EXAMINATION BEFORE TRIAL OF GEORGE VINCENT DIGIACINTO, MD.; 2000 Depo. Trans. LEXIS 8875

New Jersey Superior Court, Camden County

DOCKET NO.: L-00789-96

March 10, 2000

Reporter
2000 Depo. Trans. LEXIS 8875 *

PAULA BEAL and JOHN BEAL, her husband, Plaintiffs, -v JEFFREY SALIZZONI, MD., GARY AGIA, DO., ANTHONY VILLARE, DO., KENNETH LEWANDOWSKI, DO., ROBERT GORDON, DO., CA. ATTIENZA, DO., MARTIN BELSKY, MD., ASHOK BAPAT, MD., P. S. PATEL, MD., ROBERT TERRANOVA, MD., GEORGE KNOD, DO., JACK NOLAN, DO., K. FERNANDEZ, DO., GARY BROWN, DO., VINCENT ALLORA, DO., JOHN DOE(S) PHYSICIAN (ficticious name(s), A-Z KENNEDY MEMORIAL HOSPITAL UNIVERSITY MEDICAL CTR., Individually, jointly, Severally and/or in the Alternative, Defendants.

Expert Name: Dr. Vincent DiGiacinto, M.D.

Disclaimer

Counsel

LAW OFFICES OF GARY D. GINSBERG, ESQ., Attorney for Plaintiff, Mount Laurel, New Jersey, BY: BRIAN P. O'CONNOR, ESQ., BUCKLEY & THEROUX, LLC, Attorneys for Defendant JEFFREY SALIZZONI, MD., Princeton, New Jersey, BY: SEAN BUCKLEY, ESQ., STAHL & DeLAURENTIS, P.C., Attorneys for Defendant DR. ROBERT TERRANOVA, Mount Laurel, New Jersey, BY: DOMINIC DeLAURENTIS, ESQ., PAARZ, MASTER, KOERNIG & CRAMMER, ESQS., Attorneys for Defendants, Pleasantville, New Jersey, BY: CHARLES KOERNIG, ESQ.

Proceedings

STIPULATIONS 3

[2]IT IS HEREBY STIPULATED AND AGREED by

[3]and between (among) counsel for the

[4]respective parties hereto, that all rights

[5]provided by'the C.P.L.R., including the-

[6]right to object to any question, except as

[7]to form, or to move to strike any testimony

[8]at this (these) examinations(s), are

[9]reserved, and, in addition, the failure to

[10]object to any question or to move to strike

[11]any testimony at this (these) examination(s)

[12]shall not be a'bar or waiver to make such

[13]motion at, and is reserved for the trial of

[14]this action;

[15]IT IS FURTHER STIPULATED AND AGREED by

[16]and between (among) counsel for the

[17]respective parties hereto, that this (these)

[18]examination(s) may be sworn to by the

[19]witness(es) being examined, before a Notary

[20]Public other than the Notary Public before

[21]whom this (these) examination(s) was (were)

[22]begun; but the failure to do so, or to

[23]return the original of this (these)

[24]examination(s) to counsel, shall not be

[25]deemed a waiver of the rights provided by

[1]4

[2]Rules 3116 and 3117 of the C.P.L.R., **[*3]** and

[3]shall be controlled thereby;

[4]IT IS FURTHER STIPULATED AND AGREED by

[5]and between'(among) counsel for the

[6]respective parties hereto, that this (these)

[7]examination(s) may be utilized for all

[8]purposes as provided by the C.P.L.R.;

[9]IT IS FURTHER STIPULATED AND AGREED by

[10]and between (among) counsel for the

[11]respective parties hereto, that the filing

[12]and certification of the original of this

[13](these) examination(s) shall be and the same

[14]hereby are waived;

[15]IT IS FURTHER STIPULATED AND AGREED by

[16]and between (among) counsel for the

[17]respective parties hereto, that a copy of

[18]the within examination(s) shall be furnished

[19]to counsel representing the witness(es)

[20]testifying, without charge.

[21]

[22]

[23]

[24]

[25]

[2]G E O R G E V I N C E N T

[3]D I G I A C I N T O, M. D.,

[4]the witness herein, after first having

[5]been duly sworn by Karen L. Roth, -a

[6]Stenotype Reporter and Notary Public

[7]in and for the State of New York, was

[8]examined and testified as follows:

[9]EXAMINATION BY

[10]MR. BUCKLEY:

[11]Q State your name for the record,

[12]please.

[13]A George Vincent DiGiacinto.

[14]Q **[*4]** What is your current address?

[15]A 425 West 59th Street, New York,

[16]New York 10019.

[17]MR. DeLAURENTIS: Mark

[18]this, please.

[19](Whereupon, the above

[20]referred to document, being a CV was

[21]marked as Defendant's Exhibit S-1 for

[22]identification, as of this date.)

i

[23](Whereupon, the above

[24]referred to document was marked as

[25]Defendant's Exhibit S-2 for

[2]identification, as of this date.)

[3]Q Good morning, Doctor. My name

[4]is Sean Buckley and I am from the law firm

[5]of Buckley & Theroux. We represent -

[6]Dr. Salizzoni in this matter which you have

[7]been named as a party.

[8]Have you ever had your

[9]deposition taken before?

[10]A Yes.

[11]Q Approximately how many times?

[12]A Fifteen probably.

[13]Q Is that both as an expert, or as

[14]a defendant position solely?

[15]A Both.

[16]Q Since you've had your deposition

[17]taken 15 times, I'm sure that you've heard

[18]the instructions given at prior depositions.

[19]I ask that you listen to my

[20]instructions carefully to insure that

[21]there's no misunderstanding at a later date

[22]of the significance **[*5]** of your testimony here

[23]today. The first instruction that I have is

[24]that you verbalize all your answers and you

[25]not give nods or gestures.

[2]Do you understand that?

[3]A Yes.

[4]Q My second instruction is:

[5]Everything you say today is under oath or

[6]under penalty of impeachment.

[7]Do you understand that?

[8]A Yes.

[9]Q If you don't understand any

[10]question that I ask you, please let me know

[11]and I will rephrase the question for you.

[12]Do-you understand that?

[13]A Yes.

[14]Q Otherwise I'll assume that you

[15]understood my answer.

[16]Please wait for me to finish my

[17]questions before you give your answer so

[18]that the court reporter can take it down.

