

DEPOSITION OF ROBERT PAUL VAN BERGAN, M.D.

THE STATE OF OHIO, }
COUNTY OF CUYAHOGA. } SS: TIMOTHY MCCORMICK, J.

IN THE COURT OF COMMON PLEAS

RICHARD RIDOLFI, et al., }
Plaintiffs, }
v. } Case No. 322843
NEAL CHADWICK, M.D., et al., }
Defendants. }

Deposition of ROBERT PAUL VAN BERGAN, M.D.,
taken by the Plaintiffs as if upon cross-examination
before Christine A. Krakowski, a Stenographic
Reporter and Notary Public within and for the State
of Ohio, at the offices of Robert Paul Van Bergan,
18099 Lorain Avenue, Suite 408, Cleveland, Ohio, on
Wednesday, the 10th day of November, 1999,
commencing at 2:05 p.m.

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ROBERT PAUL VAN BERGAN, M.D.,

called by the Plaintiffs for the purpose of
cross-examination, as provided by the Ohio Rules of
Civil Procedure, being by me first duly sworn, as
hereinafter certified, deposes and says as follows:

CROSS-EXAMINATION

7 BY MR. COTICCHIA:

8 Q. Doctor, would you please tell me your full name and
9 spell your last name.
10 A. Robert Paul Van Bergan, V-A-N B-E-R-G-E-N.
11 Q. What is your occupation?
12 A. Cardiothoracic Surgeon.
13 Q. Where do you practice?
14 A. Fairview General Hospital, primarily.
15 Q. Do you have a curriculum vitae available?
16 A. Yes.
17 Q. Can I have a copy of that, please?
18 MR. MEADOWS: We'll get you a copy of
19 that. Do you have one right here?
20 THE WITNESS: No, not in this office.
21 I have one in the office. I have to get
22 Janet to go get it. Do you want me to get
23 her?
24 MR. MEADOWS: Sure. That will save
25 some time.

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5
1 Q. (BY MR. COTICCHIA) What is your home address?
2 A. 23969 Stonehedge Drive.
3 Q. Is that in Westlake?
4 A. Westlake, Ohio.
5 Q. Are you Board certified?
6 A. Yes.
7 Q. What area of medicine?
8 A. Thoracic surgery.
9 Q. Do you limit your practice to thoracic surgery?
10 A. Yes.
11 Q. Briefly tell me what is thoracic surgery.
12 A. Thoracic surgery is a surgery that deals with the
13 contents of the chest cavity.
14 Q. When did you become Board certified?
15 A. 1979. It might have been 1980.
16 Q. Within the thoracic cavity, do you limit your
17 practice in regard to coronary surgery?
18 A. No. I deal with the heart muscle, the coronary, the
19 aorta, the lungs, the esophagus, tracheobronchial
20 trunk, and the chest walls.
21 Q. Did you recall treating the Plaintiff in this case,
22 Richard Ridolfi?
23 A. Yes.
24 Q. Okay. I see you've got a lot of records in front of
25 you. Do you have a separate office chart here for

6
1 Richard?
2 A. Yes.
3 Q. I would like to see that, please.
4 A. (Witness complied.)
5 MR. MEADOWS: Off the record.
6 (Brief discussion held off the record.)
7 MR. COTICCHIA: Let's go back on
8 the record. I'm going through Dr. Van
9 Bergan's chart pertaining to Richard
10 Ridolfi.
11 I thought the Plaintiffs, along with
12 the Complaint, requested a production of
13 the office chart. So to save time, some
14 time soon, I would like a copy.
15 MR. MEADOWS: We responded to your
16 Request and you received a complete copy of
17 the chart, as far as I know. If you would
18 like another --
19 MR. COTICCHIA: Let me go back over
20 the record.
21 MR. MEADOWS: I think if you look,
22 you'll see you have a copy of the chart.
23 Q. (BY MR. COTICCHIA) Dr. Van Bergan, at the very top
24 are some entries dated August 25th, '95 through
25 September 29th, '95. Did you dictate these entries?

7
1 A. Yes.
2 MR. MEADOWS: Take a look at them so
3 you know what he's talking about.
4 A. I did not dictate discharge date 8/29/95. That was
5 dictated by a resident on service. I did not
6 dictate 9/29/95. That was dictated upon a discharge
7 by a resident on service. All the rest were my
8 dictations. 8/25/95 was also dictated by a
9 resident. That was the discharge from the hospital.
10 Q. Do you know who the resident was?
11 A. Dr. Mayer. It's written right here, Dr. Mayer. Dr.
12 Shah. The note that I pointed out are notes that I
13 have the resident dictate when a patient is
14 discharged from the hospital so that we know what
15 the medications are in the event we don't get the
16 hospital data in the office when they call.
17 Q. Prior to your deposition now in regard to Richard
18 Ridolfi, did you review the deposition transcript of
19 Dr. Gopal?
20 A. Yes, I did.
21 Q. Did you review the reports of Dr. Markowitz and Dr.
22 Lach, L-A-C-H?
23 A. Yes, I did.
24 Q. All right. Did you review the medical records that
25 you have in front of you?

8
1 A. Yes.
2 Q. I'm assuming these are all the records from Fairview
3 Hospital pertaining to the treatment of Richard
4 Ridolfi.
5 A. Yes.
6 Q. All right. I'm going to concentrate this deposition
7 regarding to your treatment specifically. When did
8 you first see Mr. Ridolfi and what was the purpose
9 of your examination?
10 A. I was called to see him. He was in the
11 catharization lab because he needed emergency
12 surgery.
13 Q. What was the surgery for?
14 A. Coronary artery disease.
15 Q. And was that your diagnosis; coronary artery
16 disease?
17 A. Yes.
18 Q. What was your recommendation as far as treatment?
19 A. In agreement with the cardiologist, he could have a
20 coronary bypass.
21 Q. Who was the cardiologist?
22 A. His name was Sean Lyons.
23 Q. What was the recommended treatment that you made for
24 Mr. Ridolfi?
25 A. He should go to the operating room as an emergency

