

THE STATE OF OHIO,)
) SS:
 COUNTY OF CUYAHOGA)

IN THE COURT OF COMMON PLEAS

Richard Ridolfi, et al.,)
)
 Plaintiffs,)
)
 vs.) Case No. 322843
)
 Neal Chadwick, et al.,)
)
 Defendants.)

Deposition of PHILLIP I. LERNER, M.D., a witness, taken as if upon discovery examination, before Margaret Adamowski, a Notary Public within and for the State of Ohio, at the offices of Reminger & Reminger, The 113 St. Clair Building, Suite 700, Cleveland, Ohio, commencing at 10:00 a.m., on Friday, the 1st day of September, 2000, pursuant to notice, on behalf of the Plaintiffs.

- - -

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[11 PHILLIP I. LERNER, M.D., of
 [21 lawful age, a witness, called by the
 [31 Plaintiffs for the purpose of discovery
 [41 examination, as provided by the Ohio
 [51 Rules of Civil Procedure, being by me
 [61 first duly sworn, as hereinafter
 [71 certified, deposed and said as follows:
 [81
 [91
 [101 DISCOVERY EXAMINATION OF
 PHILLIP I. LERNER, M.D.

[111 BY MR. COTICCHIA:
 [121 Q Doctor, will you please state your full
 [131 name?
 [141 A Phillip Erwin Lerner.
 [151 Q How do you spell your last name?
 [161 A L-E-R-N-E-R.
 [171 Q what is your occupation?
 [181 A I'm a physician.
 [191 Q Do you specialize in any area of medicine?
 [201 A Infectious diseases.
 [211 Q How long have you been a physician?
 [221 A Forty-two years.
 [231 Q Do you have privileges to treat patients at
 [241 any hospitals here in the greater Cleveland
 [251 area?

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[11 APPEARANCES:
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 [171 on behalf of Defendant
 [181 Neal Chadwick, etc.
 [191
 [201
 [211
 [221
 [231
 [241
 [251

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[11 A Yes.
 [21 Q What hospitals?
 [31 A university Hospitals.
 [41 Q Any other hospitals?
 [51 A NO.
 [61 Q I think at one time you were probably close
 [71 to 25 years associated or had privileges at
 [81 Mt. Sinai?
 [91 A correct.
 [101 Q They are no longer in business?
 [111 A correct.
 [121 Q were you at one time treating patients at
 [131 Cleveland Metro or MetroHealth?
 [141 A I was on the staff, but I never treated any
 [151 patients there.
 [161 Q In what capacity were you?
 [171 A AS a consultant.
 [181 Q In infectious diseases?
 [191 A Infectious diseases.
 [201 Q I have a copy of your report. I'll get my
 [211 hands on it. Well, I got everybody's report
 [221 except yours, Doctor.
 [231 Can I use your copy for a minute?
 [241 A Yes.
 [251 HR. LEADOWS: I have an extra

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[1] copy if you want to hand that back.
 [2] MR. COTICCHTA: Thank you.
 [3] Q I have a copy from counsel, Mr. Meadows --
 [4] MR. COTICCHIA: Thank you.
 [5] MR. MEADOWS: You're welcome.
 [6] Q -- dated November 16, '99, to William
 [7] Meadows. Is that your signature on the
 [8] second page?
 [9] A Yes.
 [10] Q Your first paragraph states, "I have
 [11] reviewed selectively the records forwarded
 [12] in this matter."
 [13] What records were forwarded that you
 [14] reviewed?
 [15] A They're stated in Mr. Meadows' cover letter
 [16] of October 13th.
 [17] Q Do you have a copy of that letter?
 [18] A No, I don't.
 [19] Q Do you know what records you reviewed?
 [20] A I reviewed the appropriate records for
 [21] determining the relationship of the surgical
 [22] procedure to the events that followed.
 [23] Q What was the name of the patient whose
 [24] records you reviewed?
 [25] A Richard Ridolfi.

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[1] it.
 [2] MR. COTICCHIA: Let's look back
 [3] on the transcript for a moment,
 [4] please.
 [5] - - -
 [6] (Record read.)
 [7] - - -
 [8] Q What records are you referring to when you
 [9] state, "appropriate records," the
 [10] determination to the relationship of the
 [11] treatment?
 [12] A Can I give an example?
 [13] Q Sure.
 [14] A In the laboratory reports for the various
 [15] confinements in the hospital, I reviewed all
 [16] of the culture results, but did not review
 [17] the chemistries, for example, and the
 [18] hematology results with the same degree of
 [19] scrutiny.
 [20] Q Okay. In addition to those records, do any
 [21] other medical records relate or are
 [22] pertinent to the -- that you reviewed prior
 [23] to preparation of your letter dated November
 [24] 16, '99?
 [25] A I'm sorry. You have to read that back to

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[1] Q All right. We're going to take this a
 [2] little bit at a time. I asked you a
 [3] question about your first paragraph. You
 [4] said you reviewed selectively. What do you
 [5] mean in that letter when you say,
 [6] "selectively"?
 [7] A The records were voluminous and I chose to
 [8] review those parts of the records that I
 [9] considered pertinent to my assignment, so to
 [10] indicate that I did not review all of the
 [11] records that I received.
 [12] Q Okay. And what was your assignment for
 [13] which you thought these records were
 [14] pertinent?
 [15] A To evaluate the CABG procedure done to this
 [16] patient and the subsequent course of events
 [17] in relationship to the possible infection
 [18] complications.
 [19] Q Okay. When you say, "CABG," you're talking
 [20] about coronary artery?
 [21] A Bypass, correct.
 [22] Q Okay. And what was that other word you
 [23] used? I think the word was appropriate
 [24] records in your answer previously,
 [25] A If I said the word appropriate then I meant

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[1] me. I didn't catch the drift of the
 [2] question.
 [3] Q I'll rephrase it.
 [4] In addition to the culture records that
 [5] you reviewed, are there other records that
 [6] you reviewed that you deemed appropriate
 [7] before you prepared your letter of November
 [8] 16, '99?
 [9] MR. MEADOWS: I'm going to
 [10] object because he gave you that as
 [11] an example.
 [12] A I reviewed the operative reports for the
 [13] various surgical procedures without -- I did
 [14] not review the operative report for the
 [15] original CABG, however.
 [16] I reviewed the progress notes for the
 [17] various hospitalizations.
 [18] I reviewed the nurse's notes when they
 [19] were part of that evaluation.
 [20] I reviewed the medication sheets with
 [21] precision and knowing exactly what
 [22] medications were used was appropriate.
 [23] I reviewed the x-ray reports when they
 [24] influenced my evaluation of the hospital
 [25] course for each of the hospitalizations.

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[1] Q Any other records that come to your mind?
 [2] A No.
 [3] Q Did you review any letters or reports from
 [4] other medical doctors who have been
 [5] identified as experts in this case?
 [6] A Yes.
 [7] Q Which ones did you review?
 [8] A I reviewed Doctor Markowitz' deposition.
 [9] Q Okay. His deposition. Let me interrupt a
 [10] minute. Did you read his report dated
 [11] February 28, '97?
 [12] A I believe I did.
 [13] Q You read that. Okay. And you read his
 [14] deposition as well?
 [15] A Yes.
 [16] Q There was also a second deposition which was
 [17] just completed last night.
 [18] A I have no knowledge of it.
 [19] Q None whatsoever? Were you provided a
 [20] summary --
 [21] A No.
 [22] Q -- or a brief outline?
 [23] A No.
 [24] Q Any other reports prepared by any medical
 [25] experts?

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[1] Q You read his report; you haven't read his
 [2] deposition?
 [3] A Correct.
 [4] Q Did you read the report of Doctor Noskin?
 [5] A Yes.
 [6] Q Did you read the deposition of Doctor
 [7] Noskin?
 [8] A Yes.
 [9] Q Did you read the report of Doctor Norman
 [10] Silver?
 [11] A No.
 [12] Q Independent of this lawsuit, do you know
 [13] Doctor Tan?
 [14] A Yes.
 [15] Q How long have you known Doctor Tan?
 [16] A Many years.
 [17] Q Are you and he members of the same medical
 [18] societies?
 [19] A Well, we both belong to the Infectious
 [20] Disease Physicians of America and the sub
 [21] branch of Ohio. That's true of most
 [22] infectious disease people in the area.
 [23] Q Independent of this lawsuit, do you know
 [24] Doctor Noskin?
 [25] A I've heard of him, but I don't know him

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[1] A I believe I read Doctor Gopal's deposition.
 [2] I read a report by Doctor James Tan, and I
 [3] read - I believe I read the depositions of
 [4] the patient and his wife, and Doctor Van
 [5] Bergan's deposition.
 [6] Q Did you read the depositions of any of the
 [7] residents?
 [8] A No.
 [9] Q Did you read the deposition of Doctor Ralph
 [10] Lach?
 [11] A I think I did. Sounds familiar.
 [12] MR. MEADOWS: Deposition or
 [13] report?
 [14] MR. COTICCHIA: I said
 [15] deposition.
 [16] MR. MEADOWS: For the record, I
 [17] don't think it's been typed yet.
 [18] MR. COTICCHIA: It's been sent.
 [19] MR. MEADOWS: Really?
 [20] A It was his report and not his deposition.
 [21] Q You read his report?
 [22] A That recent I wouldn't know that I received
 [23] it.
 [24] Q His report is May 11, '99.
 [25] A That's the one I read.

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[1] personally.
 [2] Q Did you talk to Doctor Tan about the
 [3] treatment of Richard Ridolfi?
 [4] A No.
 [5] Q Did you talk to Doctor Noskin about the
 [6] treatment of Richard Ridolfi?
 [7] A No.
 [8] Q Did you talk to Doctor Silverman about the
 [9] treatment of Richard Ridolfi?
 [10] A No.
 [11] Q Did you talk to any of the defendants,
 [12] Doctor Van Bergan, Doctor Gopal, also known
 [13] as Gopalakrishna about this case?
 [14] A No.
 [15] Q Did you talk to either Doctor Van Bergan or
 [16] Doctor Gopal about the treatment of Richard
 [17] Ridolfi?
 [18] A No.
 [19] Q Before you became involved in this case, did
 [20] you know Doctor Van Bergan?
 [21] A No.
 [22] Q Before you became involved in this case, did
 [23] you know Doctor Gopal?
 [24] A Yes.
 [25] Q How long have you known Doctor Gopal?

