

ah

99

1 (unintelligible).

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

4 A He was recovering well, yes.

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

6 A Yes.

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

8 A Yes.

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

11 A Yes.

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

13 A Mostly legs.

14 Q It indicate, indicated he had some swelling?

15 A It says negative edema meaning no swelling.

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

18 A Yes.

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

20 A Yeah.

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

23 A Yes.

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

1 A Yes.

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

3 A That's true.

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

6 A Antibiotics, yes.

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

8 A Yes.

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

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

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

14 A Ultrasound.

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

17 A Yes.

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

19 A Further investigation.

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

22 A Yes.

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

25 A Still recovering from pneumonia.

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

3 A Depending upon his progress, yes.

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

6 MS. WARD: Objection.

7 THE COURT: Overruled.

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

10 BY MR. JARASHOW:

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

14 A Yes.

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

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

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

1 A Not on that particular day.

2 Q Well, you found out the next day?

3 A Next day, yes.

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

7 A Yes.

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

13 A Yes.

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

17 A That's true.

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

20 A Yes, resident (unintelligible).

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

24 A Yes.

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

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

3 A That, that's true.

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

7 A In the last paragraph.

8 Q In the last paragraph --

9 A The last --

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

11 A Yes.

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

15 MS. WARD: Objection, Your Honor.

16 THE COURT: Basis?

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

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

21 BY MR. JARASHOW:

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

23 A From this note, yes.

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

1 A We never had that discussion.

2 Q You never discussed it with Mr. Neustadter?

3 A These, yeah, with Mr. Neustadter.

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

9 A Yes, that was my understanding.

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

12 A No.

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

18 A That's what the note says.

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

21 A I don't have that recollection.

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

24 A Yes.

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

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

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

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

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

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

11 A Yes.

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

14 A (Unintelligible) No, I --

15 Q You didn't write anything.

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

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

19 A No.

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

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

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

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

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

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

4 A Yeah.

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

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

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

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

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

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

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

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

5 A I did not address the code status.

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

8 A We did not discuss that.

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

11 A Hypoxemia.

12 Q Hypoxemia.

13 A Hypoxemic.

14 Q Yes.

15 A Meaning low oxygen.

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

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

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

23 A Yes.

24 Q That it increased to 37.6?

25 A Yes.

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

2 A It was.

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

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

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

10 A Yes.

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

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

14 Q Go back to this note --

15 A A night before, yeah.

16 Q Okay.

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

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

22 A Yes.

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

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

1 be done, yes.

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

6 A I believe so.

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

9 A Yes.

10 Q Now, why did you do that?

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

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

17 A Yes.

18 Q He was on levaquin and rocephin, correct?

19 A Yes.

20 Q And you started him on which antibiotics?

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

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

25 A With the aspiration, you are basically thinking of

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

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

4 A Yes.

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

8 A Yes.

9 Q And that was his condition at the time?

10 A Yes.

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

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

16 Q I'm sorry, there we go.

17 A Yeah.

18 Q Okay, good.

19 A It's R.

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

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

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

1 section for?

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

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

7 A Okay.

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

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

11 Q And PRN means as needed --

12 A As needed.

13 Q -- when you wanted him suctioned?

14 A Yeah.

15 Q And then No. 4 is?

16 A Called Dr. Kariya, and --

17 Q And below that it says --

18 A -- below that is ICU consult.

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

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

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

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

5 A Yes.

6 Q Explain what that is?

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

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

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

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

16 A Uh-huh.

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

19 A Yes.

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

22 A According to this, yes.

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

25 A Pulmonary and critical care specialist, yeah.

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

2 A Yes.

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

5 A Yes.

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

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

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

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

15 Q To Mr. Neustadter --

16 A Mr. Neustadter, yeah.

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

20 A Yes.

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

23 A Yes.

24 Q You were ordering air blood gas tests?

25 A Yes.

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

4 A Yes.

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

7 A Yes.

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

11 A It is a critical factor, yes.

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

14 A Yes.

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

19 MS. WARD: Page 367.

20 MR. JARASHOW: Could you repeat that?

21 MS. WARD: Sorry, page 367.

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

24 BY MR. JARASHOW:

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

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

2 A Yes.

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

5 A Yes.

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

8 A Yes.

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

10 A Yes.

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

12 A It's not.

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

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

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

17 A Yeah.

18 Q Right down here?

19 A Yes.

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

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

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

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

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

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

4 A Yes.

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

8 A Yes.

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

10 A Yes.

11 Q Can you tell us again what stat means?

12 A Stat means immediately, right away.

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

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

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

20 A I did not call back.

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

22 A Uh-huh.

23 Q Do you know if they were taken?

24 A Looking at these records, I have no recollection
25 whether --

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

2 A There's no indication, yeah.

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

5 A No.

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

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

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

11 A Yes.

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

14 A Yes.

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

16 A No.

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

19 A No.

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

23 A In overall management, yes.

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

1 A Yes.

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

4 A Yes.

5 Q And in fact, you left the room?

6 A Yes.

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

9 A No.

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

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

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

14 A Yes.

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

17 A No.

18 Q Then, o
19 sorry, the proble
20 track of where th
21 were back in to s

March 26, 2003:
- Attending physician finds his full-code patient critically ill in respiratory distress.
- He hands off all care to Dr. Weiner and leaves hospital without participating in any way or checking back. [Hand-off is undocumented.](#)
- Dr. Weiner denies seeing patient on March 26. There are no progress notes, no nursing notes and no record of any decision to withhold life-sustaining treatment.
- So who was taking care of dying patient? Who made the decision?
- How do I get Maryland's regulatory agencies to hold the bad actors accountable?

22 A Yes.

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

25 A His notation, yes.