1 procedure and do, I believe, it was three bypass
2 graphs. I would have to look in the operative note.
3 Q. I want you to be free. You can look at any notes
4 you want.
5 A. (Witness reviewing document.) Three graphs.
6 Q. Is that the operative record of August 21st?
7 A. Yes.
8 Q. That's when you performed all three graphs, is that
9 correct?
10 A. Yes.
11 Q. Before you performed the surgery, Doctor, did you
12 discuss the risks and the benefits of the surgery in
13 regard to a bypass graph --
14 A. Yes.
15 Q. -- with Mr. Ridolfi?
16 A. And his wife. She was in attendance.
17 Q. Okay. What is a coronary artery bypass graph?
18 A. When you have an obstruction in your coronary
19 artery, you take either a vein or an artery.
20 If it's the artery, the mammary artery, you sew
21 it beyond the obstruction in the coronary, so it
22 gets blood beyond the obstruction.
23 If you use a vein, you sew one end to the
24 aorta, the other one to the coronary beyond the
25 obstructions, and you get blood beyond the

1 obstruction.
2 Q. In your practice since you've been Board certified
3 since '79 or '80, how many patients do you think
4 you've done a coronary artery bypass on? That's
5 about 20 years.
6 A. I don't know. Four thousand, 5,000.
7 Q. Four thousand or 5,000 patients?
8 A. Uh-huh.
9 Q. So you've done these --
10 A. A lot.
11 Q. -- a lot. It's a specialty of yours, isn't it?
12 A. It's what I do.
13 Q. What are the risks of this kind of surgery?
14 A. Mortality, death, stroke, renal failure,
15 post-operative bleeding, infection in the sternum or
16 in the legs, wherever you incise, respiratory
17 insufficiency, heart attack, reaction to blood,
18 blood products or medications, pulmonary embolus.
19 Those are the primary ones.
20 Q. In regard to Richard Ridolfi, I'm assuming you did
21 the coronary artery bypass because of blockage in
22 his arteries.
23 A. Yes.
24 Q. Of course the purpose of this was to prevent -- Did
25 you say he had had a heart attack?

1 A. He had a Non-Q heart attack prior.
2 Q. What is "Non-Q"?
3 A. That means that on an EKG, you don't have a Q-wave
4 to show you where the heart attack was.
5 Q. I understand following catheterization, you
6 determined that there was significant blockage.
7 A. Yes.
8 Q. That's what required the bypass, correct?
9 A. Yes.
10 Q. In the thousands of bypass surgeries, at least the
11 percentage-wise, how many patients have contracted
12 infections in the sternum?
13 MR. MEADOWS: Objection.
14 Q. (BY MR. COTICCHIA) Approximately.
15 MR. MEADOWS: You may answer, if you
16 know that.
17 A. I can't give you a number. I run a less than
18 one-percent incidence of it.
19 Q. (BY MR. COTICCHIA) How many of these infections
20 actually enter the bone of the sternum?
21 MR. MEADOWS: Objection. When you say
22 "these infections," what are you talking
23 about?
24 Q. (BY MR. COTICCHIA) Do you understand my question,
25 Doctor, without your counsel interrupting?

1 MR. MEADOWS: I'm not interrupting for
2 no reason. I'm interrupting because I
3 don't understand your question. If you
4 want to tie it into -- put it in context,
5 it might make sense, but as you've asked
6 it, it makes no sense. I object to form.
7 Q. (BY MR. COTICCHIA) How many of these infections in
8 the one percent of your -- approximate one percent
9 of your patients --
10 A. Less than one percent.
11 Q. Less than one percent of the one percent, is that
12 what you're saying, have an infection that effects
13 the sternum?
14 MR. MEADOWS: He said less than one
15 percent.
16 A. You asked me before how many of these, out of my
17 4,000 patients, how many infections. I don't know
18 how many got infection. I can tell you I run an
19 incidence of less than one percent, okay, of sternal
20 wound infections.
21 Q. (BY MR. COTICCHIA) All right. This is what I want
22 to clear up on the record. When you say "sternal
23 wound," are you referring to the flesh or does that
24 include the bone?
25 A. That's hard for me -- I don't know that I can answer

13

1 that completely or completely accurately. The
 2 reason why is the numbers I'm giving you are what
 3 our quality assurance committee looks at.
 4 MR. MEADOWS: I'm going to caution
 5 you. Don't get into anything that is a
 6 by-product of quality assurance or peer
 7 review. That's all privileged and you
 8 should not discuss that.
 9 A. Okay. I don't know how many get into the bone of
 10 those patients I've had.
 11 Q. (BY MR. COTICCHIA) Let me just make a comment here.
 12 When I'm asking you questions, I'm asking you based
 13 on your own knowledge as a practitioner, a
 14 specialist in this field independent of whatever
 15 quality assurance incident reports. You're still
 16 permitted to discuss and testify based on your own
 17 personal knowledge and clinical experience.
 18 What I'm getting at in this case, Mr. Ridolfi
 19 had a sternal wound infection, correct?
 20 A. Yes.
 21 Q. Describe to me what kind of a sternal wound
 22 infection he had.
 23 A. He ultimately developed an infection that involved
 24 the soft tissues and the sternum; the bone itself.
 25 Q. It's my understanding from the records, and I want

14

1 you to correct me if I'm wrong on these dates, he
 2 was admitted on October 21st for the bypass surgery.
 3 He was discharged on -- not October. August 21st,
 4 '95. Discharged August 25th, '95, is that correct?
 5 A. Not completely correct. He was admitted on the 21st
 6 for cardiocatheterization, and I believe he came
 7 from another hospital.
 8 Q. He came from Southwest.
 9 A. Yes. And then he was discharged on the 25th, having
 10 had surgery in that interim.
 11 Q. The following day, he came to your office, correct;
 12 August 26th?
 13 MR. MEADOWS: Look at your chart.
 14 Q. (BY MR. COTICCHIA) Take a look at your office
 15 chart.
 16 A. He didn't come to my office. On the 26th, I
 17 received a call from his wife.
 18 Q. Okay. What was the call about?
 19 A. He had had a coughing episode and had fluid coming
 20 out from his chest wound.
 21 Q. Okay. Did Mrs. Ridolfi describe the fluid from his
 22 chest wound?
 23 A. I don't remember.
 24 Q. Did you suspect that it was an infection?
 25 A. No.