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- [1] A Many years.
 [2] Q How long is many years?
 [3] A All of the infectious disease people in town
 [4] get together for social and educational
 [5] purposes several times a year. And if you
 [6] name any of the infectious people in the
 [7] city, I would have to answer the same, I've
 [8] known them for many years.
 [9] Gopal goes back over 20 years.
 [10] Q Over 20 years. I thought I saw somewhere in
 [11] your CV that you and he had authored some
 [12] articles together.
 [13] A Correct.
 [14] Q How many articles do you think that you and
 [15] Doctor Gopal have authored together?
 [16] A The one study that I remember involved
 [17] tetracycline resistant pneumococci, the
 [18] study that we carried out when we were at
 [19] the Veterans Administration Hospital.
 [20] Q Do you know approximately when that was, the
 [21] article?
 [22] A In the 1960s.
 [23] Q So that goes back over 30 years?
 [24] A Yes. I said, "over 20 years."
 [25] Q Doctor Lerner, was Doctor Gopal, at any

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- [1] A Case Western Reserve University.
 [2] Q Do you hold any teaching positions at Case
 [3] Western Reserve Medical School now?
 [4] A Yes.
 [5] Q What is it?
 [6] A I'm professor of medicine.
 [7] Q How long have you been a professor of
 [8] medicine at the medical school?
 [9] A I've been on the full-time faculty since I
 [10] returned to Cleveland from Boston in 1966,
 [11] in one rank or another. I became professor
 [12] in the '80s, I believe, full professor.
 [13] Q Presently do you teach or conduct classes
 [14] with medical students at the Case Western
 [15] Reserve School of Medicine?
 [16] A Yes.
 [17] Q What classes are you teaching?
 [18] A Well, I lecture for four hours in the first
 [19] year in the infection committee devoted to
 [20] the discussion of specific organisms, and
 [21] I'm in charge of the teaching committee in
 [22] the second year that discusses the
 [23] mechanisms of infection and the consequences
 [24] of infection in the host, that's a two week
 [25] course, and I'm in charge of it.

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- [1] time, a resident under your supervision?
 [2] A No.
 [3] Q While at the VA?
 [4] A No.
 [5] Q Did he ever treat patients at Mt. Sinai?
 [6] A No.
 [7] Q Your relationship with Doctor Gopal is
 [8] professional and not a situation where you
 [9] were a supervisor; is that correct?
 [10] A He was in training in medicine at the VA and
 [11] I was one of the teachers for the training
 [12] program.
 [13] Q That's what I was trying to ask.
 [14] A But it wasn't as though he was under me
 [15] specifically for infectious disease
 [16] training. He was taking his internal
 [17] medicine training at the time.
 [18] Q Okay. So he was one of the students at the
 [19] time at the VA Hospital, correct?
 [20] A He was beyond the student level. He was an
 [21] M.D. at the time. He was a resident.
 [22] Q All right. And at that same time you were
 [23] one of the instructors or teachers?
 [24] A Correct.
 [25] Q From what medical school were you teaching?

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- [1] Q Do you confine your – the subjects that you
 [2] teach, did you confine that to infectious
 [3] disease?
 [4] A Yes.
 [5] Q Are you board certified?
 [6] A No.
 [7] Q In regard to your report, did you prepare a
 [8] rough draft of that report before it was
 [9] finalized?
 [10] A Yes.
 [11] Q What did you do with the rough draft?
 [12] A After the report was finalized, I discarded
 [13] the rough draft.
 [14] Q Before you discarded the rough draft, and
 [15] before you prepared your letter of November
 [16] 16, '99 to Mr. Meadows, did you discuss the
 [17] rough draft with Mr. Meadows?
 [18] A No.
 [19] Q When Mr. Meadows sent you the records with
 [20] this assignment, what was your understanding
 [21] of your assignment?
 [22] MR. MEADOWS: Objection. Asked
 [23] and answered.
 [24] He gave you a very detailed
 [25] answer moments ago.

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[1] A Analyze the case and answer the specific
 [2] questions that were being posed.
 [3] Q When you wrote your report of November 16,
 [4] '99, did you have, prior to that, an
 [5] opportunity to review Richard Ridolfi's
 [6] office chart maintained by Doctor
 [7] Van Bergan?
 [8] A Yes.
 [9] Q And in that office chart, Doctor, did you
 [10] see the microbiology, or using the same
 [11] words for the same thing I guess, the
 [12] culture reports pertaining to Richard
 [13] Ridolfi?
 [14] A Which culture reports?
 [15] Q The reports from August 26th, '95, through
 [16] his discharge? Well, let's say through
 [17] November 24th, '95.
 [18] MR. MEADOWS: I'm going to ask
 [19] for a clarification. You're asking
 [20] did he review the culture reports
 [21] from the hospital record or from
 [22] Doctor Van Bergan's records?
 [23] Q From Doctor Van Bergan's records.
 [24] A Then I can't answer that because I don't
 [25] remember specifically checking to see if

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[1] operative reports for his records.
 [2] Q Let me rephrase it. When is the last time
 [3] you reviewed the medical records before this
 [4] morning's deposition?
 [5] A I reviewed some, to refresh my memory,
 [6] yesterday.
 [7] Q What records did you review?
 [8] A I looked at the report of the
 [9] hospitalization for the initial -- following
 [10] his discharge from the CABG when he was
 [11] readmitted with the sternal dehiscence, and
 [12] I concentrated mainly on the records from
 [13] the various admissions through September of
 [14] '95.
 [15] Q What is an external dehiscence?
 [16] A Dehiscence means separation. Sternum is the
 [17] bone in the front of the chest that connects
 [18] the two rib cages anteriorly.
 [19] Q It's my understanding that in order to do
 [20] this type of surgery the sternum has to be
 [21] separated?
 [22] A Correct, at that time, yes.
 [23] Q If the incision does not heal within the
 [24] normally reasonably medically expected time
 [25] following surgery, is that failure to heal a

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[1] hospitals reports were also in his office
 [2] records, whether copies of them were.
 [3] Q Would you expect a surgeon like Doctor Van
 [4] Bergan to have the culture reports following
 [5] a CABG of his patient to be in his office
 [6] records?
 [7] MR. MEADOWS: Objection.
 [8] A No, they would not be there.
 [9] Q Why not?
 [10] A Because they're part of the hospital record.
 [11] If they were generated from his office, then
 [12] the reports should come back to his office.
 [13] Q In Doctor Van Bergan's office records he has
 [14] operative reports, including operations of
 [15] his patient by other surgeons. Why would
 [16] you see operative reports of his patient,
 [17] but not expect to see the wound cultures of
 [18] his patient in his office records?
 [19] MR. MEADOWS: Objection. Asked
 [20] and answered.
 [21] A Because the hospital records are not
 [22] automatically sent to the responsible
 [23] doctor. Why he has operative reports, I
 [24] don't know, unless he has an arrangement
 [25] with the doctors to send copies of their

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[1] sign or a symptom of infection?
 [2] A It may be.
 [3] Q Just so we're talking about the same thing,
 [4] when I say, "sign," do you understand that
 [5] to mean something that's objective that you
 [6] can see?
 [7] A Correct.
 [8] Q If I say symptom, that's something
 [9] subjective, you can't see it, usually it
 [10] comes from the mouth of the patient?
 [11] A Correct.
 [12] Q There's a culture report dated August 26th,
 [13] '95, pertaining to Richard Ridolfi and it
 [14] says, "wound culture." What is your
 [15] understanding of a -- what is a wound
 [16] culture?
 [17] A It's a culture taken from a surgical wound.
 [18] In this instance, a surgical wound.
 [19] Q Why would a surgeon take a wound culture?
 [20] A Because he wants to know what's growing
 [21] inside that wound, if anything.
 [22] Q Is infection in this area a risk of coronary
 [23] artery bypass graft?
 [24] MR. MEADOWS: Objection to
 [25] form.

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[1] When you say, "this area," what
 [2] are you talking about?
 [3] MR. COTICCHIA: I just said,
 [4] coronary artery bypass graft.
 [5] A Is the surgical procedure, coronary artery
 [6] bypass grafting, complicated on occasion by
 [7] infection?
 [8] Q Yes.
 [9] A The answer is yes.
 [10] Q What is the difference between a
 [11] colonization and an infection?
 [12] A Infection is where the organism that you
 [13] find in the site sample is damaging or
 [14] harming the tissue in which it is found.
 [15] Colonization is a benign presence of an
 [16] organism growing in a tissue or on a
 [17] surface.
 [18] Q In this particular case, the wound culture
 [19] of August 26th, was, would you agree, a deep
 [20] wound culture?
 [21] A There were three specimens taken.
 [22] Q I'm talking about the culture -- do you have
 [23] the cultures in front of you?
 [24] MR. MEADOWS: He doesn't, and
 [25] if you have that marked, could he

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[1] chest cavity," doesn't it?
 [2] A Says that in two parts of the report.
 [3] Q Okay. And that's the surgical specimen,
 [4] correct?
 [5] A There are three specimens listed on this
 [6] sheet. They are all surgical specimens.
 [7] Q My question to you is: In your opinion, as
 [8] an infectious disease specialist, is that
 [9] culture a deep wound culture?
 [10] A The two specimens that are categorized as
 [11] wound, chest cavity are presumably taken
 [12] from the cavity of this patient at the time
 [13] this surgery was carried out.
 [14] Q Okay. Is that a deep wound culture?
 [15] A It's within the confines of the cavity that
 [16] was being repaired by the surgeon when this
 [17] patient dehisces his wound.
 [18] I can solve your problem if you let me
 [19] explain what was going on and what these
 [20] results indicate.
 [21] Q I'll be happy to, but I want to get
 [22] something clear in my own mind so we're on
 [23] the same track.
 [24] I'm going to quote to you from Doctor
 [25] Van Bergan's testimony on page 16, line 15.