[19]If you interrupt the question she can't hear

[20]us both at the same time. Likewise, if I

[21]interrupt you in the midst of one of your

[22]answers she won't be able to get that as

[23]well.
I

[24]Do you understand that?
I 25 A Yes.

[2]Q Doctor, you mentioned you've had

[3]your deposition taken both as a Defendant

[4]and expert witness.

[5]-Have you ever been named as_a

[6]Defendant in a medical malpractice **[*6]** case?

[7]A Yes.

[8]Q How many times?

[9]A Oh, probably about 15 times.

[10]Q Fifteen times?

[11]A Yes.

[12]Q Can. you tell me how many years

[13]have those 15 cases spanned?

[14]A Twenty-two years.

[15]Q Twenty-two years.

[16]Have any of those cases settled?

[17]A Yes.

[18]Q Approximately how many have
.1

[19]settled?

[20]A One.

[21]Q What did that case involve?

[22]A Aneurysm surgery.

[23]Q Have any of the other cases, the

[24]other 14 cases that you've been involved

[25]with, involved the issues in this case,

[2]discitis?

[3]A Yes.

[4]Q How many have involved discitis?

[5]A Just one.

[6]Q Did you give a deposition in

[7]that case?

[8]A Yes, I did.

[9]Q What was name of that case?

[10]A John Merrit was the Plaintiff.

[11]Q Was it John Merrit versus Saint

[12]Luke's Roosevelt Hospital, among others?

[13]A I assume.

[14]Q Who was your attorney in that

[15]case?

[16]A Joe Rendy (phonetic.

[17]Q Do you know what firm he is

[18]with?

[19]A Now **[*7]** he's with Rendy, Ryan, et

[20]al, in White Plains. He was with a

[21]different firms.

[22]Q Bower & Gardner?

[23]A No. It was a White Plains firm.

[24]Q Who was the Plaintiff's attorney

[25]in that case?

[2]A No idea.

[3]Q Do you know what happened with

[4]that case?

[5]A ?I was dropped from the case and

[6]it was settled for $ 50, 000.

[7]Q How much?

[8]A $ 50, 000.

[9]Q That is the only case in which

[10]you've been named as a Defendant that

[11]involved discitis?

[12]A To-the best of my recollection,

[13]yes.

[14]Q Was there an allegation in that

[15]case of an alleged failure to timely

[16]diagnose discitis?

[17]A No.

[18]Q What was the allegation?

[19]A That I caused the discitis.

[20]Q That you caused --

[21]A You're making me remember almost

[22]20 years ago.

[23]Q Did you keep a copy of your

[24]deposition in that case?

[25]A I think I reviewed it and sent

[2]it back. I know I don't have it.

[3]Q Have any of the other cases that

[4]you've been involved with as a Defendant,

[5]involved any type **[*8]** of the allegation of

[6]alleged failure to timely diagnose any type

[7]of spinal infection?

[8]A No.

[9]Q You mentioned you've also had

[10]your deposition taken as an expert witness.

[11]In any case in which you've been

[12]an expert witness and gave a deposition, did

[13]any case involve alleged failure to diagnose

[14]discitis, besides this one?

[15]A Yes.

[16]Q Do you recall the name of that

[17]case?

[18]A Yes, but I can't say it.

[19]A David Robinson.

[20]Q Not the basketball player?

[21]A Yeah, you're right.

[22]Q Can you tell me if that case is

[23]ongoing?

[24]A Yes.

[25]Q Who is the Plaintiff's attorney
Page 12, 13 & 14 Missing from Original Document

[2]impairments and disability?

[3]A No.

[4]Q So he had a complete recovery?

[5]A 'I haven't seen him, but my

[6]understanding is that he's had a complete

[7]recovery, yes. '

[8]Q Was he eventually operated on

[9]for the discitis?

[10]A Yes.

[11]Q What is the length of the

[12]alleged delay?-

[13]How many days, weeks?

[14]A Ball park, two or three months. **[*9]**

[15]Q Two to three month delay?

[16]A Yes.

[17]Q Besides MRIs being taken on

[18]David Robinson, were there any CAT scans or

[19]bone scans taken?

[20]A (No response).

[21]Q Or plain x-ray films?

[22]A Plain x-rays. No CAT scans and

[23]no bone scans.

[24]Q Was it your opinion in that case
I

[25]that plain x-rays failed to reveal any

[2]evidence of osteomyelitis or any type of

[3]bony changes?

[4]A That's correct.

[5]Q " Why weren't CAT scans or borle

[6]scans taken in that case?

[7]A It was chosen to follow the

[8]patient with MRI scans and sedimentation

[9]rates, all of which were normal. It was

[10]felt that those two in conjunction ruled out

[11]discitis.

[12]Q Was discitis eventually

[13]diagnosed by someone?

[14]A Yes.

[15]Q Who?

[16]A He had a -- stopped seeing me in

[17]September of whatever year it was. He had

[18]had an MRI scan done two days before my last

[19]visit, which I only had a report of, which

[20]was reported as normal. Subsequent review

[21]of that MRI scan by physicians at John's

[22]Hopkins, where he was taken for treatment, **[*10]**

[23]clearly revealed evidence of discitis.

[24]Q Did John's Hopkins physicians do

[25]a subsequent review of the prior MRI as

[2]well?

[3]A I don't know.

[4]Q With respect to your deposition

[5]transcript, -do you have any idea as to w.he, n

[6]you would expect to be receiving it?

[7]A I would guess soon.

[8]MR. BUCKLEY: I'm going

[9]to make a demand that the deposition

[10]transcript be forwarded to us when you

receive it and I'll send a follow-up

letter requesting it.

MR. O'CONNOR: Sure.

Q Doctor, as with respect to David

Robinson, were you the attending physician

in charge of his care at the time?

A Yes.

Q What were his complaints when

you were following him?

A Initially he came having failed

a percutaneous disc excision. It didn't

help his problem subsequent with the form, a

microdiscotomy on him. He had a pain of a

ridicular nature in a post-op period. He

never developed any significant back pain

and had a normal neurological examination by

myself and several other people throughout

his course.

Q **[*11]** -Did he have persistent pain-of

a ridicular nature postoperatively?

A It tended to fluctuate up and

down. It was fairly consistent. Not in

intensity, but it was there the greater

majority of the time.

Q When you say ridicular in

nature, you're talking about the lower back?

A Ridicular means going into the

leg, not low back.

Q Was it determined or thought of

during the treatment that the patient had a

[17]pain that was radiating from a low back area

[18]into the leg?
.a.