15

1 Q. What recommendations did you make?
 2 A. I told her to come to the hospital so I can look at
 3 the wound.
 4 Q. Where did you meet Mr. Ridolfi?
 5 A. I believe I met him in the emergency room.
 6 Q. And what did you determine the condition was?
 7 A. He had coughed his sternum apart.
 8 Q. When you say "sternum," you're talking about the
 9 bone, is that correct?
 10 A. Yes.
 11 Q. And what did you do?
 12 A. I told him we should go directly to surgery and
 13 rewire it.
 14 Q. Okay. Did you do that?
 15 A. Yes.
 16 Q. Did you order antibiotics?
 17 A. Yes.
 18 Q. What did you order?
 19 A. Probably Ancef.
 20 Q. On this admission, did you see any evidence of
 21 infection?
 22 A. No.
 23 Q. Did you order a culture?
 24 A. Yes.
 25 Q. A wound culture. When did you order the wound

16

1 culture?
 2 A. At the time of surgery.
 3 Q. When was that?
 4 A. On the 26th of August.
 5 Q. What was the purpose of the request for a wound
 6 culture?
 7 A. The fact that he had opened his sternum, he had
 8 fluid that could come out of tissue, he was there
 9 for -- at risk to develop infection because of
 10 the connection from the outside with the inside.
 11 Q. Describe what you did in surgery when he was
 12 readmitted on the 26th of August.
 13 A. We put him to sleep, we prepped his skin
 14 appropriately and we draped him appropriately.
 15 I then opened the incision, removed all the
 16 suture material that would be foreign body. I then
 17 took swabs and I cultured -- I took a swab of the
 18 soft tissues and a swab of the actual inside of the
 19 -- under the sternum where the heart is located and
 20 the pericardium into the fluid and sent them for
 21 gram stain and culture.
 22 Q. Why do you want to do that as a surgeon?
 23 A. I did not feel he was infected. He wasn't infected,
 24 but because I can't be absolutely sure, I sent a
 25 gram stain to find out if there was any organisms to

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1 be seen. 17
 2 If there were no organisms to be seen, then I
 3 was going to close his sternum routinely.
 4 Q. Let's mark this as Exhibit 1 for the record. It's
 5 Page 21. It's a Wound Microbiology Wound Culture
 6 dated August 26th, '95.
 7 MR. MEADOWS: May I see that?
 8 (Plaintiff's Deposition Exhibit 1
 9 marked for identification.)
 10 MR. COTICCHIA: Would you please read
 11 back Dr. Van Bergan's last answer?
 12 (Answer read back by reporter.)
 13 Q. (BY MR. COTICCHIA) Do you have a copy of the wound
 14 culture that we've marked as Plaintiff's Exhibit 1?
 15 A. Yes.
 16 MR. MEADOWS: You mean in the hospital
 17 chart in front of him?
 18 MR. COTICCHIA: Right.
 19 A. Yes.
 20 Q. (BY MR. COTICCHIA) At the top, under the words
 21 Wound Microbiology, it says Wound Culture August
 22 26th, '95. What does that mean?
 23 A. It means it's a culture of his wound done on August
 24 25th, 1995.
 25 Q. That's the swabs that you just described?

1 A. Yes. 18
 2 Q. Including something from the boney substance of the
 3 sternum?
 4 A. These were -- I described to you three different
 5 swabs. These are those three different swabs.
 6 Q. What are the letters to the right? It looks like
 7 FNL. What does that mean?
 8 A. I guess that means final.
 9 Q. Final. And that's August 29th, '95, correct?
 10 A. Correct.
 11 MR. MEADOWS: For the first one?
 12 MR. COTICCHIA: Yes.
 13 Q. (BY MR. COTICCHIA) When did you first see this
 14 Microbiology Report?
 15 A. I think when I looked at his chart.
 16 Q. When you looked at this chart. When was that?
 17 A. Two days ago, yesterday.
 18 Q. Did you see this report before you discharged
 19 Richard Ridolfi?
 20 A. No.
 21 Q. Do you know what the report was independent of
 22 seeing this report before you discharged him?
 23 A. Yes.
 24 Q. How did you learn that?
 25 A. On the 29th, after three days, I had the resident

1 call the laboratory to find out if there was any 19
 2 growth on the submitted cultures. We were reported
 3 by phone there was no growth.
 4 Q. Let's move down the column. There's another entry
 5 there August 26th, '95, Anaerobic Culture. Was that
 6 one of the cultures you sent to the lab?
 7 A. I guess, yes.
 8 Q. What does that mean; Anaerobic Culture?
 9 A. These are organisms that do not require oxygen to
 10 grow.
 11 Q. And farther down -- By the way, it says, Final
 12 August 30, '95, doesn't it?
 13 A. Yes.
 14 Q. When you called the lab on the 29th, you were not
 15 aware of this because it hadn't been reported yet,
 16 correct?
 17 A. When I called the lab on the 29th, we asked, Is
 18 there any growth on any cultures? We were told, No.
 19 Q. And then we have a final on August 30, '95, don't
 20 we?
 21 A. Yes.
 22 Q. And the culture reads, "Rare serratia marcescens,"
 23 is that right?
 24 A. Yes.
 25 Q. What does that mean to you?

1 A. That means on this culture -- I find it interesting 20
 2 that it says, Organisms, no growth three days, yet,
 3 this is reported out on the fourth day. I don't
 4 know what that means.
 5 It tells me that there was a rare serratia
 6 marcescens found on the plate or however it is they
 7 culture.
 8 Q. Is that something you would want to know before you
 9 discharged Richard Ridolfi?
 10 A. Yes.
 11 Q. Why?
 12 A. Because I would then call my infectious disease
 13 consultant and find out if this is something that
 14 I have to be concerned about.
 15 Q. And I assume because you didn't receive this, you
 16 didn't call the infectious disease consultant.
 17 A. Right.
 18 Q. Is this a type of bacteria that one contracts in
 19 surgery or in the hospital?
 20 A. No.
 21 MR. MEADOWS: That's two questions.
 22 You want to break it down?
 23 Q. (BY MR. COTICCHIA) Is this the ty
 24 that Mr. Ridolfi could contract in
 25 A. No.