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[1] look at what you're looking at?
 [2] MR. COTICCHIA: You can make a
 [3] copy of it. You have three stacks
 [4] of records.
 [5] Q Why don't you have the cultures with you,
 [6] Doctor?
 [7] MR. MEADOWS: Maybe we have it
 [8] here. What are you looking at?
 [9] That's all I'm asking.
 [10] MR. COTICCHIA: I'm looking at
 [11] a copy of the August 26th, '95 wound
 [12] culture.
 [13] Q Do you have a copy of that, Doctor?
 [14] MR. MOSCARTNO: What's the
 [15] number of the page you're looking
 [16] at, Joe?
 [17] MR. COTICCHIA: 0021.
 [18] MR. MOSCARINO: Thank you.
 [19] Note my objection to the form
 [20] of the question if there is one at
 [21] this point.
 [22] Q Do you have a copy of that page, Doctor?
 [23] A Yes, I do.
 [24] Q Farther down the page where it says,
 [25] "Specimen description," it says, "wound,

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[1] And I quote, "I then opened the incision,
 [2] removed all the suture material that would
 [3] be foreign body. I then took swabs and I
 [4] cultured. I took a swab of the soft tissues
 [5] and a swab of the actual inside of the under
 [6] the sternum where the heart is located and
 [7] the pericardium into the fluid and sent them
 [8] for Gram stain culture," end quote.
 [9] My question first, Doctor, is: Do you
 [10] remember reading that part of Doctor Van
 [11] Bergan's testimony?
 [12] A Yes.
 [13] Q Doesn't that indicate a deep wound culture?
 [14] MR. MOSCARTNO: Objection.
 [15] A It indicates that a culture other than from
 [16] the surface of the wound.
 [17] Q So can we agree that this culture dated
 [18] August 26th, '95, which grew rare Serratia
 [19] was bacteria that was not superficial?
 [20] MR. MEADOWS: Objection to
 [21] form.
 [22] MR. MOSCARTNO: Same objection.
 [23] MR. MEADOWS: It's ambiguous as
 [24] you have worded it.
 [25] A There's a chest wound reported at the top of

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[1] this sheet that presumably represents the
 [2] surface culture and that shows no white
 [3] blood cells, many red cells and no organism
 [4] and grew nothing after three days.
 [5] There is another specimen listed below
 [6] it which indicates with a different
 [7] accession number that this was the chest
 [8] cavity and this swab Gram stain showed a few
 [9] red cells and no organisms and yielded no
 [10] growth after three days.
 [11] The next culture listed is the
 [12] anaerobic culture and that has an accession
 [13] number that is one digit higher than the
 [14] previous one, and again this Gram stain
 [15] shows moderate red cells, no organisms seen
 [16] and the culture from this specimen which is
 [17] the anaerobic culture yielded to anaerobes,
 [18] but you grew a rare colony of Serratia.
 [19] Q Thank you, Doctor. But I think you missed
 [20] the point. Where was the -- what was the
 [21] specimen description?
 [22] A This was the specimen from the chest cavity.
 [23] Q So the growth of the rare Serratia, do you
 [24] agree, represents a growth within the chest
 [25] cavity not on the surface of the skin?

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[1] the cavity.
 [2] Q Okay. What do you think that liquid
 [3] material was from, the cavity?
 [4] A Tissue juice.
 [5] What, you're asking me ridiculous
 [6] questions and I finally had to give you a
 [7] ridiculous answer.
 [8] Q Thank you. Ridiculous or not, I'm a layman
 [9] and there are going to be people on the
 [10] jury --
 [11] A If you permit me to make you a sophisticated
 [12] layman, I can clear this up in a few
 [13] minutes.
 [14] Q What liquids are you talking about, or what
 [15] juices are you talking about?
 [16] A Our body is 80 percent water. When you
 [17] enter any part of the body, penetrate beyond
 [18] the surface of the body, you will encounter
 [19] moisture.
 [20] In this instance the most likely
 [21] moisture was serum extruded from a healing
 [22] wound that had just recently mechanically
 [23] dehisced. The absolute proof that there was
 [24] no infection whatsoever resides in Doctor
 [25] Van Bergan's carefully sending specimens for

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[1] A Correct.-
 [2] Q Was the specimen that we're talking about of
 [3] August the 26th, did that include a specimen
 [4] of tissue?
 [5] A Did the specimen that reached the lab?
 [6] Q Right, the wound, chest cavity.
 [7] A There's no indication that tissue was sent
 [8] for culture.
 [9] Q What was the specimen?
 [10] A From here I have no idea what it was. It's
 [11] usually a swab. A sterile swab that is used
 [12] to take up some of the material and that is
 [13] sent sterilely to the lab for testing.
 [14] Tissue would be mentioned as tissue if it
 [15] was received in that form.
 [16] Q Is there on a sterile swab culture
 [17] microscopic fibers of tissue?
 [18] A NO.
 [19] Q What do you think the specimen was on this
 [20] swab?
 [21] MR. MEADOWS: What swab?
 [22] MR. COTICCHIA: The swab that
 [23] grew Serratia marcescens from the
 [24] chest cavity.
 [25] A I assume there was some liquid material from

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[1] Gram stain and culture and these prove
 [2] conclusively, without the shred of doubt,
 [3] that there was no infection present at the
 [4] time. There were no white cells present,
 [5] there were no gram negative rods on smear,
 [6] there was absolutely nothing to suggest the
 [7] presence of infection. And a positive
 [8] culture cannot be equated with infection.
 [9] Q Thank you for your closing argument,
 [10] Doctor Lerner.
 [11] A It's going to be the opening and the
 [12] closing.
 [13] Q Ours might be a little different.
 [14] A I'm not surprised.
 [15] Q Is the positive culture of rare Serratia a
 [16] sign of infection?
 [17] A Absolutely not.
 [18] Q Drainage alone, can it be a sign of
 [19] infection?
 [20] A Can infection manifest as drainage? Yes.
 [21] Q Can an infection manifest by way of
 [22] dehiscence?
 [23] A Yes.
 [24] Q If you have drainage and dehiscence as well
 [25] as a positive culture of rare Serratia,

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[1] don't those three signs or symptoms indicate
 [2] infection?
 [3] A The first thing we teach our students in
 [4] medical school is that a culture does not
 [5] equal infection. The presence or absence of
 [6] white cells is a prime consideration in
 [7] evaluating the significance of a culture,
 [8] and I am getting to the point where the
 [9] issue here is annoying, to say the least,
 [10] because this is a basic premise of infection
 [11] that we teach our medical students beginning
 [12] day one.
 [13] Doctor Van Bergan in this instance did
 [14] exactly what a good surgeon should do and
 [15] sent off multiple specimens to see what the
 [16] status of the wound was that had just
 [17] mechanically dehisced.
 [18] The absence of white cells proves
 [19] conclusively there was no infection.
 [20] The absence of growth of any
 [21] significant organism proves further
 [22] conclusively that there was no infection
 [23] present.
 [24] This was a sterile dehiscence of
 [25] mechanical nature and nothing more than

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[1] MR. MEADOWS: I'm going to
 [2] object.
 [3] It's an unfair question, It
 [4] suggests there was growth of
 [5] Serratia at the time of discharge.
 [6] A There's a note in the chart that the lab was
 [7] contacted and there was no growth in any of
 [8] the cultures.
 [9] Q My question is, Doctor Lerner, isn't it true
 [10] when Doctor Van Bergan discharged Richard
 [11] Ridolfi on August the 29th, Doctor Van
 [12] Bergan did not know that this culture showed
 [13] rare Serratia on August the 30th?
 [14] MR. MEADOWS: Objection.
 [15] A He couldn't know something that was not
 [16] going to happen for another 24 hours.
 [17] Q That's my next question. Thank you.
 [18] Because this report is finalized does
 [19] not necessarily mean that this is when the
 [20] Serratia grew in this culture, does it?
 [21] A Doesn't exclude it.
 [22] Q No. So you can't say, within reasonable
 [23] medical certainty, whether that was the date
 [24] that it grew or whether it was the date that
 [25] it did not grow?

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[1] that.
 [2] Q When you say the absence of growth of any
 [3] significant organism, does that testimony
 [4] include this culture --
 [5] A Yes.
 [6] Q -- of Serratia?
 [7] A It's specifically directed at that organism.
 [8] It has no significance in the overall
 [9] picture of what took place on August the
 [10] 26th.
 [11] Q You agree that at the time Mr. Ridolfi was
 [12] discharged, Doctor Van Bergan was unaware of
 [13] the growth of Serratia?
 [14] MR. MEADOWS: Objection.
 [15] It presupposes there was a
 [16] growth of Serratia when he was
 [17] discharged.
 [18] Q I'm talking about August the 29th.
 [19] A This final report was generated on the 30th.
 [20] You can see that it was finalized on the
 [21] 30th.
 [22] Q And my question is: Isn't it true at the
 [23] time Doctor Van Bergan discharged Richard
 [24] Ridolfi, Doctor Van Bergan did not know that
 [25] this culture came back as Serratia?