[19]MR. O'CONNOR: Objection.

[20]THE WITNESS: I can

[21]answer?

[22]MR. O'CONNOR: You'can

[23]answer.

[24]A I thought it was coming from the

[25]nerve root in the lower back, but there was

[2]no back pain. There was leg pain, but I did

[3]suspect it was from the nerve path level of

[4]the disc where he had the surgery.

[5]Q -What was the level of the disc

[6]again?

[7]A I think L5-S1. If not then

[8]L4-5.

[9]Q' Of course L4-L5 is where the

[10]discitiss in this case was coming from?

[11]A Correct.

[12]MR. O' CONNOF(: Just for

[13]the record, when you say this case --

[14] **[*12]** MR. BUCKLEY: I mean the

[15]Beal case.

[16]MR. O'CONNOR: Right.

[17]Q I want to talk a little about

[18]the Robinson case in more detail.

[19]Do you have the records on

[20]Mr. David Robinson still in your position?

[21]A Actually they're not in my

possession. They're still held over-at

Aaronson and Rappaport.

Q Did you have a copy in

preparation for your deposition of those

records?

A I think I had my original

records.

Q Are the original records now-at

the law firm that's representing you?

A I believe so.

Q Do you expect to have them

returned at some point in time?

A I would presume so.

Q When was the treatment and care

being rendered to Mr. Robinson that's at

issue?

Do you recall the year?

A '96 is a reasonable guess.

Q You were the attending

neuroradiologist?

A Neurosurgeon.

Q I'm sorry.

A Quite all right.

Q Was there anyone else following

the patient from a pulmonary standpoint or

from a neurology standpoint?

A No.

Q **[*13]** So you were the sole attending

at the time?

A Yes.

[4]MR. O'CONNOR: I'm going

[5]to place an objection at this time.. I

[6]think certainly any allegation about

[7]the litigation are discoverable, but

[8]getting into the care and treatment of

[9]this gentlemen without an

[10]authorization or discussing his

[11]medical records, I think it is

[12]inappropriate to go into his care. If

[13]you want to ask the doctor questions

[14]about the lawsuit, obviously that's

[15]discoverable, I don't know

[16]Mr. Robinson. There's no

[17]authorization to discuss his

[18]treatment. I don't think he's

[19]authorized Dr. DiGiacinto to discuss

[20]his treatment, and that's my

[21]objection.

[22]MR. BUCKLEY: I object to

[23]your objection. Once a lawsuit is

[24]filed, at least in New Jersey, and I

[25]believe in New York as well, the

[2]physician-patient privilege is waived.

[3]I only have a limited number of

[4]questions in this area, but I want to

[5]find 'out the circumstances. I want to

[6]find out if there's enough analogy in

[7]this case that we should do a search

[8]for materials.

[9]MR. O'CONNOR: I

[10]understand.

[11]I think you should limit **[*14]**

[12]your questions to the allegations in

[13]the lawsuit as opposed to treatment

[14]directly. You could be violating a

[15]privilege. That's all.

[16]MR. BUCKLEY: I disagree.

[17]Q Just to make it clear: There

[18]were no infectious disease consultants or

[19]neurology or pulmonary consultants brought

[20]into the case?

[21]A During the time I was caring for

[22]the patient, that's true.

[23]Q When the consistent pain

[24]continued, did you ask for any type of

[25]consult?

[2]A Other than laboratory work and

[3]CAT scans, if that is --

[4]I had him seen by pain

[5]management.-

[6]Q Was that rehabilitation

[7]management?

[8]A No. For epidural steroids.

[9]Q, When you were treating him, you

[10]mentioned there were at least two MRIs

[11]performed?

[12]A Three.

[13]Q Three?

[14]A Yes.

[15]Q Did the neuroradiologist

[16]interpret those MRIs?

[17]A Yes.

[18]Q When the radiologist or

[19]neuroradiologist interpreted those MRIs,

[20]were you relying on the reports of that

[21]radiologist?

[22]A I officialized the reports of

[23]all three. I saw the actual **[*15]** films on two of

[24]the studies, the first and second but not

[25]the third.

[2]Q Did you defer to the

[3]radiologist or did you rely upon your own

[4]interpretation?

[5]A -My interpretation of the first

[6]and second corresponded with the

[7]neuroradiologist.

[8]I didn't have an opportunity to

[9]see the third until sometime -- I stopped

[10]taking care of the patient until -- until

[11]the lawsuit was filed.

[12]Q Just for my edifidation: When

[13]the patient went to John's Hopkins, did he

[14]have surgery for the discitis?

[15]A Yes.

[16]Q You have also been an expert

[17]witness before; am I correct?

[18]A Yes.

[19]Q How many cases have you reviewed

[20]approximately over the 22 years you've been

[21]in practice?

[22]A Couple of hundred probably.

[23]Q Have any of those cases involved

[24]allegations of failure to timely diagnose

[25]discitis?

[2]A That's a tough one. Let me

[3]rummage through my head. I don't know if I

[4]can give you an accurate answer unless I can

[5]think of a particular -- I don't think I can

[6]honestly answer the question. Too many

[7]things that **[*16]** I have to go through.

[8]One doesn't stand out, but I

[9]would be hesitant to say no.

[10]Q I can understand that.

[11]If I used a broader category and

[12]said were there any cases that you reviewed

[13]where there were allegations to timely

[14]diagnose spinal infections in general?

[15]A Same answer.

[16]Q You mentioned you reviewed a

[17]couple hundred cases in the 22 years you've

[18]been doing expert work --

[19]A Okay. Ask the question.

[20]Q Do you recall something?

[21]A No.

[22]You're asking the questions I'll

[23]answer them.
24. Go ahead. Ask the question.

[25]Q If you recall something during

[2]the deposition, you want to tell me that

[3]your recollection is refreshed, tell me so.

[4]In the 22 years that you've been

[5]reviewing cases, can you tell me the

[6]breakdown of Plaintiffs versus Defendants?

[7]A Probably 75 percent Defendants,

[8]25 percent Plaintiffs.

[9]Q Can you tell me if you've ever

[10]reviewed any cases for Tom Moore?

[11]A No.

[12]Q Have you reviewed any cases for

[13]the firm Gerber, Gerber & Condon (phonetic)?

[14]A I don't believe **[*17]** so.

[15]Q Steve McCall?

[16]A No.

[17]Q How did you come to get involved

[18]in this case, do you know?

[19]A This case?