21
 1 Q. Where does Mr. Ridolfi contract this?
 2 A. I don't know if he contracted this. This is a type
 3 of bacteria that hospitalized patients or in
 4 patients who are heavy smokers and have chronic
 5 obstructive lung disease.
 6 This is a bacteria that often is a --
 7 colonizes patient's skin and secretions.
 8 Q. I have heard other doctors refer to this as
 9 hospital-born bacteria. I think the term is
 10 nosocomial. Are you saying that this culture from
 11 Mr. Ridolfi is not nosocomial?
 12 MR. MEADOWS: Objection.
 13 MR. TREU: Objection.
 14 A. I'm not sure I know what your question means.
 15 Q. (BY MR. COTICCHIA) Did he contract this at Fairview
 16 Hospital --
 17 MR. MEADOWS: I'm going to object --
 18 Q. (BY MR. COTICCHIA) -- sometime during your
 19 treatment or did he have this when he came in
 20 because he's a heavy smoker? How did he get this?
 21 MR. MEADOWS: Objection. No
 22 foundation. The Doctor just said he's not
 23 sure he did contract this.
 24 A. When do you mean by, "contract this?"
 25 Q. (BY MR. COTICCHIA) How did he get it?

22
 1 MR. MEADOWS: Objection.
 2 A. Well, I disagree that he's infected with this. I
 3 think he's colonized by this and it's probably on
 4 his skin because he had spent several days in the
 5 hospital, including Southwest General Hospital.
 6 Q. (BY MR. COTICCHIA) When you say it was "on his
 7 skin," what part of his body?
 8 MR. MEADOWS: Objection.
 9 A. All over his skin.
 10 Q. (BY MR. COTICCHIA) Are you saying that you think it
 11 is possible that this may have been picked up
 12 somehow while he was at Southwest?
 13 A. Sure.
 14 Q. What is your opinion within reasonable medical
 15 certainty, if you have one, about where this
 16 serratia came from?
 17 MR. MEADOWS: Objection. If you know.
 18 A. I think it's a ridiculous question, and I'm not
 19 saying that to be a S.O.B. I'm saying it's a
 20 ridiculous question because people who spend time in
 21 a hospital will get hospital bacteria that are
 22 normal for any hospital environment to colonize
 23 them on their skin, possibly their secretions.
 24 So to say that he contracted it or it was
 25 colonized at Southwest vs. Fairview, I don't know.

23
 1 I have no idea. If you spent three to five days in
 2 a hospital, you'll be colonized by bacteria.
 3 Q. (BY MR. COTICCHIA) The reason that I ask this -- We
 4 just discussed this and you just testified that
 5 sternal wound infection is a risk of this type of
 6 surgery, isn't it?
 7 A. True.
 8 Q. And because of this, you ordered this wound culture
 9 that we've identified, correct?
 10 MR. TREU: Objection.
 11 A. No.
 12 Q. (BY MR. COTICCHIA) Why did you order the wound
 13 culture?
 14 A. I ordered the wound culture because a patient as
 15 an outpatient had coughed his wound apart, his
 16 sternum. He put out fluid from under the sternum
 17 out of the wound that now has put the inside of the
 18 wound and the outside of the wound in contact.
 19 I did not feel he was infected. I still don't
 20 feel he was infected, but I'm not going to run the
 21 risk of closing him strictly by looking at it.
 22 We're talking microscopic organisms; therefore, I
 23 sent for gram stains in order to find out if there
 24 were any organisms. There were none, so I,
 25 therefore, went ahead with my procedure.

24
 1 Q. If you had known on August 29th that there was this
 2 rare, as you said, colonization of serratia, would
 3 you have discharged Mr. Ridolfi anyway?
 4 MR. TREU: Objection.
 5 MR. MEADOWS: Objection.
 6 A. It depends on what Dr. Gopal said. If he would have
 7 said that there's nothing to worry about, then I
 8 would have discharged him.
 9 Q. (BY MR. COTICCHIA) Could you have described an
 10 antibiotic for this rare colony?
 11 A. It would have depended on what Dr. Gopal said.
 12 Q. Well, you did not consult with Dr. Gopal at this
 13 time, correct?
 14 A. Correct.
 15 Q. And you did order Ancef, which is an antibiotic,
 16 isn't it?
 17 A. Not because of this.
 18 Q. No. But you ordered it as an antibiotic, correct?
 19 A. Yes.
 20 Q. And you were able to make that decision without
 21 consulting with an infectious disease specialist,
 22 correct?
 23 A. Yes.
 24 Q. And you also ordered Keflex, didn't you?
 25 A. Yes.

1 Q. And that's an antibiotic, isn't it? 25
 2 A. Yes.
 3 Q. And you made that decision without consulting with
 4 an infectious disease specialist.
 5 A. Yes.
 6 Q. So my question to you as a specialist in this type
 7 of surgery, knowing what you know of the risks,
 8 independent of whether or not you had consulted with
 9 Dr. Gopal or any other infectious disease
 10 specialist, would you have ordered an antibiotic for
 11 rare colony of serratia?
 12 MR. MEADOWS: Objection. Asked and
 13 answered. He just answered what he would
 14 do.
 15 A. I would have consulted with an infectious disease
 16 specialist.
 17 Q. (BY MR. COTICCHIA) Are you testifying that you
 18 could not make that decision without a consult?
 19 A. Yes.
 20 Q. Have you treated other patients who have had
 21 serratia --
 22 MR. TREU: Objection.
 23 Q. (BY MR. COTICCHIA) -- following bypass surgery?
 24 MR. MEADOWS: Objection to form in
 25 terms of other patient's having. It's not

1 been established that this patient had 26
 2 serratia at that time.
 3 MR. COTICCHIA: Your objection is
 4 noted.
 5 Q. (BY MR. COTICCHIA) You can answer the question.
 6 A. On a patient that's colonized to serratia, I have
 7 had patients in the Intensive Care Unit where rare
 8 serratia has been grown out of the sputum, that type
 9 of thing. I can't remember them. I don't remember
 10 them.
 11 Q. Did you order an antibiotic?
 12 A. Serratia can be strictly a colonization. I don't
 13 know if that patient who has a serratia growing out
 14 of -- No matter what, should be treated because it's
 15 a common colonized -- you're in the hospital. I
 16 would therefore call an infectious disease
 17 specialist to ask him.
 18 Q. Why isn't this culture in your office chart
 19 pertaining to Richard Ridolfi -- this culture
 20 report. I'm sorry.
 21 A. It wasn't sent to my office.
 22 Q. Do you want something like that sent from the lab to
 23 your office?
 24 MR. TREU: Objection.
 25 A. Cultures are read out in three days. On the third