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[1] A Well, the laboratory was contacted on the
 [2] 29th and did not report any growth.
 [3] Q Where in the record either in Doctor Van
 [4] Bergan's chart, or in all these volumes that
 [5] you carefully and selectively and
 [6] appropriately reviewed, show me the record
 [7] where it says the lab reported to Doctor Van
 [8] Bergan, or any of his residents, that the
 [9] cultures were negative?
 [10] A There's a progress note on the 29th at the
 [11] time of discharge indicating there was no
 [12] growth as of that point in time.
 [13] Q Where is that progress report?
 [14] A It's in the chart.
 [15] MR. MEADOWS: You're asking him
 [16] to look at the last progress note
 [17] before discharge?
 [18] MR. COTICCHIA: I want the one
 [19] he just mentioned, August the 29th.
 [20] A You want me to read it?
 [21] Q Let me see if I can pull mine.
 [22] Yeah, read it, please.
 [23] MR. COTICCHIA: Let's copy it
 [24] and mark it.
 [25] MR. MEADOWS: No, no, that's my

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[1] record. You can mark your own.
 [2] MR. COTICCHIA: I'd like to
 [3] make a copy of it.
 [4] MR. MEADOWS: Don't you have
 [5] yours there?
 [6] MR. COTICCHIA: Wait a second.
 [7] I want a copy made for the
 [8] transcript. Are you objecting to
 [9] that?
 [10] MR. MEADOWS: Do you have a
 [11] copy?
 [12] MR. COTICCHIA: No, I don't
 [13] have a copy.
 [14] MR. MEADOWS: You didn't bring
 [15] it?
 [16] MR. COTICCHIA: No.
 [17] MR. MEADOWS: Why not?
 [18] MR. COTICCHIA: I forgot it.
 [19] MR. MEADOWS: Does Doctor Lach
 [20] have it?
 [21] MR. COTICCHIA: Can you make me
 [22] a copy?
 [23] MR. MEADOWS: Let's go off the
 [24] record and see if I can do that.
 [25] MR. COTICCHIA: Sure. Thank

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[1] "comfortable," and then what does that
 [2] notation mean, "complains of incisional
 [3] pain"?
 [4] A Incisional pain, right.
 [5] Q Is pain around the incision a symptom of
 [6] infection?
 [7] A Well, it depends on the age of the incision.
 [8] If it's a fresh incision, it's a fresh
 [9] incision, and that can be painful in and of
 [10] itself.
 [11] Q And it says, "incision dressing intact,
 [12] stable." I don't know what that means.
 [13] A "Abdominal binder to chest."
 [14] Q What does CPM mean?
 [15] A I'm not sure.
 [16] Q Do you know whose signature that is?
 [17] A No.
 [18] Q All right. Let's go to the -- it might be
 [19] Doctor Van Bergan. I'll assume it is.
 [20] August the 28th, says, "CTS
 [21] comfortable."
 [22] What does CTA with a capital B
 [23] encircled mean?
 [24] A I don't know.
 [25] Q What does the next entry mean?

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[1] you. ---
 [2] ---
 [3] (Discussion off the record.)
 [4] ---
 [5] MR. COTICCHIA: Let's mark this
 [6] as Doctor Lerner Exhibit 1.
 [7] ---
 [8] (Plaintiffs Exhibit Lerner 1
 [9] marked for identification.)
 [10] ---
 [11] Q Doctor Lerner, I call to your attention
 [12] what's been marked Plaintiffs Exhibit
 [13] Lerner 1. Do you have a copy of that in
 [14] front of you?
 [15] A Yes.
 [16] Q Is that the progress note that we're talking
 [17] about?
 [18] A Yes.
 [19] Q Can I have that back, please?
 [20] At the top it's dated August 27th, '95,
 [21] correct?
 [22] A The note at the top of the page, yes.
 [23] Q What does CT surgery mean?
 [24] A Cardiothoracic.
 [25] Q And then the next line it says,

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[1] A Can't tell you, but I know the next one.
 [2] Q Okay. What's the next one?
 [3] A The next one is a chest tube. He's got a
 [4] couple chest tubes in. One is drained 175
 [5] CCs, the other is drained 100 CCs.
 [6] Q Is that of any significance to you?
 [7] A No.
 [8] Q What does the next entry state?
 [9] A Something is stable.
 [10] Q And I think the next entry says, "will
 [11] probably discharge" -- is that patient? I
 [12] don't know what that --
 [13] A "Patient when output" -- means the drainage
 [14] output from the chest tubes is less than 100
 [15] CCs per 24 hours.
 [16] Then the next line says, "ambulate
 [17] today."
 [18] Q What does, "ambulate today," mean?
 [19] A Get the patient up and walking.
 [20] Q When a patient ambulates, can we tell
 [21] whether or not he's ambulating with or
 [22] without assistance?
 [23] A Based on that note?
 [24] Q Yes.
 [25] A Well, I would be very surprised if the first

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[1] time he ambulated he was left to do it on
 [2] his own.
 [3] Q Okay. We have a note following that of
 [4] August the 29th, "CTS doing well."
 [5] A Chest tube dislodged yesterday accidentally.
 [6] Chest x-ray obtained, no pneumo," meaning no
 [7] pneumothorax. We've got the CTA B again.
 [8] Q What does the next entry on that line say?
 [9] A "No seepage." The last part of that line
 [10] is, "no seepage," meaning the dressing
 [11] showed no sign of fluid. "Doing well, will
 [12] get saturation of oxygen on room air. Will
 [13] discuss with staff. Cultures negative so
 [14] far."
 [15] Q Okay. I think that answers negative so far.
 [16] So at this point -- I think that signature
 [17] on there is Doctor Mayer, who was the
 [18] resident for Doctor Van Bergan.
 [19] A Okay.
 [20] Q Would you agree at this point there's no
 [21] communication on August the 29th about the
 [22] August 30th culture?
 [23] A It's not a different culture. It's a
 [24] different timeframe. At the time of
 [25] discharge on the 29th, either the computer

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[1] positive, how long does it take to grow and
 [2] there is no culture that is growing, there
 [3] are organisms that are growing.
 [4] Each organism has a different growth
 [5] rate; therefore, most of the organisms we're
 [6] looking for in this setting will grow in 24
 [7] to 48 hours. If they don't grow in that
 [8] timeframe, there's reason for it. Sometimes
 [9] the reason is they are more sluggish from
 [10] having been exposed to some antibiotic
 [11] previously.
 [12] In this case, the anaerobic culture was
 [13] incubated in the absence of oxygen and as
 [14] more than passing interest that this was the
 [15] only specimen that yielded any growth, rare
 [16] though it was.
 [17] Normally Serratia like under gram
 [18] negative rods divides every 20 to 30
 [19] minutes. So when you have a significant
 [20] growth of Serratia, you should see it in 24
 [21] to 48 hours because it is such a readily
 [22] grown organism.
 [23] Q I've heard other doctors in this case refer
 [24] to this Serratia as a nosocomial bacteria.
 [25] What does that mean?

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[1] generated database, if they were using a
 [2] computer at that time, or a call to the
 [3] laboratory established that the culture was
 [4] not growing as of 48 hours.
 [5] Q How long does a culture normally have to
 [6] grow before you make a determination that
 [7] it's negative or positive?
 [8] A Can I correct your question?
 [9] Q Yeah, after you answer the question.
 [10] MR. MEADOWS: If you can.
 [11] A It's a non-question, so I can't answer.
 [12] Q A culture is taken and it's sent to the
 [13] microbiology lab, in this case, isn't it?
 [14] A Correct.
 [15] Q My question is: When it arrives at the
 [16] microbiology lab, assuming that the taking
 [17] and the preserving of the culture and the
 [18] transport of the culture is all done
 [19] appropriately, how long does it take when
 [20] the Gram stain is done, or whatever
 [21] procedure has to be done, before you, as an
 [22] infectious disease specialist, determine
 [23] whether the culture is positive or negative?
 [24] A Now you changed the question again. The
 [25] first time you said when a culture is

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[1] A Nosocomial means hospital acquired.
 [2] Q So at this point, Doctor Mayer and/or Doctor
 [3] Van Bergan are unaware of the positive
 [4] culture, correct?
 [5] MR. MEADOWS: Objection.
 [6] It presupposes there was one at
 [7] that time. It's an unfair question
 [8] and you keep asking it.
 [9] Q I'm using the word positive.
 [10] A Culture is not positive as of the 29th.
 [11] Q All right. I agree with that.
 [12] My question to you is: Do you think
 [13] it's important when a patient is discharged
 [14] and the next day this comes up as final,
 [15] August 30th, rare Serratia, do you think
 [16] it's important for the hospital to inform
 [17] Doctor Van Bergan or Doctor Mayer about
 [18] this?
 [19] A No.
 [20] Q Why not?
 [21] A This is not a significant result.
 [22] Q If it's not significant, why is it in the
 [23] culture report?
 [24] A Because the laboratory is a place where the
 [25] organism is grown and that's where the

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[1] cultures are set up. The interpretation of
 [2] the significance of a specimen is in the
 [3] hands of the clinician. The laboratory can
 [4] only report out what it has in hand.

[5] Once again, you are confusing, sir, the
 [6] issue of a positive culture with a
 [7] significance of an infection. They do not
 [8] equate.

[9] Q Would you agree the issue in this case is
 [10] whether this was a colonization or an
 [11] infection?

[12] MR. MEADOWS: Objection.

[13] MR. MOSCARINO: Objection.

[14] A Would I agree the interpretation of this one
 [15] culture result is the crux of this case?

[16] Q Issue of this case.

[17] MR. MEADOWS: Objection as to
 [18] what he thinks the issue is.

[19] Q Is this a colonization or an infection, is
 [20] that the issue as you understand it?

[21] MR. MEADOWS: Objection.

[22] A That is the crux of the problem here. The
 [23] interpretation of this culture.

[24] Q If you were Doctor Van Bergan and your
 [25] patient is now coming to see you following

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[1] laboratory reports has nothing to do with
 [2] the concept of colonization. They are two
 [3] separate issues entirely.

[4] The colony of a bacteria is a growth
 [5] of, in this case, of bacteria, an isolated
 [6] colony of bacteria. It has nothing to do
 [7] with the concept of the colonization of a
 [8] tissue by an organism.

[9] And if you're mistaking the two of
 [10] these and think they are related, then I can
 [11] understand where your confusion arises.
 [12] Don't make those two things equal. They are
 [13] two separate entities completely.

[14] Q Where did this culture come from? Where did
 [15] this wound culture come from?

