State of Ohio,)
) SS:
County of Cuyahoga.)

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IN THE COURT OF COMMON PLEAS

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Michelle R. Freeman, Executrix, etc.,	)	
Plaintiff,	)	Case No. 410596
vs.	)	Judge Griffin
Cardiovascular Clinic, et al.,	)	
Defendants.	)	

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DEPOSITION OF RAJU MODI, M.D.

MONDAY, JULY 9, 2001

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The deposition of Raju Modi, M.D., a Defendant herein, called by the Plaintiff for examination under the Ohio Rules of Civil Procedure, taken before me, Ivy J. Gantverg, Registered Professional Reporter and Notary Public in and for the State of Ohio, by agreement of counsel and without further notice or other legal formalities, at the offices of Buckingham, Doolittle & Burroughs, One Cleveland Center - Suite 1700, Cleveland, Ohio, commencing at 12:55 p.m., on the day and date above set forth.

APPEARANCES:

On Behalf of the Plaintiff:

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On Behalf of Defendants Cardiovascular Clinic; James Sechler, M.D.; Christine Zirafi, M.D. and Raju Modi, M.D.:

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On Behalf of Defendant K. V. Gopal, M.D.:

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RAJU MODI, M.D.

a defendant herein, called by the plaintiff for examination under the Rules, having been first duly sworn, as hereinafter certified, was deposed and said as follows:

CROSS EXAMINATION

BY MR. BURNETT:

Q. My name is John Burnett. I represent the Estate of Sally Huerster in this matter, sir.

Do you understand that this is a question and answer session under oath?

A. I do.

Q. Please tell us your name?

A. Raju Modi.

Q. And that is R-A-J-U, sir?

A. That is correct.

Q. Dr. Modi, I hope you will do me the courtesy of, in the event I have asked you a question that is unclear or that you don't understand, that you will tell me this, and then I will do my best to rephrase the question; is that fair enough?

A. Yes.

Q. Doctor, if you answer my question, I am going to conclude that you have understood it and you are giving me your best answer today; is that fair enough?

A. Yes.
Q. Doctor, of course I think you understand you have to answer audibly, right?
A. Correct.
Q. And it is helpful to everybody if you wait to start answering my question until I have finished asking it. That will enable the court reporter to finish typing the question, and it will enable you to wait a split second and formulate an accurate response to my question; is that fair enough?
A. Yes.
Q. Have you reviewed the chart in preparation for this, Doctor?
A. I have.
Q. Instead of going into your educational background at this point, tell me if you are Board certified?
A. I am.
Q. In what, please?
A. Internal medicine and cardiology.
Q. What year did you become Board certified in internal medicine?
A. 1994, I believe.
Q. Did you pass the Boards the first time?
A. I did.
Q. What year did you become Board certified in

cardiology?

A. 1998.

Q. Did you pass the Boards the first time?

A. I did.

Q. Have you been deposed before?

A. I have.

Q. Please tell me how many times?

A. Once.

Q. Tell me when, roughly?

A. About a year ago.

Q. Were the circumstances that you were a defendant in a lawsuit?

A. No, I was not.

Q. What were the circumstances regarding that deposition, please?

A. My corporation being sued by another physician.

Q. Okay, this wasn't a medical malpractice issue?

A. No.

Q. This was like a business dispute?

A. Exactly.

Q. You have never been deposed other than that; is that right?

A. That is correct.

Q. Have you ever given testimony in court?

A. I have not.

Q. To your knowledge, aside from this case, have you ever been a defendant in a lawsuit?
A. Not to my knowledge.
Q. To your knowledge, has your group ever been a defendant and has it been alleged that your conduct was at issue in that lawsuit?
A. Not to my knowledge.
Q. Have you ever done any medical-legal work?
A. No.
Q. Have you published anything, Doctor?
A. Yes.
Q. Tell me what, please?
A. A novel gene associated disease back in 1994.
Q. What was that published in?
A. Nature Genetics.
Q. Anything else?
A. No.
Q. Anything currently that you are trying to get published?
A. No.
Q. Anything that you submitted for publication that was rejected?
A. No.
Q. Doctor, aside from the entries you made in this chart, have you generated any notes, diary entries,

journal entries, anything of that sort, relative to the care you provided Sally Huerster?

A. No.

Q. Doctor, let's turn to the chart, and I want you to feel free to look at the chart anytime during this deposition. It is not a memory contest.

It appears to me that your first involvement with this case was a consult that took place on the morning of July 3rd, 1999; is that fair?

A. It was actually a history and physical, correct.

Q. Tell me how that came about, how was it that you were doing the history and physical?

A. The patient was admitted to our service --

Q. Okay.

A. -- the evening prior, and so therefore I was rounding that weekend.

Q. You were rounding that weekend, I understand.

A. Correct.

Q. Did you ever speak with Dr. Zirafi about this patient prior to taking the history and physical?

A. I don't believe so. I don't recall.

Q. Would that have been a normal course, that is, if a patient was admitted to your service, would you have normally spoken with Dr. Zirafi about the patient?