1 day, I call on a culture or any type of lab. If I 27
 2 call on it and I get the answer, then I don't care
 3 if they send it or not because I've gotten the
 4 answer.
 5 Q. (BY MR. COTICCHIA) Is there anything in Mr.
 6 Ridolfi's office chart that you maintain here that
 7 makes reference to this culture?
 8 A. No.
 9 Q. Nothing?
 10 A. No.
 11 Q. I want to move on. There was another admission,
 12 wasn't there?
 13 A. Yes.
 14 Q. What was the admission for? When was the next
 15 admission and what was it for?
 16 A. The next admission was on September 8th, 1995 and it
 17 was for a wound infection.
 18 Q. All right. I want to back up a little bit. You had
 19 an appointment with Richard Ridolfi in your office
 20 on September 6th '95, correct?
 21 A. Yes.
 22 Q. I want you to refer to your notes, Doctor. Tell me
 23 what his condition was and what you did, if
 24 anything?
 25 A. What date was that?

1 Q. September 6th, '95. 28
 2 A. He was doing well -- Do you want me to just read you
 3 the note?
 4 Q. Sure.
 5 A. Okay. He was rewired. His wait is stable. He is
 6 afebrile. His appetite is good. He is requiring
 7 minimal pain medication; however, he is still
 8 requiring some every day. Pulses are intact. His
 9 leg wounds are well healed. His chest wound was
 10 rewired after he dehist his sternum from coughing.
 11 There still is no sign of infection. He has a
 12 little bit of drainage at the level of the xiphoid
 13 and this is also where the sternum is mobile.
 14 There's fluid accumulation at the very top where the
 15 soft tissues have separated; however, it even looks
 16 as though it is not infected. We are to follow this
 17 closely. Follow up in one week. Patient seen in
 18 conjunction with Dr. Shah.
 19 Q. All right. What is the date of Mr. Ridolfi's
 20 admission? His next admission?
 21 A. 9/8.
 22 Q. So that was two days after this appointment,
 23 correct?
 24 A. Yes.
 25 Q. And what is the purpose of the admission?

29

1 A. We had received a call from his wife since his
2 office visit -- I think I received a call from his
3 wife. She said that his incision has opened
4 approximately an inch and a half with drainage. For
5 that reason, I brought him into the hospital.
6 Q. Did you examine him when he was admitted?
7 A. Yes.
8 Q. What was your diagnosis?
9 A. I felt he probably had a sternal wound infection.
10 Q. That was the day after you had saw -- or two days
11 after you saw him at the office, is that correct?
12 A. Yes.
13 Q. Did you order a culture?
14 A. Yes.
15 Q. And what did the culture disclose? Well, tell me
16 how you got the culture.
17 A. By swabbing the wound. We sent it to the
18 laboratory.
19 Q. Was it the same type of matter that you cultured in
20 August?
21 MR. TREU: Objection.
22 MR. MEADOWS: Objection, too. Could
23 you read it back or rephrase it?
24 MR. COTICCHIA: No. I think I --
25 MR. MEADOWS: Would you read it back,

30

1 please?
2 (Question read by reporter.)
3 MR. MEADOWS: Objection to the form,
4 that it's vague and ambiguous. I'm not
5 sure what you're referring to.
6 A. No, it's not.
7 Q. (BY MR. COTICCHIA) All right. Describe how you
8 obtained this culture. What tissue or --
9 A. This is just drainage from the wound on the day of
10 admission. Got it with a swab.
11 Q. What did the drainage look like? Did you note the
12 color or the thickness or anything?
13 A. It was cloudy, reddish, cloudy. I don't remember it
14 being particularly thick.
15 Q. What was the treatment that you provided?
16 A. At that point, we consulted plastic surgery. It was
17 obvious he would require a procedure, a wound
18 procedure that would require muscle flaps, and I
19 believe it was the next day that we took him to the
20 operating room and did his surgery.
21 Q. That was September 9th?
22 A. Yes.
23 Q. Go ahead.
24 A. You asked me if this was the same organism as the
25 culture in August, and I want you to know that

31

1 the answer is no, it wasn't.
2 Q. Okay. Thank you.
3 A. You're welcome.
4 Q. I want to go to the -- By the way, when you had the
5 consult for plastic surgery, was the surgeon Dr.
6 Levy?
7 A. Yes.
8 Q. And I think either you or he made the diagnosis of
9 osteomyelitis, is that correct?
10 A. That was our presumptive diagnosis.
11 Q. Is that still the diagnosis?
12 A. Yes.
13 Q. What is osteomyelitis?
14 A. An infection involving the bone.
15 Q. I want to go onto the next wound culture, which is
16 dated August 14th. Do you have one that's earlier
17 than that?
18 A. Yes. 9/9/95 at the time of the surgery on Page 144.
19 Q. I had misplaced that one.
20 A. You can look at mine. (Indicating.)
21 Q. Okay. Thank you. And that was taken from the
22 surgical wound, correct?
23 A. Yes.
24 Q. Is that of any importance or significance to you?
25 A. Yes.

32

1 Q. What is important or significant to you regarding
2 that culture?
3 A. This tells me that his wound infection is due to
4 streptococcus mitis alpha-hemolytic streptococcus.
5 Q. When did you have the next culture sent to the
6 lab?
7 MR. MEADOWS: The question is wound
8 culture, correct?
9 Q. (BY MR. COTICCHIA) I'll tell you what. Let's go to
10 the wound culture of 9/19/95.
11 A. What page is it?
12 Q. I have 169, Doctor.
13 A. Not everything is in order. That's why I'm going --
14 MR. MEADOWS: Here you go.
15 A. I got it. Okay.
16 Q. (BY MR. COTICCHIA) The wound culture has a specimen
17 description of abdomen. I'm assuming that during
18 this surgery -- First of all, I'm assuming when Dr.
19 Levy was doing the surgery, you were present?
20 A. I wasn't in direct scrubs, but I was there, yes, for
21 the beginning part of the surgery.
22 Q. Why was the wound culture taken from the abdomen, if
23 you know?
24 A. I don't know.
25 Q. And then the culture at the bottom reads, Many

33

1 serratia, correct?

2 A. That's on the wound culture dated 9/19/95.

3 Q. Do you know this is the same serratia that Mr.

4 Ridolfi had -- knowing that it's from a different

5 location in the body, do you think this is the same

6 serratia that he had in August?