[16] A This swab came from the cavity, the wound
 [17] cavity that Doctor Van Bergan sampled at the
 [18] time of the sternal dehiscence, which was a
 [19] mechanical event.

[20] Q Right. It's a real world presence of
 [21] bacteria below the sternum, isn't it?

[22] MR. MEADOWS: Objection to real
 [23] world, what that means.

[24] A I have no idea what your real world consists
 [25] of.

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[1] discharge at the office, would you want to
 [2] know about that Serratia culture?

[3] A I would want to know about any significant
 [4] result from the hospitalization without any
 [5] question whatsoever.

[6] Q My next question, I think I know the answer,
 [7] do you consider the rare Serratia a
 [8] significant result of this deep wound
 [9] culture?

[10] MR. MEADOWS: Objection. Asked
 [11] and answered.

[12] A Absolutely not.

[13] Q Do you consider the rare Serratia finding a
 [14] sign of infection?

[15] A Absolutely not.

[16] Q What is a colony?

[17] A A colony is a single growth of an organism
 [18] in a compact geographic disposition.

[19] Q Okay. How would you categorize this
 [20] Serratia? Is it a colonization?

[21] MR. MEADOWS: What Serratia?

[22] MR. COTICCHIA: August 26th.

[23] A Hold on now. Let's get one thing straight
 [24] and stop obfuscating the situation.

[25] The colony that grows and the

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[1] Q You're trying to act like it's a
 [2] hypothetical thing here. My question is:
 [3] This is a real Serratia that came from below
 [4] Mr. Ridolfi's chest, sternal?

[5] MR. MOSCARINO: Object to form.

[6] MR. MEADOWS: Objection.

[7] A It came from a wound.

[8] Q Right. Came from a wound after it dehisced,
 [9] correct?

[10] A Correct. There would have been no specimen
 [11] sampled if it hadn't dehisced.

[12] Q So we understand that he did have Serratia?

[13] A Wounds can have cultures growing of many
 [14] different organisms and not be infected.

[15] Q But the reason any competent surgeon orders
 [16] cultures is to prevent infection following
 [17] surgery --

[18] A That's not true.

[19] Q -- to determine if there is a risk?

[20] A To be aware of the growth of bacteria in a
 [21] wound in case problems subsequently evolve.

[22] In this case what happened was a wound
 [23] infection did indeed take place, but it
 [24] wasn't with Serratia. It was with a
 [25] streptococcus. This is further absolute

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[1] proof of the inconsequential significance of
 [2] the Serratia at the time of the dehiscence.
 [3] Q All right.
 [4] A You can't have it both ways.
 [5] Q I agree with that. Let's start with a
 [6] simple question: Do you agree that
 [7] following the culture taken on August the
 [8] 26th, Serratia grew?
 [9] A A rare colony of Serratia grew from the
 [10] anaerobic culture submitted by Doctor
 [11] Van Bergan.
 [12] Q Okay. Now, we know that following this
 [13] discharge Mr. Ridolfi went to the emergency
 [14] room complaining of drainage on September
 [15] the 4th. Are you aware of that medical
 [16] record?
 [17] A Yes.
 [18] Q When you wrote your report, had you seen the
 [19] September 4, '95, emergency room record?
 [20] A No.
 [21] Q Is it of any significance to you as an
 [22] infection disease expert witness?
 [23] A Am I interested in knowing about the
 [24] encounter?
 [25] Q Yes.

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[1] A Correct.
 [2] Q Don't you think there should be some kind of
 [3] a culture report from this?
 [4] MR. MEADOWS: From what? Can
 [5] he see what you're looking at? You
 [6] have a record in front of you and
 [7] you're not showing it to the
 [8] witness.
 [9] MR. MOSCARMO: Objection.
 [10] MR. COTICHTA: Do you think
 [11] I'm misquoting or misreading?
 [12] MR. MEADOWS: We'd just like
 [13] you to show the witness.
 [14] A Must the wound be infected to have drainage;
 [15] the answer is no.
 [16] Q That's not my question. My question is: Is
 [17] this a sign or symptom of infection?
 [18] A No. By itself, no.
 [19] MR. MEADOWS: For the record,
 [20] you said CX ordered?
 [21] MR. COTICHTA: Yes.
 [22] MR. MEADOWS: This says, "CXR."
 [23] THE WITNESS: CXR is a chest
 [24] x-ray.
 [25] MR. MEADOWS: That's a little

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[1] A Yes, of course.
 [2] Q Now, this is dated September the 4th. Do
 [3] you have a copy of it, or I'll give you
 [4] mine?
 [5] Under the nursing assessment and I
 [6] quote, "Patient questions wound infection,
 [7] slight amount of sero," something, I think
 [8] it's serosanguineous, but I can't read it.
 [9] A Probably.
 [10] Q "Discharge in chest." I don't know what
 [11] that next word is. "NAD," what does that
 [12] mean?
 [13] A No acute distress.
 [14] Q And then CX something ordered; what does
 [15] that mean?
 [16] A Culture ordered.
 [17] Q Have you ever seen the culture?
 [18] A No, I haven't seen any cultures.
 [19] Q Again, isn't this a sign or symptom of
 [20] infection?
 [21] A Drainage?
 [22] Q Yeah.
 [23] A May or may not be.
 [24] Q A patient comes in the emergency room
 [25] because he's worried about it, right?

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[1] different. I ask that you quote the
 [2] record.
 [3] MR. MOSCARMO: Objection.
 [4] MR. COTICHTA: I couldn't read
 [5] the record.
 [6] MR. MEADOWS: I think you can
 [7] read it perfectly.
 [8] MR. COTICHTA: I stand
 [9] corrected.
 [10] Q Should a culture have been ordered at that
 [11] time?
 [12] A It should have been ordered if there was a
 [13] reason to order it.
 [14] Q You're the expert. I'm asking you. Knowing
 [15] what we know about this patient, he had --
 [16] let me paraphrase it.
 [17] A Knowing what we know about this patient is
 [18] not what they knew about this patient.
 [19] Q Wait a second. He was already in the
 [20] hospital for coronary artery bypass graft
 [21] and discharged, correct?
 [22] A Correct.
 [23] Q Next day he's admitted again because of a
 [24] sternal dehiscence, correct?
 [25] A Correct.

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- [1] Q He's discharged on the 29th, correct?
 [2] A Correct.
 [3] Q Now he's back here on September the 4th
 [4] complaining of drainage?
 [5] A Correct.
 [6] Q We know in the previous admissions cultures
 [7] were taken. My question to you as an
 [8] infectious disease expert, based on what you
 [9] know of this patient's history --
 [10] A Up to that point.
 [11] Q Up to that point, right -- don't you think a
 [12] culture should have been taken?
 [13] MR. MEADOWS: Objection.
 [14] A A culture should have been taken if it was
 [15] appropriate to take it. There were no
 [16] signs, according to the assessment, there
 [17] were no signs of inflammation, no sign that
 [18] the drainage was purulent, patient had no
 [19] fever, and his chest x-ray was normal. So
 [20] the taking or not of a culture is up to the
 [21] discretion of the person who examines him.
 [22] Q Is purulent drainage a sign of infection?
 [23] A Usually.
 [24] Q Can I have that, please?
 [25] A Serosanguineous is usually not purulent.

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- [1] discharged him on Keflex pending further
 [2] evaluation.
 [3] Now, I assume he did this simply
 [4] because in this situation, this setting,
 [5] where you've had a chest tube in for a
 [6] couple days, you want to extend the period
 [7] of prophylactic antibiotic, preventative
 [8] antibiotic beyond the point where we
 [9] normally give it, which is just 24 hours
 [10] after surgery.
 [11] Further proof that something else was
 [12] operative here is the fact that the Keflex
 [13] did not prevent the streptococcal infection
 [14] from evolving. The streptococcal, that
 [15] organism should have been sensitive to the
 [16] Keflex which he was receiving in an
 [17] appropriate dose. Despite being on an
 [18] antibiotic that should have prevented it, he
 [19] went on and developed a strep mitis
 [20] infection, which probably was his own
 [21] bacteria and not of a nosocomial nature.
 [22] Q So, generally as an infection disease
 [23] specialist, you expect strep to be inhibited
 [24] by Ancef and Keflex?
 [25] A What I know is that strep mitis is generally

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- [1] Q Doesn't a serosanguineous drainage precede a
 [2] purulent drainage if an infection is on
 [3] stream?
 [4] A No, absolutely not.
 [5] Q Is Serratia resistant to Ancef?
 [6] A This particular Serratia was.
 [7] Q Is it resistant to Keflex?
 [8] A Same drug.
 [9] Q Is Serratia resistant to Keflex?
 [10] A Yes, this one was.
 [11] Q Why does a surgeon prescribe Ancef and
 [12] Keflex?
 [13] MR. MEADOWS: Under just any
 [14] circumstances?
 [15] Q In this circumstance.
 [16] A The surgeon was confronted with the sudden
 [17] dehiscence of his wound, and before he knew
 [18] all the parameters of its etiology and
 [19] pathogenesis, it was incumbent upon him to
 [20] give antibiotic therapy until he satisfied
 [21] himself that -- satisfied that his clinical
 [22] impression of a mechanical dehiscence was
 [23] indeed the true situation.
 [24] So he ordered IV Ancef until the
 [25] results, the culture came back, and he

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- [1] susceptible to Beta Lactam antibiotics when
 [2] given in proper dosage, in this instance, an
 [3] infection developed despite his being on a
 [4] drug that should have suppressed it. This
 [5] particular strep is usually sensitive to the
 [6] antibiotic we're discussing in over 99
 [7] percent of the cases. There's a specific
 [8] determination of the species of the strep
 [9] which permits me to say that.
 [10] Q All right. Now, let's look at the flip side
 [11] of this. Doesn't that also mean that this
 [12] infection was really, or initially wasn't
 [13] strep, but Serratia, since it was
 [14] ineffective in suppressing or inhibiting
 [15] Serratia, and it was ineffective in
 [16] suppressing or inhibiting strep?
 [17] A Once again you're confusing the microbiology
 [18] laboratory with the clinical events.
 [19] Therefore, I can't answer the question in
 [20] the form that you've raised it.
 [21] Q I'm talking now, I'm asking questions now in
 [22] the framework of infectious disease. What
 [23] does, regarding these wound microbiology
 [24] cultures, what does susceptibility mean?
 [25] A It means that it was tested against a