A. Not necessarily, no.

Q. Since you were rounding that weekend, what was your role throughout the weekend? Help me with this. Were you considered her attending physician throughout the weekend?

A. That is correct.

Q. And were you an attending physician regarding cardiology issues, or all issues; tell me how that worked?

A. I was her attending physician for the entire hospital admission.

Q. It appears that your note was dictated at 10:27 in the morning; does that appear likely?

A. That is correct.

Q. You also concluded that her symptoms involving the increased white blood cell count and the diarrhea were likely attributable to Clostridium difficile colitis, correct?

A. That was a consideration, yes.

Q. I am probably going to mispronounce it throughout the balance of the deposition. Do you mind if I just call it C. diff?

A. That is fine.

Q. Now, as of July 3rd, 1999, had you ever treated a patient for C. diff?

A. I had.

Q. Tell me roughly how many times?
A. I can't give you an exact number. Probably ten years ago during my medical residency.
Q. You probably treated one patient ten years ago during your medical residency?
A. Probably several patients ten years ago.
Q. This was during your residency in internal medicine?
A. That is correct.
Q. Doctor, you concluded that the patient should be continued on Clindamycin, correct?
A. That is what the dictation shows.
Q. Why?
A. The reason for continuation of Clindamycin, that was predominantly for treatment of URI, which she had just been discharged with a week before.
Q. What is URI?
A. Upper respiratory tract infection, whether that be pneumonia, bronchitis.
Q. Okay.
Certainly as of the time you saw her, you concluded, however, that she had symptoms that were consistent with C. diff, though, right?
A. That was a consideration, yes.
Q. Did you know at that time whether or not

Clindamycin would exacerbate or aggravate C. diff?
A. I did not.
Q. Have you learned since then that C. diff can exacerbate or aggravate -- strike that.
Have you learned subsequently that Clindamycin can aggravate or exacerbate C. diff?
A. I understand that as a possibly, yes.
Q. Did you understand it as a possibility at that time?
A. As a possibility, yes.
Q. In your conclusion that C. diff [sic] should be continued, did you consult, for instance, any publications on medications, such as the Physicians' Desk Reference, or anything like that, in coming to your conclusion that Clindamycin should be continued?
A. I did not consult the PDR.
Q. But are you telling me in your mind, the Clindamycin was primarily for the upper respiratory tract infection?
A. It was to continue therapy for a potential upper respiratory tract infection.
Q. What symptoms did she have of an upper respiratory tract infection when you saw her?
A. Predominantly shortness of breath.
Q. As her attending throughout the balance of the

weekend, did you continue to believe that she was suffering from an upper respiratory infection?

A. I did not.

Q. When did you, in your own mind, conclude that she was not suffering from an upper respiratory infection?

A. After Dr. Bacik had seen the patient, the pulmonologist.

Q. And when did he see her?

A. The 3rd. I don't know exactly what time.

Q. Sometime after you saw her?

A. Correct.

Q. I am sorry, sometime after you saw her, correct?

A. Correct.

Q. Did Dr. Bacik tell you of the results of his consult?

A. I don't recall.

Q. By the time you learned that from Dr. Bacik, had the patient already been seen by Dr. Gopal and Dr. Quallich?

A. Actually, Dr. Gopal and Dr. Quallich saw the patient initially, and then Dr. Bacik.

Q. They saw the patient before you did?

A. No, immediately after I did.

Q. Okay.

And you understand that both of those physicians

recommended discontinuing the Clindamycin and starting Flagyl; is that right?

A. That is correct.

Q. So essentially, your input to continue Clindamycin was -- strike that.

Any idea how many hours after you saw the patient Dr. Gopal and Dr. Quallich saw the patient?

A. I am not sure about Dr. Quallich. I do know that Dr. Gopal was already on the floor and seeing other patients, so I knew that he would be seeing the patient.

Q. What was your understanding as to how often the Clindamycin would be prescribed for the patient?

A. As per the orders, it was b.i.d., twice a day.

Q. That means twice a day?

A. Every twelve hours.

Q. So she likely had one first thing in the morning, correct?

A. She had one, correct.

Q. And you understood she would likely have one later in the afternoon?

A. At 10:00 p.m.

Q. Oh, at 10:00 p.m.?

A. As I understand it, it was q12 hours, correct.

Q. So she probably had Clindamycin -- did she likely have Clindamycin before you saw her, or while you saw

her, or after you saw her; tell me what your understanding is?

A. Going through the chart, my understanding would be that she received it before I had seen her.

Q. And therefore, as far as you understand, the patient did not receive another dose of Clindamycin, regardless of your conclusion that she should continue on Clindamycin; is that right?

