it was medically necessary or not,
12 then that would be, that would be correct.

13 Q In the decision of whether to intubate Mr. Neustadter
14 was a joint decision you're saying between Mr. Alexander
15 Neustadter and yourself?

16 A What happens in, in real life is, if you believe a
17 patient is going to die, if they're not put on a machine, then
18 a discussion occurs based on the goals of therapy. Certainly,
19 if a 23-year-old healthy person is, is dying, and you need to
20 save their life by putting on, putting them on a machine, this
21 would be explained, and you would put them on a machine.

22 A lot of times in cases that we deal with, patients
23 are very ill with medistatic cancer. Decisions have been made
24 in the past, and what you would do is, although you would know
25 if they weren't put on a machine they would die, then

1 discussions would be, would occur with the family, and a
2 decision would be made as to whether to put them on a machine
3 or not.

4 Q And that applies no matter what age the patient is.
5 You would talk to the family about intubating, and putting the
6 patient on a machine?

7 A That is correct.

8 Q Now, when you met Alexander Neustadter for the first
9 time, did you explain to him who you were?

10 A Yes.

11 Q You told him that you're one specialist in the
12 critical care specialist?

13 A Yes.

14 Q You also talked to him about the condition of his
15 father, and what you thought was best for his care?

16 A Well, I don't remember the exact words that I would
17 have said to him at the first time I saw him, it was many years
18 ago. But I'm, I'm sure I would have introduced myself, I would
19 explain what I, what I did, and I'm, I'm sure I talked with him
20 to explain the situation of his father as I saw it.

21 Q Okay. Let's talk about your first note here, which I
22 believe was March 11th of 2003. Tell me if you have a
23 different recollection, but here from the medical records, and
24 doctor, is that book still there, you have medical records in
25 front of you?

1 A Yeah, but it's a big book.

2 MS. WARD: It's the book big.

3 BY MR. JARASHOW:

4 Q Page 372.

5 A Okay.

6 Q Does that help?

7 A That's better.

8 Q I could say, good doctor, better search for it --

9 A You were scaring me there.

10 Q But I didn't think that would be productive.

11 A It was going to be a long search. 372.

12 Q Correct. It's page, at the bottom of the page in the
13 middle there's numbering.

14 A Yes, that is correct, it says pulmonary consult, that
15 would be correct.

16 Q And that's your note there, correct?

17 A Yes.

18 Q And at that time, you determined that Mr. Neustadter
19 was gravely ill?

20 A Yes.

21 Q He had aspiration pneumonia and sepsis. Now, it's a
22 little bit hard for us to read your writing. I'm sure it's no
23 big surprise.

24 A Oh, there's my writing.

25 Q But I put it up here so you can see. You, and it's a

1 little bit hard for me to move around here, but here, you had
2 your impression was aspiration pneumonia and sepsis, correct?

3 A That's correct.

4 Q And you also pointed out that the patient has a
5 zenker as they're referenced here, right here below it, right?

6 A Yes.

7 Q Right over here, and that's a reference to his zenker
8 diverticulum?

9 A Yes, it is.

10 Q And you were basically going through what his problem
11 was that you saw at this time, correct?

12 A That would be correct.

13 Q And No. 1 was dementia, right?

14 A Well, no, that's No. 2.

15 Q I'm sorry, No. 2. No. 1 is what we just said,
16 aspiration pneumonia with sepsis.

17 A Right.

18 Q No. 2 is dementia with septic, what is that word?

19 A Encephalopathy.

20 Q Which is basically you think an infection causing an
21 affect on his brain?

22 A That's right. When a patient has a very, very bad
23 infection, it can damage your brain processes, even put you in
24 a coma.

25 Q And No. 3 was HTM, which is a reference to

1 hypertension?

2 A Yes.

3 Q And No. 4 was recent hyponatremia secondary to
4 diazide?

5 A Or --

6 Q Or diazide?

7 A Right.

8 Q And that was referenced to the change in his drug
9 that happened before he came to the hospital that caused him to
10 have a change in his chemical imbalance?

11 A It's a change in sodium.

12 Q Change in sodium.

13 A It's a low, low sodium, yes.

14 Q Now, you recall then this consult by Dr. Nawaz?

15 A Well, I, I can't recall exactly whether it was Dr.
16 Nawaz or one of his partners, but someone from their office
17 called me to, to see him.

18 Q And Dr. Nawaz was the admitting physician for Mr.
19 Israel Neustadter?

20 A Yes.

21 Q And he was responsible for his overall treatment
22 plan, correct?

23 A Well, yes, but when you work with groups, you have
24 people covering you, and I'm not really sure who, who actually
25 called me that day to see him.

1 Q I understand. You then made, is this a
2 recommendation, is that what that abbreviation is for, or is
3 that your --

4 A That's, right now looking at my handwriting in Court,
5 it's, it's, it's pretty --

6 Q You'll go to a computer now.

7 A It's very tough, you know, but to me it looks
8 perfectly clear that that says REC, which is a recommendation.

9 Q And you recommended IV drugs, correct?

10 A Yes.

11 Q Of Rocephin and Levaquin, which are two antibiotics,
12 right?

13 A Correct.

14 Q And then you had IV of, what is that below that?

15 A IV hydration.

16 Q Because he was dehydrated to some extent?

17 A Well, he was in shock at one time. So, when, when a
18 person has low blood pressure, you need to give them fluids to
19 bring their blood pressure up.

20 Q And the next thing you have there is "address code
21 status," if I can find my, the marker here, address code
22 status, right?

23 A Yes.

24 Q And that was in reference to talking with Alexander
25 Neustadter about whether this patient, Mr., his father should

1 be a DNR, do not resuscitate patient?

2 A Yeah, that, it's, it's a little more than that.
3 Remember, this is a, this is a snapshot of a discussion and a,
4 and a dictated note. This is, there was a big two page
5 dictated note, but what I, what I mean by that is that when I,
6 when I see a patient that, remember I'm an intensivist, so my
7 job is to go in and save someone's life, that's what I do.
8 That's what I was made to do, that's what I want to do.

9 Unfortunately, there are times when you go in, and
10 you realize you're not going to be able to save someone's life
11 for ones of various reasons. And a lot of times, when you see
12 someone and you pretty much know that, you try to bring the
13 realism to the patient's family as to what's going on. It's
14 only fair, and it's, it's the only good thing for the patient.

15 So, when I have a note where I go in to see somebody,
16 and I make recommendations, it, it is my own pattern of
17 behavior that when I put in that note "address code status," I
18 don't do that unless I think that the patient isn't going to
19 make it, and the family ought to know, and we ought to tell
20 them, and let them make a decision as to what they feel is best
21 for the patient. That's what that statement means.

22 And then had long talk with son is an explanation
23 that I spent a lot of time explaining the situation of the
24 patient, and what I thought was going, and that he should make
25 a decision as to what he feels is best for the patient.

1 Q So, let's break that down. So, you made this note,
2 because you came to a conclusion that in all probability Israel
3 Neustadter was going to die in this hospitalization?