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[1] certain concentration of antibiotic and
 [2] deemed sensitive or resistant depending on
 [3] the growth characteristics. This Serratia
 [4] was resistant to the cephalosporins we just
 [5] mentioned. The patient was given
 [6] cephalosporins for reasons that had nothing
 [7] to do with the culture that you are
 [8] concerned with.
 [9] Q Okay.
 [10] A The Keflex was ordered not on the basis of
 [11] anything generated from the laboratory.
 [12] What I am telling you is, based on my
 [13] expertise as an infectious disease clinician
 [14] of almost 40 years' duration, is that this
 [15] particular streptococcus should have been
 [16] sensitive to the Keflex antibiotic that he
 [17] was getting. There is no need to test this.
 [18] As a matter of fact, we don't bother
 [19] testing that organism in the micro lab when
 [20] testing against antibiotics in the micro lab
 [21] when we recover it because it is so
 [22] consistently susceptible.
 [23] What I am saying, despite being on a
 [24] prophylactic, preventative antibiotic, he
 [25] developed an infection with an organism that

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[1] elaborate, because I know you like to
 [2] lecture.
 [3] The susceptibility, sensitivity, genus
 [4] and species of the Serratia marcescens wound
 [5] culture of August the 26th are identical for
 [6] the September Serratia cultures?
 [7] A Well, I'll answer the question you didn't
 [8] ask because you -
 [9] Q Please answer my question.
 [10] MR. MEADOWS: Let him answer
 [11] the way he needs to.
 [12] A Susceptibility to antibiotics has nothing to
 [13] do with the identification of genus and
 [14] species when it comes to this particular
 [15] organism. There are some organisms that you
 [16] can suppose the genus and species based on
 [17] antibiotic susceptibility. This is not one
 [18] of them.
 [19] The fact that the Serratia isolated in
 [20] August had the same antibiotic
 [21] susceptibility pattern as the one isolated
 [22] in September does not mean they were the
 [23] same organism.
 [24] Q It's got the same sensitivity, doesn't it?
 [25] A Doesn't mean -- that's one characteristic.

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[1] should have been susceptible to the
 [2] antibiotic he was receiving, and there was
 [3] no Serratia whatsoever found in the multiple
 [4] cultures again submitted by Doctor Van
 [5] Bergan at the time of the infection, and
 [6] again several cultures were obtained as he
 [7] had done before.
 [8] Q Doctor, isn't it true that the
 [9] susceptibility -- let me back up.
 [10] Again, in the same context, what is
 [11] your understanding of the term genus?
 [12] A Genus.
 [13] Q Right. Genus, G-E-N-U-S?
 [14] A It's a classification of a species.
 [15] Q All right.
 [16] A Of a group of species.
 [17] Q Of a group of species. You've got species
 [18] and then genus, or is it the other way
 [19] around?
 [20] A Genus is more comprehensive. Species is
 [21] more specific.
 [22] Q Isn't it true, and I'll hand you this whole
 [23] stack -
 [24] A I'll save you the time.
 [25] Q Let me ask you the question and you can

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[1] Q Doesn't it make it more likely than less
 [2] likely?
 [3] A No, absolutely not.
 [4] Q You've got this presence in August, correct?
 [5] MR. MOSCARINO: What presence?
 [6] MR. MEADOWS: What presence?
 [7] Be more specific.
 [8] Q Of Serratia.
 [9] A You have a rare colony of Serratia --
 [10] Q It's present?
 [11] A - growing in one culture of several
 [12] submitted.
 [13] Q And then it comes up again in September,
 [14] doesn't it?
 [15] A Serratia appears as a suprainfection in
 [16] September with completely different clinical
 [17] characteristics, but the same antibiotic
 [18] susceptibility pattern.
 [19] Q All right. Now, my question is: In your
 [20] opinion -- by the way, let me back up. You
 [21] said superinfection, didn't you?
 [22] A Yes.
 [23] Q What did you mean by -
 [24] A Supra, something superimposed on something
 [25] else.

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[1] Q What was it superimposed on?
 [2] A It followed on the heels of a streptococcal
 [3] infection of a recent surgical incision.
 [4] Q Do you agree, and it should be marked by
 [5] page, I got 166, there's a culture, tracheal
 [6] aspirate, dated September 17th, '95,
 [7] moderate Serratia marcescens.
 [8] September 20th, respiratory culture,
 [9] the specimen is sputum, again moderate
 [10] Serratia.
 [11] My question is whether the Serratia --
 [12] there was also blood cultures that showed
 [13] Serratia; do you remember that?
 [14] A Correct.
 [15] Q All right.
 [16] So now do you agree that the Serratia
 [17] has now travelled or it's beyond **just** the
 [18] chest area?
 [19] MR. MEADOWS: Objection.
 [20] That presupposed it was in the
 [21] chest area.
 [22] A This man now has a Serratia infection in his
 [23] lungs, his bloodstream, and his abdominal
 [24] wound. I could not find in my review of the
 [25] literature, of the records, that the sternal

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[1] incision that we're talking about when the
 [2] chest is open for the initial surgery?
 [3] MR. MEADOWS: He **just** explained
 [4] to you the distinction. Why do you
 [5] keep asking the same question?
 [6] Q Can you answer that question, Doctor?
 [7] MR. MEADOWS: He **just** did.
 [8] A I'll offer the same answer as the previous
 [9] one.
 [10] Q We have, a situation with Mr. Ridolfi where
 [11] he's been admitted for a CABG, again for a
 [12] sternal dehiscence, and then again for a
 [13] dehiscence, there's a consult with a plastic
 [14] surgeon, correct?
 [15] A Yes.
 [16] Q There's a pectoralis flap, correct?
 [17] A Yes.
 [18] Q What is a pectoralis flap?
 [19] A They use the muscle of the chest to move and
 [20] move it into the wound to -- in an attempt
 [21] to eliminate the defect in the wound that
 [22] favors infection.
 [23] **If** you fill in an empty space with
 [24] muscle, you enhance the body's ability to
 [25] heal that area from infection. **If** you leave

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[1] wound was a source of the Serratia, but
 [2] there was an abdominal wound presumably from
 [3] the flap that had been created previously,
 [4] and blood cultures, and now in the lung.
 [5] This is a true infection, no ifs, ands, or
 [6] buts because there are white cells present
 [7] in each of the specimens that were submitted
 [8] that turned out to have growth of the
 [9] organism.
 [10] Q When you mention abdominal wound, isn't it a
 [11] fact that you're talking about the same
 [12] incision that starts at the sternum and goes
 [13] all the way down to the abdomen?
 [14] A That may be true. I have no way of knowing.
 [15] Q So you don't know whether it's the same
 [16] incision or not?
 [17] A I don't know whether it's a continuous
 [18] incision or two adjacent incisions. I'm
 [19] assuming that because it was marked
 [20] abdominal wound that it was from the abdomen
 [21] and perhaps the site of the graft, from the
 [22] site of the graft that was used in the
 [23] previous surgery, but this is all
 [24] supposition.
 [25] Q So you don't know if it's really the same

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[1] a cavity open, it remains -- or empty, it
 [2] remains susceptible to additional infection.
 [3] In this particular case it didn't work.
 [4] Q The sternum itself was debrided, wasn't it?
 [5] A It would be part of the usual surgical
 [6] procedure.
 [7] Q In this case it was, wasn't it?
 [8] A In this setting, yes.
 [9] Q And we had -- following that, **Mr.** Ridolfi
 [10] had another dehiscence, didn't he?
 [11] A There were additional problems, including a
 [12] laceration of the -- one of the ventricles
 [13] during another episode of dehiscence.
 [14] Q While he was in recovery from the pectoralis
 [15] flap, as I recall?
 [16] A Correct.
 [17] Q **All** right. Now, then there was some kind of
 [18] abdominal muscle flap done, wasn't there,
 [19] after the ventricle was repaired by Doctor
 [20] Van Bergan?
 [21] A Correct.
 [22] Q Correct? And what is your understanding of
 [23] this kind of a procedure for an abdominal
 [24] muscle flap?
 [25] A Well, they have to use the muscle that is

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[1] available, and if you can't use the
 [2] pectoralis muscles, you have to use
 [3] something that's close by and can serve the
 [4] same purpose. This is not my area of
 [5] expertise.

[6] Q Right. Did you read a letter from Doctor
 [7] Van Bergan to Doctor Lyons dated September
 [8] 6, '95? I'll show it to you.

[9] MR. COTICHTA: Do you have a
 [10] copy of it, Bill?

[11] MR. MEADOWS: If you have it
 [12] handy.

[13] Q Please read that.

[14] A "Richard Ridolfi was seen in the office
 [15] today for a postoperative check.
 [16] "As you will remember, after his
 [17] coronary revascularization he dehiscd his
 [18] sternum. He has a little bit of drainage at
 [19] the lower portion of the sternum in the area
 [20] of xiphoid. This area is unstable still, in
 [21] spite of our rewiring. The wound overall
 [22] looks good. There is a little fluid
 [23] accumulation at the very top of the wound
 [24] which appears to be totally benign. We will
 [25] follow him carefully. I will see him in one

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[1] room two days before this letter
 [2] significant?

[3] A May be.

[4] Q Wouldn't you expect to see that in his
 [5] office records?

[6] A If it influenced his evaluation I would
 [7] certainly expect it.

[8] Q And he does make reference to some drainage,
 [9] doesn't he?

[10] A He discusses what he found.

[11] Q You think he should have done a culture at
 [12] this point?

[13] MR. MEADOWS: What point?

[14] Q September 6th.