[20]Q Yes.

[21]A Mr. Ginsberg's office contacted

[22]me.

[23]Q Had he ever used you in any case

[24]before?

[25]A I think I've seen more than one

[2]case from the firm. I don't know if this is

[3]the first or the second. I think there were

[4]two.

[5]Q Up to the present date, meaning

[6]today, you've seen approximately two cases

[7]from Mr. Ginsberg and Mr. O'Connor's firm?

[8]A I believe that's correct.

[9]Q Do you know how they initially

[10]got your name?

[11]A Actually I don't.

[12]Q Is-your name included among any

[13]medical expert review organizations as an

[14]individual who would be interested or

[15]available for expert review work?

[16]THE WITNESS: I have to

[17]make a phone call.

[18](Brief recess taken.)

[19](After recess.)

[20]Q I think I was asking you about

[21]medical review organizations.

[22]Have you ever --

[23]A I'm not involved in any of

[24]those.

[25]Q Do you know a Dr. Paul

[2]Bloomberg? **[*18]**

[3]A No.

[4]Q When was the last time you

[5]testified in trial?

[6]A About two or three months ago.

[7]Q Where was that?

[8]A That was in Staten Island.

[9]Q Who were you appearing on behalf

[10]of?

[11]A I don't remember.

[12]Quite honestly, the names

[13]disappear, don't get stored in the memory

[14]bank very well.

[15]Q Can you tell me, was it a

[16]plaintiff or defendant?

[17]A It was a defendant.

[18]Q In a medical malpractice case?

[19]A It was a medical malpractice

[20]case.

[21]Q Mr. O'Connor was kind enough to

[22]give me a copy of your CV before we began.

[23]It's marked as S1.

[24]Can you take a look at it and

[25]tell me if it's up to date?

[2]A There are, I think, two

[3]articles -- one article that's not listed in

[4]this.

[5]Q 'What is name of that article?

[6]A It has to do with open heart

[7]surgery and aneurysm surgery simultaneously.

[8]Q I don't need to know the name.

[9]Is there anything in your

[10]bibliography, any article that you think has

[11]any relevance with this case, meaning the

[12]Beal **[*19]** matter?

[13]A (Witness examines document.)

[14]There's a relative interaction

[15]with, the authors are Hughes, DiGiacinto and

[16]Sundaresan, S-U-N-D-A-R-E-S-A-N, treatment

[17]of cervical osteomyelitis.

[18]Q Can you just put a check mark

[19]next to the that article?

[20]A (Witness complies).

[21]Q Any others?

[22]A That's it.

[23]Q That is it?

[24]A Yes.

[25]Q Have you ever specifically

[2]written on the condition discitis?

[3]A No.

[4]Q With respect to your background,

[5]you graduated from Harvard Medical School;

[6]am I correct?

[7]A Yes.

[8]Q Are you board certified in

[9]neurosurgery?

[10]A Yes, I am.

[11]Q Have you ever been re-

[12]certified?

[13]A There is no re-certification

[14]requirement.

[15]Q Is it available?

[16]A No.

[17]Q So you couldn't become

[18]re-certified if you wanted to?

[19]A Correct.

[20]Q You had your residency in

[21]neurological surgery at Neurological

[22]Institute of New York?

[23]A Yes.

[24]Q What institution is that

[25]affiliated with?

[2]A **[*20]** Columbia Presbyterian Medical

[3]Center.

[4]Q After leaving Columbia's

[5]residency at the neurological instituter -

[6]what did you then do?

[7]A I went into the private practice

[8]of neurosurgery at Saint Luke's Roosevelt

[9]Hospital, Columbia Presbyterian and Harlem

[10]Hospital.

[11]Q We're here in your office, which

[12]I guess are pant of Saint Luke's Roosevelt.

[13]Have your offices been here

[14]since you've been in private practice?

[15]A No.

[16]Q Where else?

[17]A There were three different sites

[18]on the east side. Most recent before this

[19]was 53 East 57th Street.

[20]Q I notice that you were one time

[21]an attending at Lenox Hill Hospital?

[22]A Yes. I am actually an attending

[23]there again.

[24]Q Was there any special reason why

[25]you left Lenox Hill at one time?

[2]A Just too busy elsewhere.

[3]Q Has your privilege to practice

[4]medicine ever been suspended, limited or

[5]revoked?

[6]A No.

[7]Q Have your hospital privileges

[8]ever been limited in any way?

[9]A No.

[10]Q You mentioned here you were Phi

[11]Beta **[*21]** Kappa at Columbia College undergrad and

[12]Magna Cum Laude undergrad.

[13]A Yes.

[14]Q Did you have any special honors

[15]while at medical school?

[16]A No.

[17]Q Can you tell me, other than the

[18]one case involving Mr. Robinson, have you

[19]ever treated discitis or been involved with

[20]the diagnosis of discitis?

[21]A Yes.

[22]Q How many times per year' would

[23]you see the condition of discitis?

[24]A I believe by my count, seven

[25]times in 22 years.

[2]Q So you would agree it's a fairly

[3]rare condition?

[4]A Yes.

[5]Q As a neurosurgeon, would you-

[6]probably see the condition more than, say,

[7]an internist or sub-specialist in internal

[8]medicine?

[9]A I don't think I would be able to

[10]answer that question.

[11]Q Besides Mr. Robinson, do you

[12]remember any details of the other cases of

[13]patients who had discitis?

[14]A Scanty, yes.

[15]Q Did you follow any of those

[16]other ones in follow-up, as opposed

[17]Mr. Robinson, whether he was seen in John's

[18]Hopkins?

[19]A Yes.

[20]Q In these other cases, **[*22]** did any of

[21]the others develop impairment or discuelli

[22](phonetic)?

[23]A Yes.

[24]Q All were cured of the condition?

[25]A Yes.

[2]Q With respect to the condition of

[3]discitis, are you familiar with any

[4]literature concerning that which you

[5]consider to be generally reliable?

[6]A No.

[7]Q Are there any neurosurgical

[8]texts which you consider to be generally

[9]reliable?

[10]A As authoritative, no.

[11]Q I am not asking authoritative.

[12]I'm asking generally reliable.

[13]MR. O'CONNOR: Objection

[14]to the form. You can answer.

[15]A I'm not sure what generally

[16]reliable means, that's why I'm not sure how

[17]to answer the question.

[18]Q Okay.
a

[19]Do you teach at the present

[20]time?

[21]A Yes.