4 A Yes.

5 Q And you talked to the son, and you told him that,
6 correct?

7 A I told him, in my opinion that this would be a
8 terminal illness.

9 Q And he, yet you recommended to him that he make his
10 father a DNR patient based upon that?

11 A I don't know if I did that on that day, no, I
12 wouldn't characterize that. It, when, when people are, are
13 dying, and family members are there, it is, it is very
14 difficult on the first day that you see a patient that you walk
15 in and go, "Hi, I'm Dr. Weiner. By the way, your family
16 member's dying, tough luck," and that, that's it, make them a
17 no code, that, that, that doesn't happen.

18 You know, I went into intensive care, I didn't go
19 into (unintelligible), but unfortunately it's part of the job,
20 and when someone's dying it's a process. And I doubt there
21 isn't anybody in this room that hasn't gone through that
22 process with, with a family member. I know I have, and so
23 usually the first discussion when I see somebody and they're
24 very sick, I, I, I would unlikely say this is what you have to
25 do.

1 I would likely say these are the following problems,
2 which I insure I did. These are the following problems, these
3 are the things that I feel we could try, here are the reasons I
4 don't think they're going to work, and there's a decision
5 that's going to have to be made.

6 And then the person would, and I, I could say, look,
7 you can think about it tonight, let's see it tomorrow, which I
8 frequently do, and I might have well done here. So, I, I
9 don't, I would not characterize as I made a recommendation at
10 that time.

11 Q The process you're talking about is the process of
12 dying, correct?

13 A The process of handling someone who is dying.

14 Q But for Mr. Israel Neustadter, you were convinced he
15 was going to die --

16 A I was.

17 Q -- as of this examination?

18 A Yes, I was.

19 Q And you talked to Israel, you talked to Alexander
20 Neustadter, and told him that, because he was going to consult
21 with his Rabbi, right?

22 A No, I told, now, I didn't tell him he was going to
23 die that second, so there are different ways to die. And so,
24 he decided that in order for him to decide what to do, he
25 wanted to talk to his Rabbi which was perfectly reasonable.

1 Q And you knew at that point that his, Mr. Alexander
2 Neustadter talking to his Rabbi was an important issue for him
3 in making decision about the life of his father?

4 A I assumed so, since that's who he said was going to
5 help make the decision.

6 Q At the time, the reasons that you were convinced he
7 was going to die was, one, that he was frail, Mr. Israel
8 Neustadter, right?

9 A That be correct.

10 Q That he was 91 years old, right?

11 A That's correct. That's a bad thing to be when you're
12 septic.

13 Q He had diffuse pneumonia, right?

14 A Yes.

15 Q He had low blood pressure, that was one of your
16 reasons?

17 A He was septic.

18 Q Right. And you thought that the sepsis was affecting
19 his mind, right?

20 A That's a bad prognosis.

21 Q Right. And he had a problem with sodium, because of
22 the hyponatremia, right?

23 A That was less of a problem.

24 Q And so, those were the reasons that you've relied on
25 in concluding --

1 A Well, you, you --

2 Q -- that Israel Neustadter --

3 A I'm sorry.

4 Q -- was going to die, isn't that right?

5 A You skipped a few that are very important.

6 Q Okay. Well, what are the others that you relied on?

7 A He had lost his ability to swallow, which is really
8 a, a horrific thing. And in addition, he had a Zenker's
9 diverticulum, which is a double whammy. When a person loses
10 their ability to swallow, and usually in older people it's,
11 it's due to, well, we're, we're not really sure, we're not
12 smart enough to know.

13 But for the most part, a lot of times it's due to
14 strokes or, or central nervous system problems. Swallowing
15 mechanism is extremely, extremely fine tuned. If when, when we
16 test people swallowing, we have to do a movie camera, and turn
17 in slow motion to see what's wrong, it goes so fast. Elderly
18 people frequently lose the ability to swallow. It sets them up
19 for pneumonia.

20 There's no treatment for it, you can't do anything
21 about it. And the Zenker's diverticulum is a outpouching, that
22 this is a, that this is a tube, you've got an outpouch in here
23 that's connected, so the liquid would go sit in this, in this
24 sack.

25 And when the person, better not use a cup of water,

1 when a person lies down, the sack empties back into the
2 swallowing tube, and goes right up to the mouth. Now, of
3 course, if the mouth can't swallow, all the stuff goes into the
4 lung, which is what he presented with.

5 That problem is a, is a, a terminal problem in a
6 patient like him. And along with the sepsis, what it meant
7 was, it wasn't going to get better. And no matter how you
8 treated him, he was going to continue to have problems.

9 Q Doctor, the, before Mr. Neustadter was hospitalized,
10 did you know what his, whether he had a swallowing problem or
11 not?

12 A I, I didn't see him before he was hospitalized.

13 Q No, and do you know if Dr. Nawaz had an opinion
14 about, had an evaluation of his swallowing?

15 A No.

16 Q Now, in terms of what you knew about this
17 consultation with the Rabbi that was talked about in your note,
18 you knew that Mr. Neustadter wanted to find out about Jewish
19 laws that pertains to dying, didn't you?

20 A He didn't say anything. He just said that, he, he
21 processed what I told him, and I said, I, I, I need to talk to
22 my Rabbi and make a decision.

23 Q And when somebody asks to talk to their Rabbi, you
24 know that that means they want to find out about Jewish law as
25 it pertains to dying, isn't it?

1 A You know, it is certainly possible, it's possible he
2 wanted to talk to his Rabbi because he's a friend. I mean, I,
3 I'm not privy to the full answer to that.

4 Q And doctor, you remember my taking your deposition on
5 September 6th of 2007, on page 31, starting on line 7?

6 MS. WARD: May I give the witness a copy, Your Honor?

7 THE COURT: Yes.

8 THE WITNESS: I'm sorry, where are we?

9 BY MR. JARASHOW:

10 Q Look at page 31, line 7.

11 A 31, okay.

12 Q And I asked you did you have a conversation with the
13 son at that time, whether a religious issue from Jewish
14 religion was an important issue for Israel Neustadter's care,
15 and you said, well, when someone says to you that they want to
16 consult their Rabbi, usually they want to know about Jewish
17 law.

18 A That's correct.

19 Q That was your understanding at the time?

20 A But you asked me specifically if I knew what he
21 wanted in, in this particular question. I guess we could read
22 it back. My understanding was, you asked me specifically did I
23 know why he wanted to talk to him, and I'm on, under oath here,
24 and I have to say that I don't know. In this answer, and in
25 the answer you asked I presumed it. But if --

1 Q Did you ask Mr. Neustadter --

2 MS. WARD: Can he finish his answer, please, Your
3 Honor?

4 THE COURT: Pardon?

5 MS. WARD: Were you finished with your answer, I
6 don't think he was finished with his answer.

7 THE WITNESS: You, you asked me for a definite, he
8 did not tell me exactly why he wanted to speak to me, I
9 presumed it, I still presume it, but I don't know it.

10 BY MR. JARASHOW:

11 Q And did you ask Mr. Neustadter as to what did he want
12 to find out about Jewish law that he wanted to talk to his
13 Rabbi about?