7 A. No.

8 Q. Where do you think this came from?

9 A. I think he was in the hospital and he got colonized

10 by serratia.

11 Q. Let's move to September 20th, which is the blood

12 culture in the lab report.

13 A. What page?

14 Q. 163. And you're right. It's out of order.

15 MR. MEADOWS: What page?

16 MR. COTICCHIA: 163.

17 Q. (BY MR. COTICCHIA) Do you see that at the top,

18 Blood Culture?

19 A. Yes.

20 Q. Did you order that?

21 A. No.

22 Q. Who ordered it?

23 A. I don't know. I would assume Dr. Levy.

24 Q. Did you see this lab report during Mr. Ridolfi's

25 admission?

34

1 A. No.

2 Q. Was Dr. Gopal called in as a consultant for

3 infectious disease before this culture was done?

4 A. Yes. He was called on 9/8 upon his admission. I

5 think I should -- this may help you out. Once the

6 surgery was done and my part was finished, it's

7 really Dr. Levy's patient at that point in time.

8 That's why I didn't order it.

9 Q. At this point, what does this tell you when there's

10 a blood culture and it discloses serratia?

11 A. Well, it says, One bottle out of the set. That

12 would suggest to me that it may be a contaminate and

13 not a true bacteremia.

14 Q. Okay. I'm a layman. What does that mean? It's not

15 in his blood?

16 A. Yes, that's true.

17 Q. So you're assuming, based on this culture, that he

18 does not have serratia in the blood.

19 A. Yes.

20 Q. Is that what you mean when you say it's not

21 bacteremia?

22 A. Yes.

23 Q. Why do you say that?

24 A. Three bottles were drawn. In other words, three

25 blood cultures were obtained. Only one of those

35

1 blood cultures grew the bacteria.

2 In general, you get one out of the three

3 bottles that has a bacteria, such as serratia. That

4 would suggest that it's a contaminate.

5 If he had true bacteremia, he should have three

6 out of three bottles grown.

7 Q. If it's three out of three bottles, isn't it really

8 becoming rather extensive? I mean, don't you want

9 to know when it's just one out of three before it's

10 three out of three?

11 A. No.

12 Q. Did you order any kind of treatment based on this

13 culture?

14 A. I didn't order these.

15 Q. You didn't order the culture. I know.

16 A. I was taking care of the patient at that time. He

17 was being cared for primarily by Dr. Levy and Dr.

18 Gopal.

19 Q. I understand. My question is, did you order any

20 kind of treatment based on this culture?

21 A. No.

22 Q. I assume you told Mr. Ridolfi that you were going to

23 call in Dr. Levy on a consult initially when you

24 found this wound infection, correct?

25 A. Yes.

36

1 Q. I assume you recommended Dr. Levy to Mr. Ridolfi and

2 his wife, correct?

3 A. Yes.

4 Q. All right. Are you saying at this point he's no

5 longer your patient?

6 A. Not really. I mean, the problems after he's had his

7 muscle flaps in the surgery are really in the

8 plastic surgeon's realm.

9 Q. All right. Let's start from the beginning. He had

10 this bypass surgery, which you performed, correct?

11 A. Uh-huh.

12 Q. And following his surgery, he had a wound infection.

13 A. No. Following the surgery, he dehisc the sternum

14 and I rewired it.

15 Q. I'm jumping ahead. Some time during this period --

16 I'm not going to go over every detail.

17 A. I would like to be more specific, though.

18 MR. MEADOWS: I'll object unless you

19 are going to be in more detail.

20 Q. (BY MR. COTICCHIA) He was still your patient when

21 you made a diagnosis of a sternal wound infection,

22 wasn't he?

23 A. Yes.

24 Q. So the sternal wound infection was something that

25 you diagnosed following this bypass surgery.

37

1 A. Yes.

2 Q. And then, as it developed, you called Dr. Levy.

3 A. And Dr. Gopal.

4 Q. And Dr. Gopal. All right. What antibiotic, to your knowledge, is effective in destroying serratia?

6 A. I don't know.

7 Q. When did you next see -- I'm sorry. When was Mr. Ridolfi discharged on this admission?

9 A. 9/29/95.

10 Q. All right. Rather than go through every little entry, tell me in your own words the progress of Mr. Ridolfi during his treatment.

13 MR. MEADOWS: In what period? After discharge?

15 MR. COTICCHIA: No. Before he was discharged. From 9/9/95 until his discharge.

18 A. I would see him after the initial surgery and after Dr. Levy's work. I would see him every couple days to see how he was doing.

21 At that point in time, the infection was really being cared for by Dr. Gopal and Dr. Levy, and then I -- What date? I was in the hospital. There was a stat page on the floor he was on. It's the floor that we keep our open heart patients on.

38

1 I don't know if I called over to find out if he was one of my patients or if I started walking over and somebody told me, but I found out he was bleeding and I walked into the room.

5 He was bleeding. I felt it was probably from the heart. I told him we were going directly to the operating room.

8 Q. (BY MR. COTICCHIA) What does "stat" mean?

9 A. The patient's in deep trouble.

10 Q. Life-threatening?

11 A. Yes.

12 Q. When you told him you thought it was from his heart, what were you referring to?

14 A. Rupture of the right ventricle.

15 Q. This followed -- I'm not sure myself. I think he coughed or something and he --

17 A. He was reaching for something and coughed at the same time.

19 Q. And he started to bleed profusely, didn't he?

20 A. Yes.

21 Q. What did you do when you took him to surgery?

22 A. I put him on partial bypass through his femoral artery. I opened the wound. I literally put my fingers in the hole to stop the blood.

25 Once he was on partial bypass, so we could

39

1 salvage that blood and give it back to him, I sutured the laceration.

3 Q. In your operative report, I think you said, and I'm summarizing, you put -- Did you say three fingers or two fingers in the --

6 A. I think I said three.

7 Q. -- laceration of the ventricle?

8 A. Yes.

9 Q. How long would that laceration have been then?

10 A. That long. (Indicating.)

11 Q. That's quite significant, isn't it?

12 A. Yes.

13 Q. How did that ventricle get lacerated?

14 A. I think what happened is this happened -- I'm trying to find the date of the operative report.

16 MR. MEADOWS: It should be on the No. 4 tab.

18 A. That's what I thought. There's two fours. That was on the 14th, and that's approximately five, six days after his initial surgery.