[15] A From his office? He should have done a
 [16] culture if he had any suspicion that a
 [17] culture would change the way he was managing
 [18] the patient.

[19] Q Well, we know at this point basically we've
 [20] got a rare Serratia of August 30th, we have
 [21] an emergency room visit by Richard Ridolfi
 [22] concerned with chest drainage, we've got a
 [23] history of a dehiscence. Now he's in the
 [24] office and Doctor Van Bergan dictates a
 [25] letter, September the 6th, and says nothing

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[1] week. I have asked him to make an
 [2] appointment with you for a cardiological
 [3] follow-up.

[4] "I appreciate the opportunity", et
 [5] cetera.

[6] Q There is no mention in this letter, is
 [7] there, about the culture results of August
 [8] 26th?

[9] A Correct.

[10] Q And there's no mention in there of
 [11] Mr. Ridolfi being in the emergency room with
 [12] drainage on September 4th, is there?

[13] A Correct.

[14] Q In light of what we've already discussed up
 [15] to this point in Richard Ridolfi's treatment
 [16] or recovery, wouldn't you expect Doctor
 [17] Van Bergan to be aware of it?

[18] MR. MEADOWS: Aware of what?

[19] A Of what?

[20] Q The August culture, including August 30th?

[21] A As I've said several times before, he should
 [22] be aware of anything that was significant in
 [23] terms of laboratory evaluation for that
 [24] hospitalization.

[25] Q Is Mr. Ridolfi's reporting to the emergency

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[1] about that?

[2] A Nothing about what?

[3] Q The August 30th culture and the September
 [4] 4th emergency room complaints of drainage.

[5] MR. MEADOWS: What's your
 [6] question?

[7] Q Would you, as an infection disease
 [8] specialist, expect to see that in Doctor Van
 [9] Bergan's, number one, his office chart or at
 [10] least in the letter to the cardiologist?

[11] MR. MEADOWS: Objection. Asked
 [12] and answered.

[13] A If he felt there was something significant
 [14] and something not heading in the right
 [15] direction.

[16] These wounds drain. They commonly
 [17] drain serous fluid and dehisce in small
 [18] portions at the skin level because of the
 [19] nature of the location of the wound and
 [20] there has to be a clinical interpretation
 [21] that goes along with each individual
 [22] patient.

[23] Should every wound, sternal wound
 [24] following a CABG be cultured at the time of
 [25] follow-up by the physician because there's

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[1] drainage, the answer is absolutely not.
 [2] Q I agree not every sternal drainage should be
 [3] cultured, but I'm talking about a patient
 [4] the day after he's discharged from coronary
 [5] bypass surgery, his sternum dehisces, he's
 [6] brought back to surgery.
 [7] A But that's part --
 [8] MR. MEADOWS: You already asked
 [9] this question. This is now the
 [10] third time.
 [11] Q That can happen?
 [12] A That's --
 [13] Q Let me ask the question: On August the
 [14] 26th --
 [15] MR. MEADOWS: You asked it.
 [16] Q August 26th he's brought back for more
 [17] surgery, they rewire the dehiscence, there's
 [18] a culture, and he's discharged on the 29th,
 [19] the culture comes back on the 30th rare
 [20] Serratia, all right, that's the next event.
 [21] On September --
 [22] A It's a non-event.
 [23] Q It's a non-event in your mind.
 [24] On September the 4th the patient shows
 [25] up at the emergency room complaining of

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[1] culture, it should have been done. In
 [2] Doctor Van Bergan's estimation, there was no
 [3] indication for sending a culture. And he
 [4] was a man who sends multiple cultures every
 [5] time he takes the patient to the O.R. He's
 [6] obviously thoughtful in that regard, and I
 [7] would defer to his judgment as someone who
 [8] sees many postoperative CABG incisions with
 [9] drainage as to whether or not a culture is
 [10] necessary.
 [11] MR. MEADOWS: Off the record.
 [12] ---
 [13] (Discussion off the record.)
 [14] ---
 [15] Q Do you agree, Doctor, that drainage from a
 [16] wound, as in this case, from Ridolfi's chest
 [17] incision, is a sign of the body trying to
 [18] get rid of something it doesn't want in its
 [19] system.
 [20] MR. MOSCARTNO: Object to the
 [21] form.
 [22] MR. MEADOWS: Objection.
 [23] A I can't -- what is the etiology of drainage
 [24] from a wound is what you're asking, and
 [25] it's -- it's an indication of the body's

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[1] drainage?
 [2] A Yes.
 [3] Q None of this to you indicates that a culture
 [4] should be taken; is that your opinion?
 [5] MR. MEADOWS: Objection. Asked
 [6] and answered.
 [7] Q Should a culture have been taken?
 [8] MR. MEADOWS: When?
 [9] A When?
 [10] Q After he presented at the emergency room on
 [11] September the 4th.
 [12] MR. MEADOWS: Asked and
 [13] answered.
 [14] A I've said before, if there was a significant
 [15] reason for obtaining a culture, a culture
 [16] should have been taken.
 [17] Q On September the 6th, at the follow-up visit
 [18] or when the letter is dictated, do you think
 [19] Doctor Van Bergan, knowing what he knows or
 [20] should have known, should order a culture
 [21] under these circumstances?
 [22] MR. MEADOWS: Objection.
 [23] A You can use the exact same answer to the
 [24] previous question. If there was an
 [25] indication for sending a specimen for

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[1] response to injury and attempted repair.
 [2] MR. COTICHTA: Would you read
 [3] that answer, please?
 [4] ---
 [5] (Record read.)
 [6] ---
 [7] Q Isn't it true that most patients or most
 [8] people retain the same organism such as this
 [9] when it's diagnosed or cultured in August
 [10] and then it comes up again in September, the
 [11] Serratia?
 [12] MR. MEADOWS: Objection to
 [13] form.
 [14] I have no idea what you just
 [15] asked.
 [16] A I have no idea what you're saying, sir.
 [17] Q Okay. You agree, despite its
 [18] insignificance, there's a rare Serratia in
 [19] the culture taken August the 26th?
 [20] A Yes.
 [21] Q And later on we find Serratia in September,
 [22] same patient, sputum, aspirate, blood,
 [23] correct?
 [24] A Correct.
 [25] Q My question is: Isn't that the same

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[1] Serratia in September that he had in August?
 [2] A Absolutely no way to answer that question.
 [3] Q Well then -
 [4] A The odds are it is not, because the wound
 [5] infection that developed did not - in the
 [6] interim, did not contain that organism.
 [7] Further proof that the Serratia
 [8] originally isolated to which you are affixed
 [9] has absolutely no significance in the
 [10] subsequent course of events.
 [11] This man got into trouble because he
 [12] mechanically dehisced his wound. That's the
 [13] pure and simple story of what this man's
 [14] course of illness was patterned out after.
 [15] Q Doctor, do you remember giving a deposition
 [16] in a case captioned Travis Kates versus
 [17] Cleveland Metropolitan General Hospital,
 [18] deposition of September 3, 1991?
 [19] A I remember the name.
 [20] Q The attorney for the plaintiff is Charles
 [21] Kampinski and the attorney for the defendant
 [22] is Thomas Allison; do you remember that
 [23] case?
 [24] A No.
 [25] Q It involved a knee infection.

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[1] answer, do you?
 [2] A I can't respond at all until I've had an
 [3] opportunity to see what the circumstances
 [4] were in that setting.
 [5] Q In the last 10 years, approximately, on an
 [6] annual basis, how many medical malpractice
 [7] cases have you reviewed?
 [8] A About a dozen a year.
 [9] Q And 100 percent, being all of them, what
 [10] percentage do you act as a consultant or
 [11] medical expert for the defendant doctor or
 [12] hospital?
 [13] A 60/40.
 [14] Q What does that mean?
 [15] A Defendants 60 percent; Plaintiffs 40
 [16] percent.
 [17] Q Have you reviewed cases in the past - in
 [18] this case it was Arter, Hadden, but at that
 [19] time Chris Treu was an attorney with that
 [20] office. Have you reviewed cases in the past
 [21] for Chris Treu?
 [22] A It's a familiar name.
 [23] Q In the past have you reviewed cases for
 [24] George Moscarino?
 [25] A Doesn't ring a bell. I may have. I'm not

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[1] A No recollection.
 [2] Q I'm not going to attempt to pronounce this
 [3] bacteria, but it's called MRSA. What does
 [4] that mean?
 [5] A Methicillin resistant staphylococcus aureus.
 [6] Q And I'm quoting from Page 55, Line 4, and
 [7] I'll give you this when I'm done.
 [8] "Question: All right. And is there
 [9] a way that you can determine whether that's
 [10] the same MRSA that he had in November?
 [11] "Answer: No. Probably is, but you
 [12] can't.
 [13] "Question: And when you say, 'probably
 [14] is,' why is that?
 [15] "Answer: Well, most of these people
 [16] retain the same organism."
 [17] A I'm not going to answer any question out of
 [18] context. I don't know what preceded - what
 [19] the discussion was that preceded it. I'll
 [20] be happy to review my deposition and refresh
 [21] myself with regard to the case before I
 [22] answer a question out of context.
 [23] Q I'll accept that, and I'll provide a copy of
 [24] this to your attorney.
 [25] You don't deny that question and that

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[1] sure.
 [2] Q You've reviewed cases for Tom Allison,
 [3] obviously?
 [4] A That's also vaguely familiar.
 [5] Q How about Robert Tucker?
 [6] A Don't recall.
 [7] Q How about Crawford Morris? Of course, he's
 [8] retired now.
 [9] A Yes.
 [10] Q In the past have you reviewed cases for
 [11] William Meadows, counsel in this case?
 [12] A I believe that we were involved in a case.
 [13] Q How many cases have you reviewed for
 [14] Mr. Meadows in the past?
 [15] A I really can't answer. I know there's
 [16] another case that is in the works.
 [17] Q There is one still pending?
 [18] A I think there's one pending.
 [19] Q I'm assuming in all these cases you're an
 [20] infectious disease expert?
 [21] A Yes.
 [22] Q Have you reviewed cases for Richard Vadnal,
 [23] V-A-D-N-A-L?
 [24] A I may have.
 [25] Q Have you reviewed cases for Gary Goldwasser,