14 A No.

15 Q Did you ask him what the Jewish law principles was
16 that he was concerned about?

17 A No.

18 Q Now, on your next time that he was, that you have a
19 note here, was I believe is March 13th, on page 385 of the
20 records.

21 A All right, hold on. Okay.

22 Q I mean, you didn't see Mr. Neustadter everyday,
23 sometimes Dr. Kariya saw him, and others as we've talked about,
24 right?

25 A That's correct.

1 Q And on the 12th though, you have, I'm sorry, the 12th
2 (unintelligible), I lost myself.

3 THE COURT: 385 is the 13th.

4 BY MR. JARASHOW:

5 Q The 13th, hold on one minute.

6 A I'll correct you if you make a mistake.

7 Q Okay. So, on the 13th you saw Mr. Neustadter, and
8 this is your note in the progress notes about your examination,
9 correct?

10 A Yes.

11 Q And then, here you, I can't quite read your first
12 sentence. Can you read to us what that was.

13 A Oh, boy.

14 Q Patient still doing worse --

15 A It looks like, I can see it completely. My partners
16 could read this. Okay, patient doing worse, still with low
17 grade temperature, profoundly hypoxic with oxygen saturation 89
18 percent on a 100 percent (unintelligible). You want, you want
19 me to keep going?

20 Q No. This day though, you did your examination, and
21 under impression you said he still had pneumonia with
22 respiratory failure worsening, correct?

23 A Correct.

24 Q And on this day, it was decided, you decided that he
25 should be intubated, right?

1 A No, I, I didn't decide that. The --

2 Q You decided with the family as you said before?

3 A That's correct.

4 Q And he was intubated on this day?

5 A Well, when you, you present the facts to the family,
6 and if they, they, they ask for intubation, your choices are
7 the patient's going to die, or the patient's going to be
8 intubated, you intubate the patient. And the patient was
9 intubated, which means a tube was placed down the mouth, into
10 the, into the trachea so that a machine could breath for them.

11 Q And down here, you talked about talking to the son.
12 Let me see if I can get my pointer there. The son will decide
13 about after consultation with his Rabbi if he wished mechanical
14 ventilation, right?

15 A Well, the, this note basically says what I said
16 before. The patient will need mechanical ventilation if any
17 further deterioration and aggressive therapy is designed. So,
18 this means it's a process, he, the son's going to decide.

19 I informed him on this day that given the patient's
20 age, and, and his debilities, that I, I doubted that doing this
21 would change the ultimate outcome in his case. So, I did
22 inform him that I thought he was going to die no matter what we
23 did.

24 And then, after I told him that, because I, I felt it
25 was my responsibility to tell him that I didn't think this

1 procedure was curative, the son's processed that, and said he
2 wanted to speak to his Rabbi again to make the decision.

3 Q And then he, Mr. Israel Neustadter was intubated, and
4 you made that decision along with Mr. Alexander Neustadter to
5 do so, right?

6 A That's, and then the result of that was he then
7 became intubated.

8 Q And then he was in the ICU unit while he was under
9 intubation, right?

10 A Yes.

11 Q And during that time, he improved enough so that on
12 March 17th he was extubated, right?

13 A Well, improvement can be a funny thing. Just so I'm,
14 I'm clear on, on the facts, when, when people have terminal
15 illnesses, they have ups and downs as their dying. So, just
16 because someone has a good day doesn't mean that you were wrong
17 in the beginning that they were dying.

18 You expect that, they're, in fact, the dying process
19 of these people might be repeated pneumonias, and eventually
20 one of them's going to get them, which was the case in, in this
21 case. So, he did temporarily get better, and that is correct.
22 He temporarily got better. I was under no illusions that he
23 wouldn't get worse again, but he got better enough to take him
24 off the machine, and place him in a, in a, in a bed --

25 Q Let's talk --

1 A -- with the, with the machine.

2 Q -- about that decision to extubate him, to remove the
3 breathing tube, that happened on March 17th, right? And let me
4 try to find for you, I want to look at the physician orders,
5 because I believe you gave a voice order for it, okay. And if
6 I can locate that page, I think it's, see the section under
7 orders here? Let's go to March 17th.

8 MS. WARD: Page 330.

9 MR. JARASHOW: 330, thank you.

10 THE WITNESS: Good thing someone knows these pages.

11 BY MR. JARASHOW:

12 Q As you said, there's a lot of records here. Okay.

13 A I've got it.

14 Q Okay, just let me put it up here on the screen.

15 Okay, this is your, the physician's order that you gave to
16 extubate Mr. Neustadter, and put him on a 40 percent mask,
17 right?

18 A That's correct.

19 Q And you didn't sign this down here, I'm sorry, you
20 initialed it right there, correct, but didn't put a date and
21 time on it?

22 A Well, when you give a verbal order, the order has a
23 date and time on it. You could sign it a week later, a few
24 days later --

25 Q That's what I was going to get to. The VO stands for

1 verbal order?

2 A Right, that's correct.

3 Q And that means that you were standing there, and told
4 someone that this is what should be done?

5 A In this particular instance, this was the 17th, I did
6 not see Mr. Neustadter in the hospital, Dr. Ball did. He
7 rounded on him, he made a decision of care, and we always speak
8 when we change the baton. And he told me, if his oxygenation
9 was good, I'm assuming this, because this is what happened,
10 that we should take him off the ventilator.

11 It was his plan, and we, we work as a team of
12 intensivists, and we, we honor the plan of the person who saw
13 the patient last, so he would have told me, and I would have
14 gotten the call from the hospital that the oxygenation was
15 good, and everything was fine, and I just gave the order. But
16 it was really based on his plan, plan of action of when he saw
17 him in round up.

18 Q And doctor, you didn't push, you didn't make any note
19 in the progress notes of March 17th, right, there's no note in
20 here as far as you know?

21 A I, I didn't see him on the 17th.

22 Q And normally, a telephone order is more with a TO,
23 isn't it?

24 A I don't have the faintest idea.

25 Q Because you don't look at physician's orders, and

1 versus telephone order, or voice order?

2 A I, I have never heard the TO mentioned in my life. A
3 voice order means it comes from someone's voice, whether that
4 voice is over the phone or, you know, but usually, usually a
5 voice order is over the phone, because if it's not, you're
6 standing there, and you write it.

7 Q And the time that you gave this order, you don't know
8 exactly, but these two markings down here, the 8:04 and 9:00
9 p.m., that would be when your order was carried out?

10 A That would be correct.

11 Q So, he's extubated that night, he still remained in
12 the ICU, didn't he?

13 A Yeah, you don't, you don't extubate somebody, and
14 take them right out of the ICU, it's too dangerous.

15 Q You next saw Mr. Neustadter on March 20th.

16 A Okay.

17 Q And I can show you that note on page 410.

18 A 410?

19 Q Yes.

20 A Okay.

21 Q At this time, you did an assessment of Mr.
22 Neustadter, correct?

23 A Are we talking about the, which, which date are we
24 talking about?

25 Q Well, we're looking at March 20th, which the, I'm

1 sorry, March, pardon me, let me see if I jumped over something
2 here. I'm sorry, here is the 19th right here. This is the
3 19th, isn't that the next day you saw Mr. Neustadter after he
4 was extubated?

