

2 him. He was going to have a downhill course, and he
3 was going to die despite any therapy because he was
4 just too ill to survive.

5 Q In your assessment on March 11, did it
6 matter whether he had aspiration pneumonia or
7 community acquired pneumonia?

8 A A little bit, because when you lose the
9 ability to swallow and you're that old, it does not
10 usually come back, which means that you're sort of in
11 a checkmate position. You can't eat, and even if you
12 take a tube and put it in your stomach, which was
13 done, and feed through the stomach, your saliva still
14 goes into the lungs, which is full of bacteria, and
15 you continue to have pneumonias that you just can't
16 treat.

17 So community acquired pneumonia is a little
18 bit different of a diagnosis. You can get that from a
19 child that has an organism that doesn't -- it's not as
20 stark a problem in a 92-year-old as aspiration
21 pneumonia.

22 Q And did you agree that his aspiration
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1 pneumonia was secondary to his having Zenker's
2 diverticulum?

3 A I think that the Zenker's played a role, but
4 it became pretty clear that he lost his swallowing
5 mechanism, so he had a double whammy. One, he had a
6 pocket in his esophagus that collected material so
7 that anytime time he lay down, it would just
8 regurgitate into his lungs, and two, when that stuff
9 did regurgitate, he lost the mechanism to be able to
10 protect his airway. A hopeless situation.

11 Q Does eating food come to play with the
12 degree to which or the aspiration that was going on
13 with Mr. Neustadter? Eating food orally?

14 A It would make it worse. He was too sick to
15 eat anything when I saw him. He was in a -- in a
16 state where he was not able to feed himself or eat.
17 But had someone given him something, that would have
18 made him worse.

19 Q Did you order that he should not be fed
20 orally? Was that considered by you?

21 A I would have to review all the -- all the

Dr. Weiner gives his new patient no benefit of no doubt.

- Where is evidence that swallowing ability was lost?
- How was a patient described in his consultation as "well-nourished" eating up until now?
- No prior hospitalizations for, or history of pneumonia.

Why did Dr. Weiner keep this full-code patient on a regular diet if any food would have made him worse?