21 My feeling is is that what remained of the sternum healed down to the heart, getting sticky. It was healing to the heart.

24 I think the combination of reaching and coughing at the same time caused the sternum to

40

1 pull, and, therefore, the heart lacerated.

2 Q. You think some of the tissue from the ventricle was laying against that part of the sternum or starting to actually adhere to it?

5 A. I know it was starting to adhere to it, yes.

6 Q. Okay. Do you think -- I'm speaking of possibilities now -- this could have been something that Dr. Levy did --

9 A. Absolutely not.

10 Q. -- during the debridement?

11 A. Absolutely not. No. You're --

12 MR. MEADOWS: You've answered his question.

14 Q. (BY MR. COTICCHIA) Well, this is a discovery deposition. That's why I'm asking.

16 A. I don't feel I should have to discover anyway.

17 Q. I'm just looking for facts. I don't need any help.

18 MR. MEADOWS: Just wait for the question.

20 Q. (BY MR. COTICCHIA) How many hours with Mr. Ridolfi in surgery?

22 A. I don't know.

23 Q. Did you order bone cultures?

24 A. When?

25 Q. Any time during your treatment of Mr. Ridolfi.

1 A. On the day of surgery, we probably swabbed it. I
2 don't know.
3 Q. Which surgery? Are you talking about August or this
4 last one where you ran into complications?
5 A. You don't order a specific bone culture. There's no
6 such thing.
7 Q. What --
8 A. As part of the wound, I certainly, in the surgery
9 when I re-did his sternum prior to him coming
10 infected, swabbed the bone to get the gram stain.
11 Q. What were those reports? What do they disclose?
12 A. We went through those already.
13 Q. We went through them all and you didn't see
14 anything?
15 A. No.
16 Q. What I'm trying to get at is I was looking for a
17 bone specimen in a path report. Do you have one in
18 your records?
19 A. A bone specimen would have been on the 9/8
20 admission, if there was one. I don't see a path
21 report in here.
22 Q. All right.
23 MR. MEADOWS: Mr. Coticchia, do you
24 have something you want to show him? You
25 obviously have three notebooks here.

1 Q. (BY MR. COTICCHIA) I want to show you -- for the
2 record, it's Page 0064 -- the flow record for the
3 admission of August 26th through August 29th.
4 MR. TREU: Give me that page again.
5 MR. COTICCHIA: 0064.
6 MR. MEADOWS: I think it's under
7 graphics, Doctor.
8 Q. (BY MR. COTICCHIA) I'll be happy to show you my
9 copy. (Indicating.)
10 A. Uh-huh.
11 Q. In regard to the temperature, from the time of
12 admission to the time of discharge, are those normal
13 or does this show a fever?
14 A. Well, it shows a fever on the 26th and 27th, very
15 low grade, about 38.2. And then it goes down to the
16 29th where it's about 37.6. That would be a normal
17 code of course for a surgical patient. It's a
18 normal temperature plotting for a surgical patient.
19 Q. What was his temperature on discharge on the 29th of
20 August?
21 A. It looks like it's probably about 37.5, 37.6.
22 Q. It looks to me that it's somewhere between 98.6 and
23 99. Would you agree with that?
24 A. Okay. I agree with that.
25 Q. Is that normal?

1 A. Yes.
2 Q. Do you have any temperature readings in your office
3 chart when you saw Mr. Ridolfi?
4 A. No.
5 MR. MEADOWS: Actual temperature?
6 Specific temperature? He's already read
7 you his note. Is that what you are asking?
8 Q. (BY MR. COTICCHIA) Doctor, turn to Page 617 --
9 MR. MEADOWS: Wait a minute. Let's be
10 fair about this.
11 MR. COTICCHIA: He answered --
12 MR. MEADOWS: You asked him whether
13 there's any reference to whether the
14 patient was febrile -- or afebrile or do
15 you want to know his specific temperature
16 because he read you his note. It's a
17 different question.
18 MR. COTICCHIA: You can argue all you
19 want.
20 MR. MEADOWS: I'm not arguing. I just
21 want you to be fair to the witness. That's
22 all I ask.
23 MR. COTICCHIA: He answered the
24 question.
25 Q. (BY MR. COTICCHIA) Doctor, turn to Page 617 on the

1 Graphic Flow Record.
2 MR. TREU: Same admission?
3 MR. COTICCHIA: No. This is the
4 September 8th admission.
5 A. Okay. I've turned there.
6 Q. (BY MR. COTICCHIA) All right. What was his
7 temperature in Fahrenheit since I don't understand
8 centigrade on September 8th?
9 A. On September 8th, it was probably between 98.6,
10 -- about 98.7, 98.8. I don't know.
11 Q. Is that normal?
12 A. Yeah.
13 Q. All right. And then during his admission, we get to
14 August 11th, August 12th, August 13th. What is the
15 range?
16 MR. TREU: August or September?
17 Q. (BY MR. COTICCHIA) I'm sorry. I misspoke. I
18 meant September. September 11th.
19 A. It ranges as low as 90 -- I don't know. Probably 96
20 to as high as 99.5 maybe.
21 Q. Is that a low-grade temperature or a low-grade
22 fever?
23 A. See, I go by centigrade. I've been doing it for 20
24 years, and that's what I'm going to do now. I mean,
25 37.7, 37.8, that might be low grade.

45

1 Q. What's normal in centigrade for a patient?
 2 A. It varies through a 24-hour period. It's lower in
 3 the morning. Probably 37.4 is generally the lower
 4 limit, to about 37.7, 37.8. In the morning, it
 5 would be lower than in the evening. Which is nicely
 6 demonstrated on the 12th. And that's due to diurnal
 7 variations.

8 Q. What is that?

9 A. I don't know. It has to do with, I believe, your
 10 corticosteroid output morning vs. evening.

11 Q. When Mr. Ridolfi was finally discharged on his last
 12 admission, in layman's terms, tell me what he
 13 underwent to debride the wound and combat the
 14 infection?

MR. MEADOWS: I object to form. I
 have no idea what that question means.

MR. COTICCHIA: During his last
 admission in September. He was there
 almost 20 days or something.

20 A. So what's your question?

21 Q. (BY MR. COTICCHIA) What kind of treatment did he go
 22 through? What was he left with?

MR. MEADOWS: It's two different
 questions. You want to know what his
 condition was on discharge?