5 A Yes.

6 MR. LEVIN: Wait a minute --

7 THE COURT: Hold on for just one second.

8 MR. LEVIN: We're on 407.

9 MR. JARASHOW: Let me back up.

10 THE WITNESS: Well, no, I saw him the 18th, I saw him
11 the 18th.

12 MR. LEVIN: Look at 407 --

13 MS. WARD: Right.

14 MR. LEVIN: Doctor.

15 THE WITNESS: Yes.

16 MR. LEVIN: Look at 407, and see --

17 MR. JARASHOW: I'm sorry, thank you, pardon me.

18 BY MR. JARASHOW:

19 Q Here's your note of the 18th, on the 18th you saw Mr.
20 Neustadter, that was the day after he was intubated, right?

21 A That's correct.

22 Q I mean, extubated, pardon me?

23 A Right.

24 Q And let me get my copy here to look at. At that
25 time, the patient was lethargic, right?

1 A That's correct.

2 Q And his condition there was he was, still had
3 pneumonia, right?

4 A Yes.

5 Q Pardon me, I'm having trouble getting my notes
6 straightened out here. And it's here your impression was that,
7 read this to us here, improving, is that aspiration pneumonia
8 improving?

9 A The aspiration pneumonia was improving. That means
10 he was able to come off the machine, okay.

11 Q And --

12 A He had the neuromyopathy of critical illness.

13 Q And that's the next line right there, correct?

14 A That's correct.

15 Q And he had dementia?

16 A That's correct.

17 Q And then, down here are your recommendations,
18 correct?

19 A Right.

20 Q And you were recommending what?

21 A Well, I was going to try to move him a little bit in
22 the bed, and I was going to try to, usually physical therapy
23 comes up, so they don't become total stiff boards. I was going
24 to try to, that say match his I&O --

25 Q That's down there.

1 A Which means that whatever you put in you take out,
2 because if you get too much fluid in you, it hurts your oxygen
3 levels, so you don't want to do that, it's a big problem.

4 Q And this says?

5 A That says continuous antibiotics.

6 Q Right. And down here?

7 A And then I said, I doubt he was ready to begin
8 swallowing, because again, I thought he was never going to be
9 able to swallow with aspirating. And I put, needs a speech
10 pathology evaluation, because that's how we formally prove it,
11 to do that sonography test where you show that they can
12 swallow.

13 Q Okay. You saw him again on the 19th.

14 A Okay.

15 Q And again, he was lethargic?

16 A Right.

17 Q But afibrial (phonetic sp.), that means he had no
18 fever, right?

19 A At that time, yes.

20 Q Yes. He was still improving on this day, wasn't he?

21 A No.

22 Q You thought he had gotten worse?

23 A Well, you know, again, improvement's, improvement's a
24 funny thing. I, I, in a dying person, in a person that's in
25 the terminal stages of their illness, to use the word

1 improvement is sort of a misnomer. Again, he was going through
2 the dying process having some ups, some downs. For instance,
3 he has absolutely no gag reflex, as you can see up there.

4 Now, you got to be really bad not to have a gag
5 reflex. That means, you can stick your finger in the back of
6 someone's mouth, and they don't even feel it, which nothing
7 could even enter their mouth without going down into their
8 lungs.

9 So, that's a very bad sign. His white count was
10 still up, he still had the pneumonia. He still had the
11 neuromyopathy of critical illness. Now, what that is, is
12 something when I was younger, and I'm old now, but when I was
13 younger, we used to believe that when you were sick in the ICU,
14 it was because you just didn't move around. It was just like,
15 you know, you get weak if you didn't go out and do your
16 exercise everyday.

17 What we now, the critically ill people getting actual
18 disease of their muscles and nerves, almost to the point of
19 paralysis, and some people are almost totally paralyzed on the
20 basis of that. They need months and months of rehab, even
21 young, healthy people. So, the neuromyopathy of critical
22 illness is just a horrific thing.

23 And for a 91-year old who would no, not even have a
24 chance of going through the type of rehab a 40-year-old with
25 sepsis would, it was, it's a horrible thing. And it's just,

1 again, part of the dying process. I, I would not say that he's
2 getting better, I would say that he's dying.

3 Q Okay. And on 3-20 you wrote a note here, and I know
4 that the hole there covers up the date a little bit, but I
5 believe that that is 3-20 on this date, on page 410.

6 A Right.

7 Q And here the, you wrote that he had a failure to
8 thrive, right, that sort of sums up your opinion at that time,
9 that he was not getting better, he was worsening?

10 A He was dying.

11 Q He was dying, and failure to thrive sort of says that
12 all, correct?

13 A Yeah.

14 Q And were you aware that on this day, the physical
15 therapy people were saying that he was a good candidate for
16 physical rehabilitation?

17 A No.

18 Q And were you aware that this date he was evaluated
19 for physical therapy purposes, and they were talking about
20 discharging him to an outpatient care?

21 MS. WARD: Can we refer the doctor to a page number,
22 please, so he knows which note --

23 THE WITNESS: Yeah, I, I think you better --

24 MS. WARD: -- you're talking about?

25 THE WITNESS: Because I'd be very surprised.

1 BY MR. JARASHOW:

2 Q Okay. So, let's look at page, see which one I want
3 to look at first, look at page, I want to try to find the exact
4 reference here. There we go, okay, so go to 730, that's what
5 I'm looking for. So, here is the BP re-evaluation on March
6 20th. Let me --

7 A Where's the page in here, because I can't see that?

8 Q Oh, I'm sorry, page 310.

9 A That's better.

10 Q Okay.

11 MS. WARD: It actually starts on, to be fair, the
12 note starts on page 308.

13 MR. JARASHOW: (Unintelligible) put back up --

14 THE WITNESS: 308.

15 MR. JARASHOW: -- the 730, okay.

16 BY MR. JARASHOW:

17 Q The note starts in 308, runs for three pages. So, it
18 starts just it's here on, let me get this straight here,
19 whoops, sorry, starts on physical therapy evaluation on page
20 310, 308, I'm sorry. And then it goes to 309, which is here.
21 Let me try to do this over my shoulder here. Okay, here, this
22 is the evaluation at 730 by, this is the one on 308 that's by
23 Richard Holly of occupational therapy, this is an occupational
24 therapy note, correct?

25 A So, it's not a physical therapy note?

1 Q Well, we'll get to physical therapy next.

2 A Okay.

3 Q And in here, you'll see that it talks about the
4 patient would benefit from an OT evaluation, intervention,
5 sorry, and I move down here. I have to work off of two things
6 here. It says in this document that the patient has potential
7 for, the potential for patient rehabilitation is fair, okay?