A. That is correct.

Q. I think later in the day, she received Flagyl instead of Clindamycin, right?

A. Soon thereafter.

Q. Do you know how soon she received Flagyl?

A. I can't say that exactly.

Q. To your knowledge, had Dr. Zirafi ever treated a patient with suspected C. diff?

A. Not to my knowledge.

Q. Have you ever spoken, either that day or up until the present, unless the conversation occurred in the presence of your counsel, have you ever spoken with either Dr. Quallich or Dr. Gopal about their decisions to start the patient on Flagyl?

A. I have not.

Q. Did you, in your evaluation of the patient, even consider treating her for the diarrhea and the increased

white blood cells?
A. My intent --
Q. Yes, please tell me what your intent was?
A. My intent was to mainly treat the other medical issues, and as to infectious disease, the gastroenterologist and the pulmonologist would be taking on that portion of the case, so my intention was to really defer the therapy to them.
Q. And did you understand that they were going to be seeing her shortly after you?
A. I did.
Q. Did you call for the consult of Dr. Gopal and Dr. Quallich?
A. I called for Dr. Quallich.
Q. You did?
A. Yes.
Q. Forgive me, Dr. Quallich's specialty is?
A. Gastroenterology.
Q. Do you know who called for the consult for the infectious disease physician?
A. Dr. Zirafi.
Q. Did she do that the previous evening?
A. That is correct.
Q. By the way, had she wanted to, given your understanding of how things work at Parma Community

Hospital with your group and calling in consults, had she wanted to call for a stat infectious disease or GI consult on the evening of July 2nd, could she have done so, and would it likely have been responded to that evening?

A. Yes, a stat consult could be called.

Q. Okay.

A. I can't comment as to whether or not it would be responded to that evening.

Q. You know, I think you concluded that she had significant hyponatremia; am I pronouncing that correctly?

A. Hyponatremia.

Q. Please tell me what that means?

A. Low sodium.

Q. You also seemed to indicate that she either had or you suspected she had thrombocytopenia?

A. Correct.

Q. Did you think she -- forgive me, I am not looking at your note. Let's see what you said about that. Would you turn to your note and tell me what you said about thrombocytopenia?

A. I believe I commented on it, and that we would follow this unclear etiology.

Q. Did you think she likely had thrombocytopenia?

A. Biochemically, she did.
Q. What about her biochemical studies led you to believe that she had thrombocytopenia?
A. A platelet count of 99,000.
Q. What do you think was the likely etiology of the thrombocytopenia in this patient?
A. I do not know.
Q. What was the significance of the thrombocytopenia at the point she had it?
A. At this point, it was merely a biochemical abnormality.
Q. Was it life-threatening?
A. It was not.
Q. As you saw this patient on the morning of June 3rd, what was of greatest concern to you, as her attending physician, what you thought was her upper respiratory infection, or the C. diff?

MR. WILT: Just let me object. You just said, the morning of June 3rd.

MR. BURNETT: Oh, July 3rd, I am sorry. Thank you.

Q. (Continuing) The same question with the morning of July 3rd, what did you think was of greater hazard to this patient, the upper respiratory infection or the C. diff?

MR. WILT: Objection.

MR. BURNETT: You can still answer.

A. I was concerned about both.

Q. Did you think one was any more dangerous to the patient than the other?

MR. WILT: Objection.

MR. BURNETT: When he objects --

MR. WILT: You can go ahead and answer. I am protecting the record. For legal reasons, I don't agree with the form of his question, but he can either reword the question or he can just say he would like you to go ahead and answer. I think he wants you to go ahead and answer the question, if you can.

MR. BURNETT: When he gets to the point where he doesn't want you to answer a question, you will know it. He will kick you under the table. No, he will just say --

MR. WILT: I instruct the witness not to answer.

MR. BURNETT: -- he instructs you not to answer.

A. Can you repeat the question?

Q. Yes.

As of the morning of July 3rd, what condition do

you think posed a greater hazard to the patient, the upper respiratory infection or the C. diff?

A. As of the morning when I evaluated her, I honestly could not say which one was more hazardous.

Q. Were there any conditions in your mind that caused a greater hazard in your mind of what you suspected to be the upper respiratory infection or the C. diff?

A. I am sorry, please restate that.

Q. Sure.

When you saw her that morning, was there any other condition that caused you as much concern as what you expected -- or suspected to be the upper respiratory infection and the C. diff?

A. Yes.

Q. What was that other condition?

A. The low sodium and the low potassium.

Q. What did that signify to you?

A. Dehydration.

Q. What do you think the likely cause was for the dehydration?

A. Most likely, a combination of the diarrhea which she had had, and likely decrease in intake, oral intake.

Q. For a woman with her co-morbidities, was dehydration especially more dangerous than to someone without those co-morbidities?

A. I can't say that.
Q. Okay.
Is this your curriculum vitae, Doctor, that I am looking at?
A. I don't know.
MR. WILT: Here you go.
Q. I am sorry.
MR. WILT: It is the same thing.
A. Yes.
Q. Doctor, relative to your Ohio license, has it ever been suspended, revoked or called into question?
A. No.
Q. Relative to your Pennsylvania license, has it ever been suspended, revoked or called into question?
A. No.
Q. In either state, has your conduct ever been the subject of a complaint to the State Medical Board, to your knowledge?
A. No.
MR. WILT: John, he said '98 for the cardiology Board certification. It is 1999.
THE WITNESS: 1999.
MR. BURNETT: Would you mark that, please.
(Thereupon, Plaintiff's Exhibit 1 (Modi) was marked for identification.)