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[1] also from this office?
 [2] A Yes.
 [3] Q Have you reviewed cases for Mario Ciano?
 [4] A No,
 [5] Q John -- Jim Malone.
 [6] MR. MEADOWS: He'll appreciate
 [7] that you got his name just right.
 [8] A Doesn't sound familiar.
 [9] Q Do you know Jim Malone?
 [10] You have to answer.
 [11] A I'm sorry. I don't think so.
 [12] Q Who is your medical malpractice insurance
 [13] company?
 [14] MR. MEADOWS: Objection.
 [15] A I don't know. Whoever insures the
 [16] department of medicine at University
 [17] Hospitals.
 [18] Q How often, prior to this lawsuit, would you
 [19] say that you see Doctor Gopal either at
 [20] society meetings or socially?
 [21] A Well, the infectious disease group in this
 [22] city meets every two weeks at one of the
 [23] hospitals to discuss interesting cases and
 [24] problems, and I would say that I attend most
 [25] of these and he does, too, so we're likely

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[1] case?
 [2] MR. MEADOWS: As to his
 [3] opinions regarding Doctor
 [4] Van Bergan?
 [5] MR. COTICCHIA: I've also asked
 [6] him some opinions about the
 [7] hospital.
 [8] MR. MOSCARINO: You have?
 [9] A You haven't asked me anything about
 [10] Doctor Gopal.
 [11] Q No, I haven't.
 [12] A Well, I don't see why I can't evaluate
 [13] Doctor Van Bergan's performance
 [14] independently of my knowing Doctor Gopal.
 [15] He was not involved at the time in question.
 [16] Q Have you ever been sued for medical
 [17] malpractice?
 [18] MR. MEADOWS: Objection.
 [19] A Have I ever been named in a suit?
 [20] Q Yes.
 [21] A The answer is yes. All but one dropped
 [22] before they came to trial.
 [23] Q How many times, including all that were
 [24] dropped, and the one that wasn't?
 [25] MR. MEADOWS: Continuing

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[1] to see each other on these occasions.
 [2] Q Independent of society meetings, do you and
 [3] he socialize?
 [4] A Depends on your definition of socialization.
 [5] I was invited to one of his children's
 [6] weddings many years ago.
 [7] Q Have you and he eaten lunch together?
 [8] A I'm sure we have sometimes.
 [9] Q Has he been a guest at your home?
 [10] A Not that I can recall.
 [11] Q Has he attended any family functions, like
 [12] you mentioned, with your family, wedding,
 [13] birthday, whatever?
 [14] A No.
 [15] Q Have you attended any other family functions
 [16] besides the wedding of his daughter?
 [17] A I think there was a party a couple years ago
 [18] that he threw for the ID people in town, and
 [19] that was potentially in that category.
 [20] Q Where was the party held?
 [21] A At his home.
 [22] Q Based on your close professional
 [23] association, as well as your social
 [24] relationship with Doctor Gopal, do you think
 [25] you're able to be objective and fair in this

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[1] objection.
 [2] A Maybe three times. I was one of 14
 [3] physicians named for a patient who died
 [4] several years after I saw her as an
 [5] attending; all the physicians who had ever
 [6] seen her were named.
 [7] Q Do you know if that still -- I apologize. I
 [8] don't remember the names of the parties.
 [9] There was a suit involving some kind of peer
 [10] review in '98, and you were named in that.
 [11] Do you remember that? I think it was a
 [12] woman doctor.
 [13] A Oh, yeah, I remember that.
 [14] Q Is that still pending?
 [15] A That was dropped by the court.
 [16] MR. COTICCHIA: I think I'm
 [17] almost done. Let me just quickly go
 [18] through my notes here.
 [19] A Can I answer one of your previous questions
 [20] now about Mr. Kates?
 [21] Q Yes.
 [22] A Was bone involved at the time in that
 [23] infection?
 [24] Q Yes, it was a knee replacement I believe.
 [25] A Okay. One of tissue invasion involvement,

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[1] that organism is not going to go away until
 [2] you clear it up. So it's an entirely
 [3] different context. That spares me the
 [4] necessity to review that deposition?
 [5] Q Sure.
 [6] A Thank you.
 [7] MR. MEADOWS: I'd ask that you
 [8] send that to us nonetheless, since
 [9] you offered to do so and have asked
 [10] questions about it. Apparently you
 [11] retrieved it from one of your
 [12] colleagues.
 [13] MR. COTICCHIA: Some injury
 [14] lawyer.
 [15] Q I do have a question, Doctor. What is a
 [16] sedimentation rate?
 [17] A It's a test that is used to determine the
 [18] degree of inflammation occurring in the
 [19] body. It's nonspecific test, but it can be
 [20] helpful in certain types of infection. It
 [21] is performed by putting blood in a tube and
 [22] seeing how long it takes for the red blood
 [23] cells to settle out.
 [24] Q Was there one done with Richard Ridolfi?
 [25] A I wouldn't be surprised if there was.

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[1] clinical evaluations, but you can't use them
 [2] in postoperative settings.
 [3] Q There was testimony yesterday about the
 [4] epidemiology, testimony by Doctor Markowitz.
 [5] His concern was whether or not there were
 [6] other patients with Serratia at the
 [7] hospital.
 [8] As a matter of fact, he narrowed it
 [9] down to within three days preceding
 [10] Mr. Ridolfi's admission in August, and three
 [11] days following his discharge, and he also
 [12] testified that this is a marker type of
 [13] bacteria.
 [14] A Marker for what?
 [15] Q For an epidemic.
 [16] A That's absolutely not true.
 [17] Q He said if there were even one other patient
 [18] who had this, he would consider it
 [19] significant.
 [20] A That's not true.
 [21] Q You don't agree with that?
 [22] A Absolutely not.
 [23] MR. COTICCHIA: Okay. I don't
 [24] have any more questions.
 [25] - - -

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[1] Q Did you review those?
 [2] A No, I didn't. It wouldn't have any
 [3] significance in the immediate postoperative
 [4] period anyways because the sed rate goes up
 [5] in the presence of wound repair.
 [6] Q You agree that a sed rate of 75 or over --
 [7] or higher is significant?
 [8] MR. MEADOWS: Post-op patient?
 [9] A In what setting?
 [10] Q Postoperatively.
 [11] A Significant in what respect? Is it
 [12] abnormal?
 [13] Q Yes.
 [14] A Not necessarily.
 [15] Q In relation to the presence of an infection?
 [16] A What day following surgery was the specimen
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 [18] Q I don't know. I'm speaking generally.
 [19] A Well, I'm trying to speak generally, too.
 [20] Q Have you ordered sedimentation --
 [21] A I don't order sedimentation rates in
 [22] patients who are immediately post-op for
 [23] major surgery because they have no value
 [24] whatsoever in that setting. And I'm an
 [25] enthusiastic endorser of using sed rates in

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[1] EXAMINATION OF PHILLIP I. LERNER, M.D.
 [2] BY MR. MOSCARINO:
 [3] Q Doctor, why is it that it's untrue, with
 [4] respect to his last few questions about this
 [5] alleged epidemic and marker?
 [6] A Well, I mean isolating an organism in a
 [7] laboratory is one thing. Evaluating its
 [8] significance and the situation from which it
 [9] came is an entirely different situation.
 [10] Serratia is not an uncommon organism in
 [11] a busy hospital. It doesn't represent
 [12] anything other than the isolation of an
 [13] organism in the laboratory.
 [14] As I stated repeatedly throughout my
 [15] deposition, culture does not equal
 [16] infection. Culture represents a laboratory
 [17] event. Infection represents a clinical
 [18] event. They may or may not be related.
 [19] In a hospital setting dealing with sick
 [20] patients who are postoperative, major
 [21] surgery and receiving antibiotics, Serratia
 [22] is but one of many organisms that may or may
 [23] not cause problems in the postoperative
 [24] setting. It is not a marker for anything.
 [25] MR. MOSCARTNO: Thank you.

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[1] MR. MEADOWS: I'd like him to
 [2] read it. We'll take a copy of that.
 [3] MR. COTICCHIA: Are you
 [4] ordering the original?
 [5] MR. MEADOWS: I just want a
 [6] copy.
 [7] MR. COTICCHIA: I want a copy,
 [8] too. . . .
 [9]

[10]
 [11]
 [12] _____
 Phillip I. Lerner, M.D.
 [13] (Deposition concluded.
 [14] Signature not waived.)
 [15] - - -
 [16]
 [17]
 [18]
 [19]
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[1] STATE OF OHIO,) CERTIFICATE
)
 [2] COUNTY OF CUYAHOGA.)

[3] I, Margaret Adamowski, a Notary Public
 [4] within and for the State aforesaid, duly
 [5] commissioned and qualified, do hereby certify
 [6] that the above-named, PHILLIP I. LERNER, M.D.,
 [7] was by me, before the giving of his deposition,
 [8] first duly sworn to testify the truth, the whole
 [9] truth, and nothing but the truth; that the
 [10] deposition as above set forth was reduced to
 [11] writing by me by means of stenotype, and was
 [12] later transcribed into typewriting under my
 [13] direction; that said deposition was taken in
 [14] all respects pursuant to the stipulations of
 [15] counsel herein contained, and was completed
 [16] without adjournment; that the foregoing is the
 [17] deposition given at said time and place by said
 [18] PHILLIP I. LERNER, M.D.; that I am not a relative
 [19] or attorney of either party or otherwise interested
 [20] in the event of this action.

[21] IN WITNESS WHEREOF, I hereunto set my
 [22] hand and seal of office, at Cleveland, Ohio, this
 [23] 7th day of September, A.D., 2000.
 [24]

[25] _____
 Margaret Adamowski, Notary Public
 My commission expires: 11/21/02.

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