8 A But do you want me to comment on that, or --

9 Q Well, were you aware of that first one?

10 A Well, I, I think you're taking something out of
11 context.

12 Q Yes. Well, first of all --

13 A I'm looking at the note.

14 Q -- were you aware of it?

15 A What?

16 Q First of all, were you aware of this evaluation?

17 A I, I, I may have been, I can't, I can't remember.

18 Q Okay. And you don't agree that the patient's
19 potential rehabilitation was fair at that point in time, do
20 you?

21 A No, I think that's quite naive.

22 Q All right. And then you go to the physical therapy
23 note here at 8:55 p.m., and this is the physical therapy note
24 of Laura Huggins (phonetic sp.). I don't know if I'm
25 pronouncing that right, correct, this is on the same date,

1 March 20th (unintelligible)? And do you see the reference that
2 the patient was sitting up in bed at that time?

3 A Well, you're skipping all kinds of things in these
4 notes to sort of cherry pick sentences you want to see. So, do
5 you want me to answer the one question you asked, or do you
6 want me to point to the things in the notes that, in these same
7 notes that say that, I mean --

8 Q Well, let me just --

9 A I don't think it, it might not be fair for you to
10 cherry pick the, the note into a sentence.

11 Q Well, you get to talk now.

12 A Like for instance, in your first note here, it says
13 upper extremity coordination severely impaired.

14 Q Yes.

15 A Upper extremity strength poor. Cognition, lethargic,
16 communication impaired. Now, see to me, as an intensivist,
17 those things are really bad. And unfortunately, I'm probably a
18 lot older than this occupational therapist, and I have a lot
19 more experience when dealing with dying people. And so, even
20 if I had read this, I would have taken her aside probably, and
21 said, listen, you know, this guy's dying.

22 So, if you're asking me am I aware, if I was aware, I
23 probably would have said to her, gee, that's nice, but you
24 know, it isn't going to happen.

25 Q And you would have corrected her, right, you would

1 have told her that's just not a realistic viewpoint for this
2 person, right?

3 A I would have told her, as I've done many times, that
4 it's really nice to hope, in this case it wasn't going to
5 happen.

6 Q And you would have told her that rehabilitation
7 really isn't a prayer for this person?

8 A That's correct.

9 Q Even though that's that person's job to evaluate
10 potential, right, you would have told them that they don't have
11 potential for rehabilitation?

12 A In this particular case, I probably would have
13 counseled them that this, this, a person that can't move their
14 upper extremities in this age with the type of pneumonia that
15 he had, and the fact that he was going to get another pneumonia
16 in a couple of days, wasn't going to do well in a rehab
17 facility. And I think they would have understood that.

18 Q I mean, your opinion was this was a lost cause,
19 right?

20 MS. WARD: Objection.

21 THE COURT: Overruled.

22 THE WITNESS: In my opinion, from the time I saw him,
23 I thought he was going to die.

24 BY MR. JARASHOW:

25 Q And you thought any treatment for him was really

1 futile, isn't that right?

2 A Well, I said that in my note on, on day two.

3 Q Right.

4 A Right.

5 Q And so, when you look here at this physical therapy
6 note, and the therapist concludes that his patient's rehab
7 potential is fair, you strongly disagree with that?

8 A I think it's totally unrealistic.

9 Q Now, doctor, I think we can jump over a lot of this,
10 and go to sort of the last days of Mr. Neustadter's care. You
11 saw him on, well, let me ask this first. You don't recall
12 seeing Dr., Mr. Neustadter on March 26th, do you?

13 A If I have note in the chart, I for sure saw him.

14 Q If you will look in the note, look in the progress
15 notes, I think you will find there is no note from you on March
16 26th.

17 A Then, I would have no recollection of seeing him.

18 Q And as far as you know, you weren't even there?

19 MS. WARD: Objection.

20 THE WITNESS: I --

21 THE COURT: Overruled.

22 THE WITNESS: There would be no way for me to
23 remember.

24 BY MR. JARASHOW:

25 Q If you were there and treated, or evaluated Mr.

1 Neustadter, you would have made a note in the progress notes,
2 wouldn't you?

3 A If I, if I treated him and, and made something, made
4 a change in his therapy, actually you know, my, my group is in
5 the hospital everyday, and I do recall feeling so bad for Mr.
6 Neustadter's son that there were times I would actually go in
7 the room and talk to him.

8 He was sort of, you know, up against the wall, sort
9 of, it was just horrible. So, if you walked by the room, and
10 see him like that, you would go in and ask him how he was doing
11 and, and talk to him. I wouldn't, and I did that on, on a
12 couple of occasions.

13 The nurses did that on a couple of occasions. But I
14 wouldn't put that in the chart. I don't bill for that, you
15 know, I'm not putting it in the chart, I didn't make any change
16 during those times.

17 Q But certainly --

18 A So, it's possible that I went in, I'm sure I went in,
19 in different days, but on the 26th, I have no idea.

20 Q And certainly, if you were called there by another
21 doctor to do an examination, because Mr. Neustadter was
22 declining in his status, you would go in and do an examination,
23 wouldn't you?

24 A If something was happening, and I got called in, I
25 would probably go in, but I probably would notate that I would

1 imagine. If I, and if I --

2 Q Did you recall --

3 A -- gave an order, whether it was verbal or written,
4 it would be put in the, in the sheet by the nurses --

5 Q Do you recall --

6 A -- and there would be record of that.

7 Q Pardon, I thought you were finished. Do you recall
8 Dr. Shamim calling into your offices, and asking for a
9 pulmonary consult on March 26th, because Mr. Neustadter's
10 condition was getting much worse?

11 MS. WARD: Objection.

12 THE WITNESS: No.

13 THE COURT: Overruled.

14 BY MR. JARASHOW:

15 Q And as far as you know, you didn't go in on March
16 26th to see Mr. Neustadter?

17 A I have, I have no recollection of March 26th.

18 Q And then, on March 27th, the date of Mr. Neustadter's
19 death, you have a note in the chart, (unintelligible) zoom back
20 out here, sorry. This is on page 426. I'm sorry, I'm going
21 (unintelligible) whoops.

22 A That way, yeah.

23 Q There we go. That's your note on March 27th of
24 seeing Mr. Neustadter the day he died, correct?

25 A That's correct.

1 Q And he was terminal at that point when you saw him,
2 right?

3 A He was terminal when physical therapy saw him a
4 couple days before.

5 Q Right. And so, you in fact, you think he was
6 terminal from the day he entered the hospital?

7 A Yes, this wasn't a surprise to me.

8 MR. JARASHOW: I have no further questions.

9 MS. WARD: Your Honor, may I request just a very, two
10 minute, very brief break?

11 THE COURT: Sure.

12 MS. WARD: Thank you.

13 THE COURT: We're going to take a two minute very
14 short break.

15 THE WITNESS: We get to go.

16 THE COURT: So far, the building is standing, I don't
17 know what the weather's like out there.

18 THE WITNESS: It was looking bad, very, very bad.

19 THE CLERK: All rise. Court stands --

20 (Recess)

21 THE COURT: We lost all the lawyers. You win. We're
22 the only ones here (unintelligible). (Unintelligible), oh, one
23 of the jurors, oh. I'm trying to figure out who it would be.

24 UNIDENTIFIED SPEAKER: It's looking slightly better.

25 THE COURT: Yes, it is, unless we're in the eye of a

1 storm.