BY MR. BURNETT:

Q. Doctor, have you ever had any conversations with Dr. Zirafi about this patient?

A. I have.

Q. Please tell me when?

A. The 25th of July, 1999.

Q. The 25th or the 5th?

A. I am sorry, the 5th.

Q. Who else was present during the conversation?

A. Nobody. This was just over the telephone.

Q. Please tell me, as best you remember, what you said and what she said?

A. It was mainly to notify her that Mrs. Huerster had passed away.

Q. Okay.

A. And I don't recall what she had said.

Q. You can't recall what Dr. Zirafi said to you?

A. That is correct.

Q. You say it was mainly to tell her that Mrs. Huerster had passed away. Was there anything else?

A. Not pertaining to this case.

Q. Do you recall having any communications with Dr. Sechler about this patient?

A. I do, but I don't remember specifics.

Q. When was the conversation?

A. I can't tell you a direct time. It was somewhere in and around that week.
Q. Was it during her hospitalization?
A. It was not.
Q. It was after her hospitalization?
A. Correct.
Q. Would the conversation have likely been about her death?
A. Probably to notify him.
Q. But you don't remember talking about the cause of death with him, do you?
A. I don't recall.
Q. Do you think you talked about the cause or your belief as to the cause of the patient's death when you spoke with Dr. Zirafi?
A. I don't remember.
Q. Since those conversations with these two physicians, have you ever talked with them again about this patient?
A. After -- yes, with Dr. Zirafi.
Q. Tell me when you spoke with Dr. Zirafi?
A. Mainly after the autopsy results, after we knew about the potassium, and things like that.
Q. What did you talk about?
A. It was mainly just bringing out the point of the

autopsy, and saying what had happened.

Q. Okay, let's deal with that issue right now.

Do you have an opinion as to the likely cause of this patient's death?

A. Yes.

Q. Please tell me what your opinion is?

A. Most likely related to sepsis.

Q. Was the sepsis most likely a result of the C. diff?

A. In retrospect, yes.

Q. Why in retrospect?

A. After putting all the findings with the autopsy together, that is the only cause that I could think of.

Q. Have you gone back and looked through the chart separate and apart from the autopsy to see bits and pieces of her presentation that you believe should have alerted you to the fact that she was extremely sick from C. diff and was developing sepsis?

A. I am sorry, state the question again, please.

Q. Sure.

Separate and apart from the autopsy, have you gone back to the chart to look at symptoms and test results which you believe should have alerted you to the fact that she was developing sepsis?

MR. SHROGE: I just want to make it clear.

In his chart, his notes, or the entire --

MR. BURNETT: The entire chart.

MR. SHROGE: Objection.

MS. LOESEL: Objection.

MR. BURNETT: Go ahead.

A. I can't really answer that question because there are two individual components.

Q. Okay.

A. The individual components, number one, yes, I did go back and look at the chart.

Q. Okay.

A. The second part, did I find something that should have --

Q. That you believe should have alerted you to the fact that she was developing sepsis or was in sepsis prior to her death.

A. Nothing more than what we already knew and had suspected from the first day.

Q. Okay, what did you know and suspect from the first day?

A. That she had a leukocytosis, an elevated white count.

Q. Okay.

A. Which had actually decreased, from my understanding, and that she had abdominal pain.

Q. Those were indicators of sepsis to you?

A. Those were not. Those were indicative of an infection.

Q. Okay.

A. Sepsis is a very distinct clinical syndrome, and to this point, I still can't say she meets all the criteria, but overall, that is what I believe happened.

Q. More likely than not, her death was the result of sepsis?

A. As we had suspected, right.

Q. And more likely than not, the sepsis resulted from the C. diff colitis, correct?

A. Probably.

Q. Doctor, had the patient been started on Flagyl on June 2nd, 1999 instead of -- strike that -- July 3rd, 1999 instead of -- let me start all over again, okay?

Doctor, had the patient been started on Flagyl when she presented to the hospital in the afternoon and evening of July 2nd, 1999, is it more likely than not that the C. diff colitis would have been arrested and the patient would not have developed sepsis?

MR. WILT: Objection.

A. I can't answer that. I don't know.

Q. Do you recall anything the patient said to you during this hospitalization?

A. Specifically?

Q. I mean, certainly you can look at your chart and you recall things --

A. She said a lot.

Q. -- but separate and apart from your chart, do you remember anything she said to you, do you have any memories of things she said to you that are not reflected in the chart?