[22]Q Do you teach residents or

[23]medical students?

[24]A General surgery residents.

[25]Q Do you have any of them refer to

[2]any texts when you teach them?

[3]A No.

[4]Q Do you have them refer to any

[5]specific journals when you're teaching the-m?

[6]A No.

[7]Q What is your teaching consist **[*23]**

[8]of?

[9]A We have general surgery

[10]residents who rotate on and cover

[11]neurosurgery patients. That, general

[12]approach for them is to give them an idea of

[13]how to handle neurosurgical emergencies.

[14]They're not neurological residents, but

[15]rather having to evaluate a patient with a

[16]back problem with a head injury in an

[17]emergency situation verses a chronic

[18]situation.

[19]Q Would these be physicians that

[20]would be covering your patients at various

[21]times?

[22]A Yes.

[23]Q Other than clinical training and

[24]management for neurological emergencies, do

[25]you do any other type of teaching, say

[2]didactic lectures in classes?

[3]A I will a couple of times give

[4]the ACLS course in neurotrauma to a variety

[5]of people, residents, nurses, etcetera, -an-d

[6]occasionally be asked to give a lecture on

[7]one topic or other.

[8]Q With neurological residents,

[9]have you outlined essentially the training

[10]and teaching you gave them?

[11]A Yes.

[12]Q Whore are they from?

[13]A Saint Luke's Roosevelt Hospital

[14]Center.

[15]Q Is that presently **[*24]** affiliated

[16]with Columbia's residency?

[17]A There's no relationship with

[18]residency. We are a teaching hospital of

[19]Columbia.

[20]Q Do you do any teaching

[21]whatsoever to neurosurgical residents at the

[22]present time?

[23]A No.

[24]Q Other than the one article you

[25]mentioned to me, it would be fair to say

[2]that your bibliography is up-to-date?

[3]A Yes.

[4]Q You prepared a report in this

[5]case dated'October 20, 1999?

[6]A Yes.

[7]Q Did you receive any cover

[8]letters prior to that report?

[9]A I'm sure I did.

[10]Q Do you have your file with you

[11]here today?

[12]A (indicating).

[13]MR. O'CONNOR: I looked

[14]through there. There's no cover

[15]letters.

[16]MR. BUCKLEY: I'll accept

[17]your representation.

[18]Q Would it be possible that you

[19]might have discarded the cover letters?

[20]A Yes.

[21]MR. BUCKLEY: The file,

[22]we'll have that marked as S3, ' that big

[23]box over there. I Just ask for a

[24]sticker to be put on it.

[25](Whereupon, the above

[2]referred to document, being a box was

[3]marked as Defendant's **[*25]** Exhibit S3 for

[4]identification, as of this date.)

[5]Q Doctor, we've had marked as-S3,

[6]is that the entire contents of your file as

[7]it now exists?

[8]A Yes.

[9]Q So there wouldn't be any letters

[10]located anywhere else in this office or at

[11]home to the best of your knowledge?

[12]A That is correct.

[13]Q Is it fair for me to say

[14]sometimes you discard cover letters when you

[15]receive them?

[16]A Not usually.

[17]It's not inside one of the --

[18]MR. O'CONNOR: It might

[19]be. You're welcome to take a look.

[20]MR. DeLAURENTIS: Let me

[21]look.

[22]Q Do you recall if you were given

[23]a specific request when you were sent the

[24]materials in this case?

[25]A Other than review and render an

[2]opinion, no.

[3]Q Doctor, when reading your report

[4]dated October 20th, 1999, it makes no

[5]mention of deviations in that report. F

[6]take it you're not offering any opinions of

[7]deviation by the pulmonologist in this case

[8]nor the cardiologist?

[9]A I don't know how medically to

[10]answer that question. I'm not sure. Help

[11]me. I don't know how **[*26]** to answer that
e
a

[12]question.

[13]Q I note -

[14]A I don't want to say no and

[15]exclude it, if that's what I'm doing.

[16]Q The way I'm asking this

[17]question, in your report you make no

[18]statement as to deviations on the parts of

[19]the pulmonologist or the neurologist; am I

[20]correct, you don't say they deviated from

[21]the standards of care?

[22]MR. O'CONNOR: Objection.

[23]A I make statements about

[24]attempts to diagnose and firm up diagnosis.

[25]1 don't use the term deviation of standard

[2]of care, if that's what the question is.

[3]I'm sorry.

[4]MR. O'CONNOR: Off the

[5]record.

[6](Whereupon, a discussion

[7]was held off the record.)

[8]Q I think Mr. DiGiacinto and

[9]Mr. Koernig and I were discussing this this

[10]morning. In opposition to Mr. DeLaurentis'

[11]motion to bar Dr. DiGiacinto, he was going

[12]to be making a causation to the court.

[13]Whether or not an MRI should have been

[14]performed earlier, I don't know if that

[15]falls into a liability type of opinion or

[16]not, but just so we're clear, the only type

[17]of thing that could potentially be

[18]considered criticism **[*27]** would be this opinion

[19]of MRI being done earlier.

[20]MR. KOERNIG: Yes. His

[21]report doesn't specifically name any

[22]particular department with respect to

[23]cause and care. He's a causation

[24]expert.

[25]Q Let's get to that opinion.

[2]A Sure.

[3]Q Did you review Dr. Barnish's

[4](phonetic) progress notes in this case?

[5]A Which one is Dr. Barnish?

[6]Q As you sit here today, do you

[7]know who Dr. Barnish is?

[8]A Either the infectious disease

[9]doctor or the neurologist, I believe. I get

[10]the two switched back and forth and I don't

[11]want to guess.

[12]Q That's okay.

[13]Do you have the chart available

[14]to you for the omission in question, the

[15]last omission?

[16]A I can state in review of my

[17]report that Dr. Terranova is a neurologist

[18]and Dr. Barnish I believe was the infectious

[19]disease doctor.

[20]Q I'm asking now specifically

[21]referring to Dr. Barnish's February 1, 1994

[22]note.

[23]MR. O'CONNOR: What date?

[24]MR. BUCKLEY: February

[25]1st, 1994, if I have the right date.

[2]MR. KOERNIG: You have the

[3]right year.

[4]A Yeah, **[*28]** it's in here.

[5]MR. O'CONNOR: It's

[6]contained in this binder. That's

[7]February. '

[8]A What is the date?

[9]Q February 1st, 1994.

[10]A Can I see what --

[11]You don't have it in front of

[12]you.