2 UNIDENTIFIED SPEAKER: I think it's getting lighter
3 (unintelligible).

4 THE WITNESS: Slightly better.

5 THE COURT: Yes, it looked a little lighter to me, so
6 hopefully the worst is over. But we still need Mr. Jarashow.

7 MR. LEVIN: I think Mr. Neustadter went to get him.

8 MS. WARD: Thank you for the break, Your Honor.

9 THE COURT: No problem.

10 MR. JARASHOW: I apologize, Your Honor, the call of
11 nature.

12 THE COURT: No problem. Go ahead, Ms. Ward.

13 CROSS-EXAMINATION

14 BY MS. WARD:

15 Q Good afternoon, Dr. Weiner?

16 A Good afternoon.

17 MS. WARD: May I approach the witness, Your Honor?

18 THE COURT: Yes.

19 BY MS. WARD:

20 Q Doctor, let me show you a copy of your curriculum
21 vitae and your professional resume. Could you please take a
22 look at that, and let us know if that is up to date with any
23 additions or corrections that need to be made?

24 A It's up to date, there's maybe one article that's not
25 on here to nothing of any importance.

1 Q Okay. Doctor, you are, and have been since 1980 in
2 the private practice of pulmonary medicine and critical care,
3 correct?

4 A That's correct.

5 Q And you also are an assistant clinical professor of
6 medicine at George Washington University School of Medicine?

7 A Yeah, I might, I, you know what, I might of, since,
8 since Holy Cross stopped teaching the medical residents, I
9 might have just given that up. (Unintelligible).

10 Q You previously were then, we'll leave it there?

11 A Yes, yes, in 2003 I was.

12 Q Okay. Doctor, you are not and have not ever been an
13 employee of Holy Cross Hospital, correct?

14 A That's correct.

15 Q Okay. And is it fair to say that you have never held
16 yourself out, or told any person that you were an agent of Holy
17 Cross Hospital?

18 A Oh, no, not at all, I'm in private practice.

19 Q And you've never held any positions at Holy Cross
20 Hospital, correct?

21 A That's correct.

22 Q You simply have privileges at the hospital, and can
23 you give the jury in a sort of very succinct manner what that
24 means to have privileges in a hospital?

25 A Well, you know, when, when you're in private

1 practice, and you have sick patients, you have to take care of
2 them somewhere. So, each doctor chooses hospitals that are
3 around their area where their patients live. I chose as my
4 primary hospital Holy Cross. Our group goes to more than one
5 hospital. So, if you were my patient, you were to get sick, I
6 could say go to the Holy Cross Hospital emergency room, I'll
7 come in and see you.

8 And then, if you got admitted to the hospital, I
9 would see you everyday as my patient. I would write your
10 orders, I would take care of your medications, I would try to
11 decide what's the matter with you. And then, when you went
12 home, I would see you back in the, in the office.

13 Q Doctor, is it fair to say that throughout the time
14 period that Israel Neustadter was a patient in March of 2003 at
15 Holy Cross Hospital that you had many discussions with
16 Alexander Neustadter, the son, about his father's condition and
17 prognosis?

18 A Oh, yes.

19 Q Doctor, is it also fair to say that there was never
20 any conflict between you and Alexander Neustadter with regard
21 to any treatment that was, or was not to be rendered to Israel
22 Neustadter?

23 A No, there's no, there's no conflict.

24 Q And is it fair to say that all of the treatment
25 decisions that were made for Israel Neustadter were discussed

1 with the surrogate, Alexander Neustadter?

2 A Oh, yes, every one of them.

3 Q Doctor, you mentioned at the time of admission that,
4 the word sepsis. Can you explain that, what that means to the
5 jury, please?

6 A Well, there's, there's something called a sepsis
7 syndrome. We, in, in the old days when I was young, we used to
8 believe that sepsis was caused by infection, by bacteria. But
9 in truth, the, a sepsis can be caused by both infection and
10 other things, like dead tissue. Like if someone were to have
11 an artery cut, and no blood could get to the bottom of a, of a
12 leg, the muscles would die.

13 So, what sepsis is, is a condition of the body where
14 the body puts out these chemicals that affect the body's
15 functions. It affects their, the body's ability to, to
16 maintain a blood pressure.

17 It affects the body's ability to maintain mentation.
18 It affects the body's ability to oxygenate, and the body, in,
19 for lack of a better term, begins to shut down. But there are
20 different ways you can come to that same import. Infection,
21 tissue that's dying, poisons, there's all different ways you
22 can get to a sepsis condition.

23 Q And doctor, is it fair to say, the jury has
24 previously heard this testimony, but just for clarification,
25 that simply by reintubating a patient, that does not take away

1 the possibility that the patient can still have micro-
2 aspiration, correct?

3 A Well, absolutely, that's one of the problems why a
4 swallowing dysfunction is so horrible. What, what happens is
5 that, if you, if you can't maintain your swallowing, even if
6 you have a tube down there, material from your mouth can just
7 go right down the edges of the tube and drip into the lungs.
8 And that's a, that's frequent problem.

9 In fact, even if you close the person's airway
10 completely off, if you take their vocal chords and sew them
11 shut, so that nothing above can (unintelligible) to get down,
12 the bacteria drill their way through and get down anyway.
13 There is no way to stop aspiration in certain people.

14 Q Is it fair to say, doctor, when, the point in time
15 when you had a discussion with the surrogate, Alexander
16 Neustadter, and a decision was made for the patient to be
17 intubated, and also to be on a ventilator, you followed the
18 wishes of the surrogate, correct?

19 A That's right, that's, that's the, that's the process.
20 The process is, you educate, the family makes the decision.

21 Q And is it fair to say, doctor, that there was never a
22 point in time where the surrogate, Alexander Neustadter,
23 requested that his father be reintubated, and you made a
24 refusal to do that, is that correct?

25 A That's correct, in fact, we put a, we put a note up

1 there on the board before, but if you read my, my very last
2 note, you can see that even after a decision was made not to
3 reintubate him, I was so concerned about, here, I think the
4 decision was made already before that note that he shouldn't be
5 reintubated by, by the son.

6 But even that withstanding, I felt so concerned that
7 I went back, and talked to him again, because I knew death at
8 this time, was eminent. So, that note says, "patient doing
9 very poorly, appears terminal." When I say "appears terminal,"
10 now I'm talking about minutes to hours, okay, or a day. But
11 that, that's my code word for eminent.

12 Case discussed with son. He does not wish any other
13 treatment, RX is treatment. X-rays, ventilation means the
14 ventilator intubation, et cetera. He wishes to be alone with
15 his father while he dies. He understands he is terminal.

16 I, I don't, I didn't remember I wrote that note three
17 years after the case, but I think that pretty clearly shows
18 that even after he was made a no code, not to be intubated or
19 resuscitated, that I went back and said are you sure, are you
20 positive, we want to do what you want to do, and these were his
21 wishes. There would be no other reason why I would write that.

22 Q And just to be a little bit more specific, doctor,
23 for the jury's sake, when it comes to the issue of reintubation
24 of this patient, strike that. When it came to the code status
25 of this patient, is it fair to say that there was never a

1 conflict between you and the surrogate, Alexander Neustadter?