A. There were many ancillary type issues. Yes, I do remember some.

Q. Tell me, in general, what you remember?

A. Just her level of frustration.

Q. Okay, what was she frustrated about?

A. About being sick.

Q. The diarrhea?

A. No, no, in general.

Q. In general?

A. Just being sick and in the hospital.

Q. Had you cared for this patient prior to this admission?

A. I had not.

Q. Given what you have learned of this patient during her admission, I want you to assume for a minute she didn't develop sepsis, let's say she pulled out of this infection.

Do you have an opinion to a reasonable degree of

medical probability as to how much longer she would have lived?

MR. WILT: Objection.

A. I can't make that decision or answer your question.

Q. Did you ever have any conversations with Dr. Lazo about this patient?

A. No.

Q. And when I say, ever, I mean from the date you started seeing this patient, or even before you saw this patient, until we sit here today.

A. No.

Q. Okay.

Are you aware of the patient refusing a blood draw on the evening of July 4th, 1999?

A. I am.

Q. Okay.

A. It was the morning.

Q. Was it the morning?

A. Yes.

Q. And tell me about the circumstances of that, as you understand them?

A. I had been speaking with her, going over the case and just where we were at this point, and noting the elevation of her potassium on the morning labs.

Q. And why was that concerning to you?
A. It was just higher than the norm.
Q. And you brought this to her attention, right?
A. I did.
Q. And what was your recommendation to her?
A. That we consider repeating the blood sample.
Q. And what was her response?
A. Once again, more of frustration, and I don't know the appropriate term, not really fear, but just not wanting to be stuck all the time.
Q. She didn't want somebody sticking a needle in her again?
A. Yes. Again, these were commonly expressed sentiments and understandable.
Q. Doctor, is it more likely than not that had the patient consented to that blood draw, that you would have learned something that would have prevented her death?
A. I can't answer that. I don't know.
Q. Are you aware of any other circumstances on the day before her death in which she refused a blood draw?
A. I am not.
Q. As her attending physician throughout the weekend, sum up for me her progress? I mean, for instance, did she appear fairly stable to you relative to her infections and then her death was unexpected, or did you

see a downward progression? Give me an idea how you, as an overview, saw this patient throughout the weekend?

A. Mainly from my review of the charts, her course had been relatively stable from admission on. Minor peaks and valleys, but really nothing of note.

Q. Was her death unexpected?

A. It was.

Q. I know we have talked about the likely cause of her death. Tell me what it is about the autopsy that leads you to conclude that the likely cause of the death was sepsis?

A. It was the manifestations of the colon and the edema of the colon, the size and edema of the colonic walls showing that she in fact did have a very -- she did have pseudomembranous colitis, which had been suspected since the 2nd -- or the 3rd, actually.

Q. Okay.

A. And that was really it. Blood cultures were still negative.

Q. For what?

A. For Clostridium difficile, in order to fully say this is sepsis.

Q. Why would you need positive C. diff blood cultures to call it sepsis?

A. Because that is the definition of sepsis.

Q. What is?

A. Blood cultures being positive for an organism.

Q. Then how can you conclude that this was likely sepsis, if it was not in the blood?

A. I didn't conclude, it was my assumption. I believe that this was the cause. Frequently we have -- we believe something to be the case when it is not proven.

Q. Yes.

And please understand, when I say, likely, I mean in terms of probability as we define it here in the law, that is, if you are 51 percent or more certain of a fact, I always tell people, then you can say it is the likely cause of something, and I want to make sure you understand that.

MR. WILT: And also, it goes to your level of expertise, if you feel comfortable speaking towards C. diff, and this organism and sepsis, then that plays into the likelihood and your ability to give an opinion about causation. If you don't feel like you are that expert, then tell us you are not.

A. And that actually is the case, I am not an expert in C. diff, for that matter, and again, I speak of sepsis in a generic term regarding other types of infections,

also, not necessarily confined to C. diff.

Q. Let me make sure I understand your testimony. Given your background in internal medicine --

A. Yes.

Q. -- your background in cardiology, the likely cause of her death was sepsis?

A. Yes.

Q. Okay.

What was it about the sepsis that -- well, let me get a little bit more specific, if I may. I am looking at your cardiology progress note, and --

A. What day?

Q. 6:20 in the morning.

MR. WILT: What day?

MR. BURNETT: On the day of her death.

MR. WILT: Okay.

A. Okay.

Q. I mean, you indicate that -- negative arrhythmias before event, no bradycardia with event.

What happened, did her heart just stop?

A. It appears to be the case, yes.

Q. So she had organ failure, the organ being her heart, correct?

A. Correct.

Q. She had white blood cell counts, laboratory

values, that day, I am showing, of 29,000; do you see that?
A. I do.
Q. And again, the significance of that to you is what?
A. I don't know the significance of that particular sample, and the reason I say that -- 29,000, it is up from 15,000, so to me, that indicates that there is a higher white count which needs to be further explained.
Q. Did you know at some point in time throughout the weekend her stool samples were positive for C. diff?
A. I did know that, correct.
Q. Given the fact that she likely had sepsis prior to her death, and that sepsis likely caused her death, as you look at this case, from your standpoint as an internist, is there anything that you believe -- any intervention from, let's just say, the morning of June 3rd [sic] onward, that could have been undertaken by either yourself, the GI physician, the infectious disease physician, the pulmonary physician, all these experts, which would have likely resulted in saving her life?
MR. WILT: Objection.
MR. JONES: Objection.
MR. SHROGE: Objection.
MS. LOESEL: Objection.
MR. WILT: You can answer.
A. No.