[13]Q I have an outline of it.

[14]A I wanted to see if I could

[15]recognize it.

[16]There's a note dated 1/31/94,

[17]infectious disease, bacteremia, bacteria, no

[18]growth --

[19]There's a note 2/1/94, 1:45 p.m.

[20]Blood cultures as of 1/29 still positive, so

[21]hinkman placement must be postponed.

[22]Patient too big for MRI. Will try to get CT

[23]of lumbar spine instead.

[24]Q I want you to stop right there.

[25]What is your understanding of

[2]who were the physicians who ordered the MRI

[3]to begin with?

[4]A Either Dr. Barnish or

[5]Dr. Terranova.

[6]Q What is the reason that you

[7]understand that that MRI was ordered to

[8]begin with?

[9]A To rule out epidural abscess.

[10]Q Would you agree with me there

[11]was never an epidural abscess found in this

[12]case?

[13]A Correct.

[14]Q If Dr. Barnish ordered the MRI

[15]and then wrote this subsequent **[*29]** note that you

[16]just read regarding February 1, 1994, what

[17]is your understanding of what he was telling

[18]the attending physicians when he wrote that

[19]subsequent note?

[20]MR. O'CONNOR: I just

[21]object.

[22]You can answer.

[23]A Well, it speaks for itself.

[24]Patient too big for MRI. I don't know what

[25]MRI he was referring to, but he's saying

[2]would try to get CT of lumbar spine instead.

[3]Q If Dr. Barnish wrote this note,

[4]and other attending physicians relied upon

[5]it, would it be permissible for attending

[6]physicians to rely on that note concerning

[7]his views about per following a CAT scan

[8]instead of MRI?

[9]MR. O'CONNOR: Objection.

[10]A I think an at attending

[11]physician would have to reach his own

[12]conclusion about that.

[13]Q What is your conclusion as to

[14]what the consultant is telling the attending

[15]physician?

[16]MR. O'CONNOR: Objection.

[17]A I'm not sure if you mean based

[18]on my opinion of the chart and possible

[19]diagnosis, or just reading the note.

[20]Q Just reading the note.

[21]A Just reading the note,

[22]Dr. Barnish seems to say don't **[*30]** get the MRI

[23]scan because it's going to be difficult, or

[24]if that were the only MRI scan available,

[25]impossible, let's get a CT scan and see how

[2]that helps us.

[3]Q If that was what Dr. Barnish was

[4]saying in that note, and he was telling the

[5]attending pulmonologist, did the attending

[6]pulmonologist have a right to rely on

[7]Dr. Barnish's opinion in that regard if we

[8]assume that either Dr. Barnish or his

[9]partner were the ones who initially

[10]recommended the MRI to begin with, ?

[11]MR. O'CONNOR: Objection

[12]to the form.

[13]A I think, again, that any other

[14]attending or any other physician involved

[15]with the patient would read the consult, if

[16]he agreed with the approach, ie, don't get

[17]the M'RI scan, he agreed, but he's certainly

[18]allowed to disagree and say, well no I don't

[19]agree with that.

[20]Certainly what 'Dr. Barnish is

[21]saying is exactly what's written in the

[22]chart. Whether another physician should

[23]agree has to include what the other

[24]physician thought was going on as well.

[25]Q I want you to assume in my

[2]hypothetical that the physicians, Dr.

[3]Condalucci **[*31]** (phonetic), Dr. Barnish's

[4]partner, and who Dr. Barnish was consulting

[5]with were the attending pulmonologists, -I
I

[6]want you to assume neither Dr. Agia nor

[7]Dr. Salizzoni thought -- I want you to

[8]assume they were relying upon Dr. Barnish
I

[9]and Dr. Condalucci's opinions as an

[10]infectious disease consultant. I want you
i

[11]to assume that when the February 1st, 1994
s

[12]note came in, that Dr. Agia and

[13]Dr. Salizzoni relied upon that to come to

[14]the determination that an MRI wasn't needed

[15]and that a CAT scan would be a suitable

[16]alternative.

[17]Assuming those facts to be true,

[18]would it be appropriate for the attending to

[19]rely on the --

[20]MR. O'CONNOR: Objection.

[21]It sounds to me you're

[22]asking questions on deviation.

[23]MR. BUCKLEY: Quite

[24]frankly it's a real tightrope that

[25]you're putting me in and a real

[2]awkward position. Whether or not

[3]that's a deviation or not, I don't

[4]know whether or not a judge will allow

[5]general allegation an MRI should have

[6]been performed sooner, we'll say that

[7]meets a deviation or not. I have to

[8]protect my client.

[9]MR. O'CONNOR: Sure. My **[*32]**
E
k 10 objection is noted.
k
f

[11]A The one part of your

[12]hypothetical which wasn't clear was just how

[13]unconvinced your clients were about the
I

[14]possibility of an epidural abscess, because

[15]I think you used the term like they didn't

[16]really think there was an epidural abscess

[17]there.

[18]If they didn't have a strong
.:

[19]opinion and their opinion basically
I

[20]corresponded with the doctor, who perhaps

[21]should be more qualified, then I don't think
i

[22]that there's a problem.

[23]Q I want you to assume further

[24]that the attending neurologist made clear

[25]that he doubted highly an epidural abscess.

[2]Could the pulmonologist rely

[3]upon that opinion in coming to the

[4]conclusion that a CAT scan was a suitable

[5]alternative? -

[6]MR. O'CONNOR: Objection.

[7]I don't believe that the

[8]neurologist stated anything but an MRI

[9]would be appropriate and he doubted

[10]something that, in time, proved to be

[11]true. So you have to take that with a

[12]grain of-salt.

[13]Q Getting back to my question --

[14]A I'm really trying.

[15]Q If the neurologist wrote in a

[16]progress **[*33]** note that he doubted epidural

[17]abscess, is that something attending

[18]pulmonologists could rely upon?

[19]MR. O'CONNOR: Objection

[20]to the form.

[21]A I think it's an incomplete

[22]statement he doubted it, because he still

[23]felt it needed to be ruled out. That's the

[24]problem I have with the question.

[25]1 think the pulmonologist can

[2]listen to that and rely on it, but it's not

[3]a statement that's not there. I have to

[4]prove it, it's not there is how I interpret.

[5]Q In 1994, was a CAT scan

[6]considered a test that could help in ruling

[7]out an epidural abscess?

[8]A It could potentially help in

[9]ruling it in or out, yes.