2 A No, absolutely not.

3 Q And is it true to, fair to say you never withdrew, or
4 withheld any care, any medical care from Israel Neustadter?

5 A No, Mr. Neustadter got every possible treatment that
6 could be given to him. If you, if you think about it, he, he
7 was put on a ventilator, he was given a PEG, which is a tube in
8 the stomach to feed him. He was treated with antibiotics.
9 There wasn't anything that we could have done any different to
10 anyone in this situation. So, nothing was, was withheld.

11 Q Doctor, this patient, Israel Neustadter, did not have
12 any advanced directives, correct?

13 A Not that I'm aware of.

14 Q Could you tell the jury just briefly what is, what
15 are advanced directives.

16 A Well, it, it, it's a very difficult question.

17 Q I'm sorry.

18 A Advanced directives are, are documents where a
19 patient lets his wishes be known as to what happens to him in,
20 or her in, in periods of time when they're incapacitated, and
21 are, are dying, or have to have decisions made about their,
22 their care.

23 Many people, for instance, would say that if I have a
24 hopelessly ill disorder, I don't want to go on any machines.
25 If, you know, there is no hope, I don't, I don't want to be

1 kept alive for long periods of time. They, they vary
2 individual to individual.

3 I don't like them, but you can also do a medical, a
4 power of attorney where you give that decision to somebody
5 else. So, it depends, but the directive is where the patient
6 decides what it is they want, that's the key, because the
7 patient directs this. They tell you what it is they want, and
8 your job as a physician is to honor the patient. Because it is
9 the patient that's ill.

10 Q And doctor, is it fair to say in a case such as
11 Israel Neustadter where there are no advanced directives,
12 that's why the treating physician such as yourself have
13 discussions with the family, or the surrogate with regard to
14 the code status. And actually, while the patient's in the
15 hospital, because that decision had not been made prior to the
16 patient arriving at the hospital, correct?

17 A When you, when you have a decision where, and, and
18 even when there is a, even when there is paperwork, you always
19 talk to the family, you always talk to the family. You always,
20 the, the belief is the family's going to do what's best for the
21 patient, they know the patient the best, and you're going to
22 speak to them.

23 Q Doctor, I'd like to direct you to page 310 in the
24 large medical book, please.

25 A Uh-oh, I got to get my glasses on again. Okay.

1 Q And I'll refer you to the note at the bottom of the
2 page. You were asked some questions by Mr. Jarashow about the
3 prior notes, which was the extensive occupational therapy note
4 that was written on the 20th of March, do you recall that
5 questioning?

6 A Right.

7 Q And doctor, can you read for the jury under Irene
8 Serro's (phonetic sp.) RN notes, also on the 20th of March, the
9 first two lines of the note, please?

10 A Okay, "patient awake, non-verbal, unable to follow
11 instructions, lung sounds clear and improved, no respiratory
12 distress noted."

13 Q And doctor, was the fact that the patient was unable
14 to follow instructions, does that go along with your earlier
15 testimony that you don't think that he was a candidate for
16 occupational therapy?

17 A Oh, yes, there were so many reasons this patient
18 wasn't a candidate for occupational or physical therapy. You
19 have to know the big picture, you know, sometimes it's like the
20 elephant, someone has a leg, someone has the tail. If you know
21 the big picture, you're better off understanding what's going
22 to happen in the end.

23 Q And doctor, I'd like to refer you to page 36 of the
24 large medical record book. It's the consultation of Dr. Allen
25 Chanales.

1 A 36. 36?

2 Q Yes.

3 A It is a handwritten or typed?

4 Q It's a typed note, doctor, it should be under the
5 consultation tab.

6 A Oh, I've got a page 36, but it's not that. I've got
7 a handwritten note there. Move back this way.

8 MS. WARD: May I approach the witness, Your Honor?

9 THE COURT: Yes.

10 THE WITNESS: Maybe it's this way, and the, the
11 thing's falling apart.

12 THE COURT: It's not just your copy.
13 (Unintelligible) mine fell apart first thing, so.

14 THE WITNESS: Oh, good --

15 MS. WARD: See this can (unintelligible).

16 THE WITNESS: I thought it was personal sabotage,
17 okay.

18 MS. WARD: No, no, (unintelligible) sabotage
19 everyone.

20 THE WITNESS: Okay.

21 MS. WARD: Okay, you got the (unintelligible).

22 THE WITNESS: I, I got it now.

23 MS. WARD: Okay.

24 THE WITNESS: You know there is another page 36, do
25 you know that?

1 MS. WARD: (Unintelligible).

2 THE WITNESS: I just didn't want to make it look like
3 I didn't know what I was doing up here.

4 MR. LEVIN: That's all the way in the back.

5 THE WITNESS: Yeah.

6 MR. LEVIN: Okay.

7 MS. WARD: That's under tab 12.

8 THE COURT: Now you have to say front 36 --

9 MS. WARD: Well --

10 THE COURT: -- or back 36.

11 MS. WARD: Under tab 1, page 36, thank you --

12 THE WITNESS: Okay, I, I --

13 MS. WARD: -- for that clarification.

14 THE WITNESS: I --

15 MS. WARD: You had me nervous there for a minute.

16 BY MS. WARD:

17 Q Okay. Doctor, what I'm referring to is a typed up
18 copy of what is entitled second opinion pulmonary consultation
19 report.

20 A Yes.

21 Q Correct? And that was done on March 11, 2003, which
22 is just a day after the patient's admission, correct?

23 A Yes.

24 Q And that was done by Dr. Allen Chanales?

25 A Yes.

1 Q What type of doctor is Dr. Chanales?

2 A He, he also does pulmonary and critical care.

3 Q And it's fair to say in this case, that he was
4 brought in as a second opinion at the request of Alexander
5 Neustadter, correct?

6 A It wouldn't have been by me, so it must have been by
7 him.

8 Q Doctor, can you take a look at page 3 of that
9 consultation note. It's page 38, under Tab 1.

10 A Page 38, yes, okay.

11 Q Doctor, can you take a look at Dr. Chanales's plan,
12 and please tell the members of the jury if there's anything
13 that you disagree with in that plan, and also if there were any
14 changes in your plan recommended by Dr. Chanales?

15 A Okay, so let's see, he says intravenous fluids, that
16 we talked about that. Antibiotics, we talked about that.
17 Giving oxygen, we talked about that. If necessary, the patient
18 will be intubated, put on mechanical ventilation according to
19 the son's wishes as well as instructions of his Rabbi.

20 We had a long discussion about the issues involved
21 making this decision, including, but not limiting to, the
22 multiple complications that often care in, probably a typo, in
23 elderly patients placed on a ventilator leading to an insiable
24 situation with the patient stuck on the ventilator.

25 The issue of resuscitation was discussed with the

1 son, and for the moment, will press ahead with full code
2 situation, even though I have told result of such therapeutic
3 action is often death, or worse, vegetative state. I can't
4 disagree with that.

5 Q And looking at that plan again, was there anything in
6 that plan that differed, or contradicted anything that your
7 team, the team's plan was prior to him being seen by Dr.
8 Chanales?