46

1 Q. (BY MR. COTICCHIA) You already testified with
 2 regard to the repair of his lacerated ventricle,
 3 correct?

4 A. Yes.

5 Q. And Dr. Levy and you both dictated an operative
 6 note based on that procedure, correct?

7 A. Yes.

8 Q. What is your understanding of what Richard Ridolfi
 9 was left with, physically, after that surgery?

10 A. He's left with a good life. Alive and well.

11 Q. What's the condition of his chest?

12 A. I don't know.

13 Q. When you last saw him?

MR. MEADOWS: You may look at your
 note.

16 A. That's not when I last saw him. 10/4, "Patient is
 17 doing very well. His lungs are clear at
 18 auscultation and percussion. There is slightly
 19 diminished breath sounds on the right --

MR. MEADOWS: Slow down. Slow down.

21 A. -- No rales or rhonchi. His heart is in a regular
 22 rhythm. No murmur, gallops or rubs are noted. He
 23 looks very good. We peeked at the wounds, even
 24 though Dr. Levy, the Plastic Surgeon, is involved in
 25 that part, and he is granulating in very nicely. He

47

1 will be followed up in one month. Patient seen in
 2 conjunction with Dr. Shah."

3 Q. (BY MR. COTICCHIA) How much of his chest was left,
 4 the boney part?

5 A. I can't say. I don't know.

6 Q. Is that a normal outcome following bypass surgery?

MR. MEADOWS: Objection.

8 A. It's a complication that can occur with surgery.

9 It's not a normal outcome, in that, we don't want
 10 that complication, but it can occur.

11 Q. (BY MR. COTICCHIA) What caused this?

12 A. An infection

13 Q. What kind of an infection was it?

14 A. Streptococcus mitis alpha-hemolytic strep.

15 Q. Did the serratia play any part in this?

16 A. No.

17 Q. I'm curious why you are able to say that today, and
 18 yet, you couldn't make that kind of diagnosis -- I'm
 19 going to rephrase it.

20 I'm curious why you are able to say this today
 21 when earlier when I was asking you questions about
 22 these various types of bacteria, you couldn't answer
 23 it without a consult from an infectious disease
 24 specialist.

MR. MEADOWS: Objection.

48

1 A. That's not what you asked me. You asked me if it
 2 would change my therapy. I said, I would have to
 3 consult. I can tell you without a doubt that the
 4 infection was due to streptococcus mitis
 5 alpha-hemolytic strep. It's in the record. You
 6 read it and I read it. No serratia marcescens grew
 7 from his sternal wound.

8 Q. (BY MR. COTICCHIA) What is the name of your medical
 9 malpractice insurance company?

MR. MEADOWS: Objection.

MR. TREU: Objection.

MR. MEADOWS: You can answer.

13 A. Medical Protective.

14 Q. (BY MR. COTICCHIA) Have you been a Defendant in any
 15 other medical malpractice cases?

16 A. Yes.

MR. MEADOWS: Show an continuing
 objection.

19 Q. (BY MR. COTICCHIA) How many times?

20 A. Once.

21 Q. How long ago was that? Do you remember when?

22 A. Well, it's been to trial a second time. I won the
 23 second time. Some guy named Costello.

24 Q. The patient's name is Costello?

25 A. Yes.

49

1 Q. Did it involve an infection?

2 A. No.

3 Q. Okay.

4 MR. COTICCHIA: I don't have any more

5 questions.

6 MR. TREU: Doctor, I have a couple

7 real quick ones for you.

8 CROSS-EXAMINATION

9 BY MR. TREU:

10 Q. Doctor, I see that the actual discharge order from

11 the initial admission in August was written by

12 Dr. Mayer, right?

13 A. Yes.

14 Q. Was that done with your approval --

15 A. Of course.

16 Q. -- that discharge? If in fact a patient were to

17 contract a nosocomial infection, that doesn't mean

18 that there was any negligence on anybody's part,

19 does it?

20 A. No.

21 Q. It happens all the time.

22 A. It happens, yes.

23 Q. Yes. Okay. And I think you testified that Mr.

24 Ridolfi's condition when you were called to his room

25 stat, when he had his ventricular tear, was, in

50

1 fact, an emergency situation.

2 A. Yes.

3 Q. It required emergent care.

4 A. Yes.

5 Q. Okay. Thank you.

6 MR. MEADOWS: We'll have him read.

7 - - -

8 (Deposition concluded at 3:23 p.m.)

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2 I have read the foregoing transcript of my deposition

3 taken on Wednesday, November 10th, 1999 from page 1 to

4 page 50 and note the following corrections:

5

6 PAGE:	LINE:	CORRECTION:	REASON:
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ROBERT PAUL VAN BERGAN, M.D.

DATE _____

52

1 THE STATE OF OHIO, }
2 COUNTY OF CUYAHOGA. } SS: CERTIFICATE

3 I, Christine A. Krakowski, a Notary Public

4 within and for the State of Ohio, duly commissioned

5 and qualified, do hereby certify that ROBERT PAUL

6 VAN BERGAN, M.D. was by me, before the giving of his

7 deposition, first duly sworn to testify the truth,

8 the whole truth and nothing but the truth; that the

9 deposition as above set forth was reduced to writing

10 by me by means of Stenotype and was subsequently

11 transcribed into typewriting by means of

12 computer-aided transcription under my direction; and

13 that I am not a relative or attorney of either party

14 or otherwise interested in the event of this action.

15 IN WITNESS WHEREOF, I hereunto set my hand and

16 seal of office at Cleveland, Ohio, this 12th day of

17 November, 1999.

18

19 Christine A. Krakowski, Notary Public
20 Within and for the State of Ohio
21 1511 Terminal Tower
22 Cleveland, Ohio 44113

23 My Commission Expires: November 18, 2001.

24

25

DEPOSITION OF ROBERT PAUL VAN BERGAN, M.D.

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I have read the foregoing transcript of my deposition taken on Wednesday, November 10th, 1999 from page 1 to page 50 and note the following corrections:

PAGE:	LINE:	CORRECTION:	REASON:
42	17	Remove "code of"	Means nothing

Robert Paul Van Bergan
ROBERT PAUL VAN BERGAN, M.D.

11-16-99
DATE