Q. When do you think, Doctor, given this case, that the likely window of opportunity in salvaging this patient was?

MR. WILT: Objection.

MR. JONES: Objection.

MR. SHROGE: Objection.

MS. LOESEL: Objection.

A. I can't answer that question.

Q. Doctor, I see on the morning of July 5th, the nurses notes indicate at one or two points abdominal discomfort. What was the likely cause of the abdominal discomfort at that point in time, do you know?

A. I don't know.

Q. Do you remember speaking with the nurse at about 0600 that morning?

A. I know from the chart only.

Q. You don't have a recollection of the conversation?

A. I don't.

Q. I note from looking at the autopsy that you spoke with Edward Cottle?

A. Yes.

Q. He is a physician?

A. He is a pathologist.

Q. It says, case discussed with Dr. Modi?

A. Uh-huh.

Q. Is that a yes?
A. Yes.
Q. Do you remember the discussion with Dr. Cottle?
A. Yes.
Q. Tell me what you discussed?
A. The findings of the case, what had happened through the weekend, how she had progressed, and I went down for the gross autopsy, just to see.
Q. Oh, you were present during the autopsy?
A. Yes, I usually do attend.
Q. Do you remember --
A. I was present for parts of it, not the whole thing.
Q. Do you remember anything Dr. Cottle told you?
A. A surprising lack of findings, other than the colon.
Q. You discussed with Dr. Cottle your perception of the events as they transpired throughout the weekend, correct?
A. I did.
Q. Now, do you recall speaking with any member of Mrs. Huerster's family?
A. I do.
Q. She has a couple of daughters and she has a daughter-in-law and a son, okay? Tell me who you remember speaking to, and when you remember speaking to

them?
A. I remember speaking to Shirley --
Q. Sheehan?
A. -- Sheehan.
Q. That is the daughter who is a nurse, correct?
A. Correct, an L.P.N. or something.
Q. How many times did you speak with her?
A. I don't know exactly. I know the morning of, and I am sure during the hospitalization.
Q. The morning of the death?
A. That is correct.
Q. Okay.
A. And at other times during that weekend, also.
Q. Do you remember the conversation the morning of her death, what you told her?
A. Vaguely, but yes.
Q. Tell me what you remember?
A. Basically expressing my condolences.
Q. Did you give her any reasons as to why Mrs. Huerster had expired?
A. No, not knowing at that point.
Q. Do you remember anything Shirley Sheehan said to you that weekend?
A. No, not specifically.
Q. Do you remember any displeasure she expressed with

Dr. Modi, for instance -- I am sorry -- with Dr. Sechler, for instance?

A. I do not.

Q. Did she ever express displeasure to you, challenging you on the care she was -- that you were providing her mother?

A. Not at all.

Q. Do you remember her expressing any displeasure with Dr. Zirafi?

A. No.

Q. Are you critical of the patient at all in this case, that is, in your mind, did Mrs. Huerster do anything or fail to do something that likely contributed to her death?

A. I don't think so.

Q. And I am sorry, did you speak with Dr. Quallich about this patient throughout the weekend?

A. As per the records, I did. I don't recall the conversations.

Q. And you spoke with Dr. Gopal, correct?

A. I don't recall. I don't believe I did.

Q. Okay.

A. I had seen him on the floor, but I don't recall speaking directly to him.

Q. Aside from Shirley Sheehan, did you speak with any

other member of Mrs. Huerster's family, to your knowledge?
A. During that weekend?
Q. Yes.
A. I do recall a room full of people. I don't know who all was present.
Q. Do you remember anything they said?
A. It was a fairly tense moment, and I don't recall specifics.

MR. BURNETT: Let's go off the record for a minute.

(Thereupon, a discussion was had off the record.)

BY MR. BURNETT:
Q. Doctor, there were a number of other physicians consulting with this patient throughout the weekend, correct?
A. Yes.
Q. Are you critical of any of these physicians in regard to any of their activities or inactivities being a possible cause of Mrs. Huerster's death?

MR. WILT: Objection.

MR. JONES: Objection.

MR. SHROGE: Objection.

MS. LOESEL: Objection.

MR. WILT: You can answer.