[10]Q Am I correct in saying that you

[11]are offering no opinions as to deviations

[12]from accepted standards of medical practice

[13]in this case, other than this alleged

[14]failure to get an MRI sooner?

[15]A You're --

[16]THE WITNESS: Off the

[17]record.

[18](Whereupon, a discussion

[19]was held off the record.)

[20]A You're asking me legal things

[21]and I don't know how to answer those.

[22]MR. O'CONNOR: You could

[23]just ?? I'm not telling you **[*34]** what to

[24]say, but we're not going to ask him to

[25]testify outside of the four corners of

[2]his report. Is that fair enough?

[3]MR. BUCKLEY: That's fair.

[4]THE WITNESS: I'm not

[5]trying to be difficult.

[6]MR. KOERNIG: He's not a

[7]pulmonologist. We can go through this

[8]1, 000 ways and waste everybody's time.

[9]Q Doctor, would you agree with me

[10]that the infectious disease specialist,

[11]Dr. Barnish in any event, seemed to be

[12]comfortable in''ordering a CAT scan in lieu

[13]of an MRI to rule in the potential of an

[14]epidural abscess or rule it out?

[15]A Yes, I can.

[16]MR. O'CONNOR: Objection

[17]to the form.

[18]A Yes, I can agree with that
.6

[19]statement.

[20]Q You would agree with me that if

[21]he felt uncomfortable with a CAT scan being

[22]used for that purpose, he could have readily

[23]said that to any of the attending

[24]physicians?

[25]A I presume yes.

[2]Q Have you ever testified in court

[3]against a pulmonologist?

[4]A Not to my recollection.

[5]Q Have you ever written a report

[6]against a pulmonologist?

[7]A Not to my knowledge.

[8]Q **[*35]** Would you agree with me that you

[9]do not hold yourself out as an expert in the

[10]field of pulmonology?

[11]A That is correct.

[12]Q You are not aware of the

[13]standards of medical care for a board

[14]certified pulmonologist?

[15]A In a general way I would be

[16]aware, but in specifics related to

[17]pulmonologists; no, I would not.

[18]Q In this case a diagnosis of

[19]discitis was made, I think, on or about

[20]February 18th.

[21]Is that correct?

[22]A Yes.

[23]Q Surgery was not performed until
I

[24]at least five days later, February 23rd.

[25]Am I correct?

[2]A Yes.

[3]Q Did the delay of five days in

[4]any way increase the severity of the

[5]infection?

[6]A The infection is a progressive

[7]process, so it probably progressed for those

[8]five days as well, yes.

[9]Q Would an earlier operation on

[10]this patient have increased the chances of a

[11]better outcome for this patient?

[12]A Could you give me a time frame?

[13]Q Five days earlier.

[14]A Given the clinical picture,

[15]probably not.

[16]Q Why do you say that?

[17]A **[*36]** Five days earlier and for a day

[18]or two before that, the patient developed a

[19]significant neurological deficit. It did

[20]not substantially change over that five day

[21]period.

[22]Q You would agree with me'that the

[23]patient had on and off symptoms of back pain

[24]during the last hospital admission?

[25]A Yes.

[2]Q You would agree with me that to

[3]begin with, she was not a patient in a very

[4]good state of health?

[5]A Correct.

[6]Q She had diabetes; correct?

[7]A Yes.

[8]Q She was a steroid dependent

[9]asthmatic?

[10]A Yes.

[11]Q She was significantly obese; am

[12]I correct?

[13]A Yes.

[14]Q She had a number of significant

[15]preexisting health problems separate from

[16]this condition that's involved in this case;

[17]is that correct?

[18]A Yes.

[19]Q You would agree with me that

[20]even before this admission she had

[21]difficulty ambulating; am I correct?

[22]A Yes.

[23]Q You would agree with me that to

[24]a large extent, that was due to her

[25]preexisting conditions?

[2]A I don't know that I could **[*37]** agree

[3]with that statement.

[4]Q Do patients who are

[5]significantly or severely obese have

[6]problems ambulating at times?

[7]MR. O'CONNOR: Objection.

[8]A That's a general question that I

[9]would only answer on a case-by-case bases.

[10]Q What was your understanding of

[11]her ability to ambulate before this

[12]admission?

[13]A She was ambulating during the

[14]period from sometime in January on. She had

[15]significant back pain without a neurological

[16]deficit.

[17]Q How far was she able to walk?

[18]A I don't know.

[19]
Q You mentioned she was able to

[20]walk back and forth to the bathroom?

[21]A Yes.

[22]Q Are you aware of her having an

[23]inability to ambulate long distances of any

[24]nature?

[25]A No.

[2]Q When do you contend that this

[3]significant neurological deficit started?

[4]What date?

[5]A When it clinically demonstrated

[6]itself, in or around the time she was

[7]transferred to Cooper Hospital which was

[8]2/18. 1 believe it was 2/16 or 17 or 18,

[9]I'm sorry, I don't have the precise date in

[10]front of me.

[11]Q Are **[*38]** you saying that if an

[12]operation had been performed on 2/18, 1994

[13]at Cooper Hospital when she was transferred

[14]there on an emergency basis, it would not

[15]have changed the ultimate outcome?

[16]A Very probably not at that point.

[17]Q Is it possible that it could

[18]have changed the outcome at that point?

[6]

[19]MR. O'CONNOR: Objection

[20]to the form.

[2]1 A Yes

.

[22]Q Can you give me any type of

[23]percentage or possibility that it would have

i

[24]changed the outcome?

[25]MR. O'CONNOR: Objection.

[2]A Low percentage. I can't make up

[3]a number.

[4]Q Would it have been as high as 20

[5]percent possibility?

[6]A I don't know.

[7]Q Would it have been as high as a

[8]40 percent possibility?

[9]MR. O'CONNOR: Objection.

[10]A I don't know.

[11]Q Could it have been as high as a

[12]50/50 shot?

[13]MR. O'CONNOR: Objection.

[14]A I would probably be able to say

[15]no to that, it would not.

[16]Q Who was the physician who

[17]recommended the ultimate MRI, that MRI that

[18]was performed?

[19]A I would have to go through the

[20]record **[*39]** to tell you. I don't think I made

[21]note of it.

[22]Q Who is Dr. George Knod?'

[23]A I don't recall.

[24]Q Did you have any specific

[25]recollection of that name before I mentioned

[2]it?

[3]A No.