9 A No, I think that was our similar plan.

10 Q Doctor, do you have an independent recollection of
11 interaction with the surrogate, Alexander Neustadter, on the
12 day of Mr. Neustadter's death, the 27th of March?

13 A You mean, the time I went in to, before I wrote the
14 note, you mean, do I remember that, the 27th was the day I
15 wrote that note?

16 Q Let's do it this way, do you have any recollection,
17 on the day that Mr. Israel Neustadter died, of having
18 interaction with Alexander Neustadter with regard to whether or
19 not he wanted you to continue to be his father's physician?

20 A Oh, no, no. I don't, that never happened.

21 Q Doctor, during, strike that. I want to ask you to
22 turn to page 367, which is under tab 1 as well.

23 A Uh-oh.

24 MR. LEVIN: Tab 1.

25 MS. WARD: Yes, but his fell apart, so he's at a

1 disadvantage.

2 THE WITNESS: 367, the order, the order pages?

3 BY MS. WARD:

4 Q Yes.

5 A Okay.

6 Q And I'd like to refer you to the order on the bottom
7 of that page.

8 A Okay.

9 Q And can you tell the members of the jury what is a
10 VO, is that a voice order from you?

11 A Right.

12 Q Okay. Can you tell them what the order was for?

13 A That order is for morphine. When patients are
14 terminal and dying, one of the worst ways you can die is by
15 death of suffocation. No one ever wants to die like that,
16 trust me.

17 One of the, the main way we handle that is to
18 alleviate the brain's knowledge that the body is short of
19 breath. And morphine is a very good way to do that. This
20 isn't a very large dose of morphine, you know, but this is a,
21 this is a dose that is enough to alleviate pain and suffering.

22 Q And doctor, is it fair to say that morphine is a drug
23 that is generally given to patients when they're at the stage
24 of end of life?

25 A Yes, it's, it's one of the main drugs we use.

1 Q And my last question, doctor, with regard to the
2 administering the morphine, is that something fair to say it
3 would have been discussed with the son?

4 He would have been told what morphine was? And why
5 it was being given before it was being administered to the
6 patient?

7 A Without, without pleasure.

8 MS. WARD: May I have one moment, Your Honor?

9 THE COURT: Yes.

10 MS. WARD: Thank you. No further questions, thank
11 you, doctor.

12 THE COURT: Any other --

13 MS. WARD: Oh, I'm sorry, may I move his CV into
14 evidence please?

15 THE COURT: Any objection?

16 MR. JARASHOW: Just a few questions, Your Honor.

17 THE COURT: I'm sorry, any objection to the CV?

18 MR. JARASHOW: Oh, I'm sorry, no objection, no
19 objection.

20 THE COURT: It'll be received.

21 (The item marked for identification
22 as Defendant's Exhibit No. 3 was
23 received in evidence.)

24 MR. JARASHOW: I thought you were turning to me
25 again.

1 REDIRECT EXAMINATION

2 BY MR. JARASHOW:

3 Q Doctor, let's talk with the Dr. Chanales record, that
4 page 37 record that you looked at a minute ago. The front
5 section page 37.

6 A The front the, oh boy, I'm just destroying this
7 thing. I don't know who's next, but I'm not taking any
8 responsibility.

9 Q I'll tell you what, here I'll help you out, I'll put
10 it up over here. This is page 2 of that report.

11 THE COURT: I'm just going to say this, the lawyers
12 have binders. You and I have these things (unintelligible).

13 THE WITNESS: Yeah.

14 MS. WARD: Read nothing into that.

15 THE WITNESS: I can see that.

16 MS. WARD: It was not an intentional move.

17 THE WITNESS: I can see that, okay.

18 BY MR. JARASHOW:

19 Q Okay. So, I have it up on the screen if you want.
20 And take a look at No. 6, this is, well, first of all, this is
21 the impression that Dr. Chanales gave after examining Mr.
22 Neustadter, right? (Unintelligible) this section is, this
23 report, his impression on his examination?

24 A Yeah, that's his, that's his impression.

25 Q Right. And he says that on No. 6 that Mr. Neustadter

1 had underlying dementia, but he had a reasonable of quality of
2 life for the patient without any real severe, or serious
3 medical problems I should say, right?

4 A That was --

5 Q That was his impression?

6 A That was his impression, yeah.

7 Q Right. And you also talked about mental, the mental
8 restrictions in No. 2 that, I'm sorry, not in No. 2, pardon me.
9 I'm reading this, No. 5, he talked about pneumonia could be
10 aspiration secondary to his recent change in mental status with
11 hyponatremia in connection with this longstanding Zenker's
12 diverticulum, right?

13 A That was his, that was his opinion.

14 Q So, his opinion was that Mr. Neustadter's mental
15 status had changed, not because of sepsis, but because of his
16 hyponatremia?

17 MS. WARD: Objection.

18 THE COURT: Overruled.

19 THE WITNESS: Pneumonia certainly could, I don't know
20 that I would make that out of this. You want to say that again
21 to me?

22 BY MR. JARASHOW:

23 Q That his mental status had changed due to
24 hyponatremia, not due to sepsis? You had concluded a septic
25 (unintelligible) --

1 A No, he said he had pneumonia.

2 Q Right.

3 A That certainly could be due to aspiration, which
4 means you swallow down the wrong tube. Secondary to a mental
5 status, and in conjunction with the Zenker's. So, what he's
6 saying there is, he still got infected, but he's giving you the
7 mechanism that he thinks he got infected. This is, this is how
8 I read this, that he had a low sodium, he got even worst mental
9 status, he aspirated something, got infected, and then got
10 septic.

11 Q Okay. And now, you don't recall on --

12 A But these aren't my conclusions, these are his
13 conclusions.

14 Q I understand.

15 A Okay.

16 Q Now, let me switch gears here for a second. You
17 don't recall on March 17th standing and having an argument with
18 Mr. Alexander Neustadter, and waving your finger in his face
19 telling him what does he expect for his father's future?

20 A No.

21 Q Okay.

22 A Absolutely not.

23 Q And you're saying that didn't happen?

24 A That did not happen.

25 Q And you don't remember on March 26th also having your

1 finger in Mr. Neustadter's face, and saying to him, what do you
2 expect (unintelligible) what I told you would happen with your
3 father?

4 A Oh, come on.

5 Q You don't remember that?

6 A In that way, no, not, not even --

7 Q And that didn't happen?

8 A That did not happen.

9 Q Thank you.

10 MR. JARASHOW: No questions, no further questions.

11 MS. WARD: Nothing further, Your Honor.

12 THE COURT: May this witness be excused?

13 MS. WARD: Yes.

14 MR. LEVIN: Yes.

15 THE COURT: Thank you, you're free to go.

16 (Witness excused.)

17 THE COURT: And we are going to adjourn for the day.

18 MS. WARD: May we approach just for a moment, Your
19 Honor?

20 THE COURT: Maybe we're not, hold that thought.

21 MS. WARD: Sorry.

22 THE COURT: There was a look of panic there for a
23 moment. Do we have one more doctor out there?

24 (Bench conference follows:)

25 MS. WARD: Well, we've got two fact witnesses --