A. No, I am not.

Q. I understand that on the evening of the 4th at 2200 she refused Mycostatin?
A. As per the record, yes.
Q. Yes.
What is Mycostatin?
A. It is an antifungal agent. She had -- I believe she had oral candidiasis.
Q. What was the significance of the oral candidiasis?
A. Chronic illness, chronic steroid use.
Q. The refusal to take the Mycostatin in no way contributed to her death, did it?
A. No, not that I can determine.
MR. BURNETT: Does anybody else have any questions while I just scan my notes?
MR. JONES: No.
MS. LOESEL: No.
MR. SHROGE: I have no questions.
BY MR. BURNETT:
Q. Doctor, are any of your notes in the chart in your own handwriting, or are they all typed?
A. The notes in the chart are predominantly my own handwriting, with the exception of the dictated H and P.
Q. So you will be under -- this would be under the progress notes, Doctor?
A. That is correct.

Q. Did you do a discharge summary?
A. I am pretty sure I did.
Q. May I see it?
A. I don't know if I can produce that for you.
MR. WILT: I don't think I have seen a discharge summary in these records.
BY MR. BURNETT:
Q. Doctor, by the way, very quickly, on the autopsy, the electrolyte imbalance, that was likely a result of the diarrhea she was experiencing?
A. Specifically which electrolyte imbalance?
Q. Well, I see on the potassium 7.2 that is referenced on the provisional gross diagnosis of the autopsy report. Is that likely the result of her diarrhea?
A. No.
Q. What do you think that is likely a result of?
A. I believe it is the result of her kidneys showing significant deterioration overnight.
Q. And what was the likely cause of the kidney deterioration overnight?
A. I still don't have an explanation.
Q. Could it be multi-organ shutdown from the sepsis?
A. You have to define multiple.
Q. Multi-organ shutdown.

A. Right, what other organs?
Q. Well, my understanding of the progression of sepsis is that if left untreated or not timely treated, it can lead to multi-organ shutdown and death; is that fair?
A. In certain situations, it can, yes.
Q. In this situation, was the deterioration of the kidneys overnight likely a result of the sepsis, that is one of the organs shutting down as a result of the sepsis?
A. I am not sure about that, based on the autopsy results.
Q. What makes you unsure?
A. There was a lack of acute -- excuse me -- a lack of tubular necrosis on the autopsy. And generally with sepsis and acute renal failure, it is attributable to acute tubular necrosis.
Q. That has been your experience?
A. As a cardiologist, yes.
Q. And I am sorry, I interrupted you. Please continue.
A. So that would have been my explanation for her acute decompensation of renal function, but that wasn't found on the autopsy.
Q. So her renal failure is just something you can't fit into the puzzle?

A. I cannot explain it.
Q. What significance is it to you of the fact that this provisional gross diagnosis indicates chronic passive congestion of liver, any significance to you?
A. Other than verifying her significant underlying heart disease, no.
(Thereupon, a discussion was had off the record.)
BY MR. BURNETT:
Q. You consulted with Dr. Renner, I think, at some point during the weekend, correct?
A. I placed a consult for him, yes.
Q. And he came in and saw the patient, right?
A. Yes.
Q. Do you remember talking with Dr. Renner?
A. I don't remember the conversation, no.
Q. Was there a discussion about surgical removal of the colon?
A. I don't recall.
Q. You don't recall any, okay.
As a cardiologist and her attending physician, had a -- had the colon been removed on Saturday or Sunday, would she have likely survived that procedure?
MR. WILT: Objection.
MR. JONES: Objection.

MR. SHROGE: Objection.

MS. LOESEL: Objection.

A. I can't make that assessment.

Q. Had the colon been removed on Saturday or Sunday, would she likely have survived?

MR. SHROGE: Objection.

MR. WILT: Objection.

A. I can't answer that.

Q. Are you critical at all of the nursing care she received the day of her death, that is, the early morning hours -- well, from midnight until her death on July 5th, 1999?

A. No, I don't believe that I am.

Q. Anything that you see in the chart that you believe should have been reported to you more quickly than it was?

A. Can you identify where you are looking?

Q. Well, I am just looking at the nurses notes from July 5th, 1999. There appear to only be six or seven entries.

While you are looking, I am just going to step out of the room for a moment.

(Thereupon, Mr. Burnett left the room and reentered the room.)

A. The only point they really needed to notify me was

at 6:15 in the morning where things look like they were happening very quickly. So I don't really see that there was really time to call me at 6:15 in the morning.

Q. And when were you called?

A. It says, 6:00 o'clock in the morning.

Q. Do you remember receiving the call at 6:00 in the morning?

A. I don't remember, no.

Q. But did you receive a call at 6:00 in the morning?

A. As per the chart.

Q. Is there anything about her condition that you believe was not reported to you and that should have been reported to you to give this patient the maximum chance of surviving this?

A. No, I believe they called me at 6:00 o'clock to notify me of her lowered blood pressure, which we responded to.

Q. And how did you respond to that?

A. I increased her IV fluids, held her blood pressure medications until I had made rounds in the morning to see her.

Q. And given that report of -- well, the critical report to you at that point in time was the fact that her blood pressure was so low, correct?

A. That is correct.

Q. What about the telemetry atrial fib 68, what was the significance of that to you?

A. She was stable.

Q. In retrospect, is there anything you believe you should have done at this point in time, based on these test results as reported to you by the nurses?

A. I had no test results reported to me, and I had no symptoms other than she was feeling fine. I just had a blood pressure.

Q. Given that blood pressure, is there anything else in retrospect you believe you should have done which would have likely resulted in saving this woman's life?

A. No.

MR. BURNETT: I don't have any further questions, Doctor.

MR. WILT: Anybody?

MS. LOESEL: No.

MR. JONES: No.

MR. SHROGE: No.

MR. WILT: Great, all done.

We will read.

- - -

(DEPOSITION CONCLUDED)

- - -

Raju Modi, M.D.

CERTIFICATE

State of Ohio,)
) SS:
County of Cuyahoga.)

I, Ivy J. Gantverg, Registered Professional Reporter and Notary Public in and for the State of Ohio, duly commissioned and qualified, do hereby certify that the above-named RAJU MODI, M.D., was by me first duly sworn to testify to the truth, the whole truth, and nothing but the truth in the cause aforesaid; that the deposition as above set forth was reduced to writing by me, by means of stenotype, and was later transcribed into typewriting under my direction by computer-aided transcription; that I am not a relative or attorney of either party or otherwise interested in the event of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office at Cleveland, Ohio, this 16th day of July, 2001.

Ivy J. Gantverg, Notary Public
in and for the State of Ohio.
Registered Professional Reporter.
My commission expires November 5, 2003.

LAWYER'S NOTES

Page	Line	

Curriculum Vitae

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Education

1987-1991	Northeastern Ohio Universities College of Medicine- *Combined Six Year BS/MD Program*, Rootstown, OH.
1985-1987	Kent State University - Magna Cum Laude, Kent, OH.

Postgraduate Education

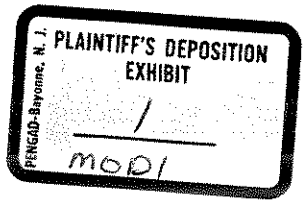
1994-1998	Fellowship: Cardiology University of Pittsburgh Heart Institute, Pittsburgh, PA. Chief, Arthur M. Feldman M.D. Ph.D.
1992-1994	Residency: Internal Medicine University of Pittsburgh Medical Center, Pittsburgh, PA.
1991-1992	Internship: Internal Medicine University of Pittsburgh Medical Center , Pittsburgh, PA.

Board Certification

1999	Diplomat: American Board of Cardiology #158346
1998	State Medical Board of Ohio License -- #74487
1994	Diplomat: American Board of Internal Medicine- #158346
1993	State of Pennsylvania Medical License- MD 051236L
1992	Diplomat: National Board of Medical Examiners #398716

Honors and Awards

1997	Chief Cardiology Fellow- University of Pittsburgh Medical Center
1990	Alpha Omega Alpha
1985-1989	Ohio State Board of Regents Scholarship
1985-1987	Kent State Valedictorial Scholarship



1985-1987	Kent State Honors Scholarship
1985	High School Valedictorian
1984	President, National Honor Society
Clinical Experience-	ACC guidelines met for:
	Nuclear licensure
	Transesophageal Echocardiography
	Stress and Dobutamine Echocardiography
	Diagnostic right and left heart catheterization

Clinical Appointments

2000-	Medical Director- Parma Community General Hospital Coronary Care Unit
2000-	Chairman- Critical Care Committee Parma Hospital
1998-2000	Medical Staff Member -Parma General Community Hospital -Southwest General Medical Center -Deaconess Hospital -Fairview General Hospital -St. Vincent Charity Hospital

Research Experience

1997-1998	The utility of Ultrafast CT scanning in early detection of coronary disease in people originating from the Indian subcontinent. Department of Preventative Cardiology Dr. Daniel Edmundowicz and Dr. Hershal Rao
1997-1998	Myocardial Contrast Echocardiography Research University of Pittsburgh Heart Institute Department of Echocardiography Dr. Flordeliza S. Villanueva
1994-1995	Cardiology Research Fellowship: University of Pittsburgh Medical Center Department of Biochemistry and Molecular Genetics Dr. Eric P.Hoffman
1989-1990	Microbiology Research Fellowship: Northeastern Ohio Universities College of Medicine Division of Infectious Disease Dr. William Gardner

1987

The Role of The Medical Practitioner in Managing the Illness Trajectory of the AIDS Patient -North Central Sociological Association Annual Conference, Cincinnati, Ohio

Publications

Bonnemann CG., **Modi R.**, et al. Beta-sarcoglycan (A3b) mutations cause autosomal recessive muscular dystrophy with loss of the sarcoglycan complex.
Nature Genetics 11(3): 266-73, 1995 Nov

Bonnemann C.G., **Modi R.**, et al. The 43 kDa dystrophin-associated glycoprotein A3b is mutated in an autosomal recessive muscular dystrophy. American Journal of **Human Genetics** 1995; 57; A22

Personal

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