[4]Q Is it your position in this case

[5]that the significant neurological deficit

[6]that occurred originated sometime on

[7]February 18th, the day of the diagnosis?

[8]A I don't remember if it's the

[9]18th or the 17th or the 16th, so I would

[10]have to say around that time. The records

[11]may indicate the 18th, and I, can look.

[12]Q Would you look, please?

[13]A Sure.

[14](Witness examines documents).

[15]I have --- I'm noticing a gap in

[16]my records from 2/15 until 2/18, and I don't

[17]know why. But the notation that is on 2/18

[18]is by a name that I can't read and it's

[19]indicating, "patient tearful. We must find

[20]something. I'm numb. I can't move. I'm in

[21]excruciating pain."

[22]I don't know why those pages

[23]aren't here.

[24]Q Can you double check to make

[25]sure they're not in --

[2]A -- unless they're out of order.

[3]Q Yes.

[4]A **[*40]** (Witness examines documents.)

[5]The next note in the progress.

[6]is after the MRI scan and I don't see -- I

[7]don't see the 16th and the 17th, which maybe

[8]we can provide.

[9]Oh, wait. They are out of

[10]order. 16th, 17th -- on the 17th --

[11]What's the standing question?

[12]Q I asked you to check and tell me

[13]when in your opinion this severe

[14]neurological deficit had as it's onset. You

[15]told me it was either February 18th or two

[16]or three days before that and I asked you to

[17]look in your chart for when that started.

[18]A There's a neat 2/17/94 11:20

[6]

[19]a.m. pain in back, no strength, paresis.

[20]Cries out with lifting her legs. Unable to

[21]support her weight on the 17th. At that

[22]point the plan is MRI 2/18, so it appears to

[23]be documented in the charts as having become

[24]clinically obvious on the 17th and that's

[25]the only notation specifically about

[2]weakness and paresis, on the 17th.

[3]Q Am I correct that you're saying

[4]that the onset was February 17th?

[5]A The documentation in the chart

[6]was the 17th, yes.

[7]Q I want to ask you a question.

[8]With respect to **[*41]** the note

[9]reading, did you read any notes where any of

[10]the consultants in this case wrote there was
i

[11]no evidence of seeding (phonetic) in the
i

[12]joints, kidneys, etcetera?
I

[13]A I can't remember.

[14]Q What is meant by the term when

[15]an infectious disease specialist writes "No

[16]seeding in the joints"?

[17]A I assume the infection spreading

[18]to the joints, seeding the bacteria.

[19]Q Would that include the disc

[20]faces in joints?

[21]A It's not one that we would

[22]include. Joints are long bones. The disc

[23]isn't generally referred to as a joint.

[24]It's not really referred to as a joint.

[25]Q Do you know if it's ever used to

[2]refer to disc space area by physicians?

[3]MR. O'CONNOR: Objection.

[4]A In my experience I don't think

[5]someone would call a disc space a joint; no.

[6]Q I want you to refer to a

[7]February 9th, 1994 note, progress note by

[8]Dr. Barnish.

[9]A I think I have it.

[10]Q It refers to a temperature

[11]study.

[12]A There's a note, 2/9/94

[13]infectious disease, 10:30 a.m.

[14]Q Does Dr. Barnish indicate **[*42]** that

[15]he's the one signing the note?

[16]A It looks like Dr. Barnish's

[17]signature.

[18]Q It refers to a patient having a

[19]recent temperature spike?

[20]A Yes.

[21]Q Is in your opinion, was that

[22]recent temperature spike due to an ongoing

[23]discitis?

[24]A It certainly could be.

[25]Q At this point in time as of

[2]February 9th, do you believe this patient

[3]had an ongoing discitis?

[4]A Yes.

[5]Q What did this doctor,

[6]Dr. Barnish, indicate he believed the

[7]temperature spike was related to?

[8]A Probably related to, I think it

[9]says liver dysfunction.

[10]Q It says, "Probably related to

[11]the IV line."
n 12 A Oh, okay.

[13]Q I've had a lot more of an

[14]opportunity to review this.

[15]A I can see the line now that you

[16]say that.

[17]Q Would I be correct in saying at

[18]this point in time you believe an MRI should

[19]have been ordered?

[20]A On 2/9?
I

[21]Q On or about 2/9.

[22]A Yes.

[23]Q Would I be correct in saying

[24]that Dr. Barnish was not the one who

[25]ultimately ordered or recommended **[*43]** the
s

[2]February 18th, 1994 MRI?

[3]A You would --

[4]MR. O'CONNOR: Objection.

[5]A -- you would have to refresh my

[6]memory. I don't remember who ordered it. I

[7]would be glad to accept your representation

[8]of who did.

[9]MR. O'CONNOR: Did you say

[10]ordered or recommended?

[11]MR. BUCKLEY: Either/or.

[12]He didn't do either.

[13]Q Now, where was the discitis in

[14]this case?

[15]A L4-L5.

[16]Q Are you aware of Dr. Agia having

[17]a discussion with the neurosurgeon Rushdan

[18](phonetic) at Cooper on --

[19]A I believe there's a note to that

[20]effect indicating that someone spoke to

[21]somebody at Cooper Hospital.

[22]Q In a case of discitis with

[23]severe neurological symptoms of recent

[24]origin, is it a surgical emergency to

[25]perform surgery on that patient?

[2]A It doesn't qualify as a surgical

[3]emergency.

[4]Q Does it qualify as surgery of an

[5]urgent nature?

[6]A Yes.

[7]Q That is surgery that should be

[8]performed within 24 to 48 hours.

[9]A I could agree to that, yes.

[10]Q In your opinion, as of February

[11] **[*44]** 18th, under your definition,. qualified as a

[12]patient needing a meeting a criteria of

[13]surgical urgency; am I correct?

[14]A Yes.

[15]Q Have you reviewed Dr. Sachs'

[16]deposition at all in this case?

[17]A I don't know.

[18]Is it in there?

[19]MR. O'CONNOR: There's

[20]depositions in here.

[21]A I don't see it here, so I don't

[22]believe I have.

[23]Q Have you received Dr. Sachs'

[24]report?

[25]A I don't see it.

[2]I'll keep looking if you want.

[3]Q Sure.

[4]A I do have a report from

[5]Dr. Steven Sachs and a pile of papers that

[6]makes me think I did read it.

[7]Q I'm sorry?

[8]A I have a copy of a report from

[9]Dr. Sachs and it's attached to a report from

[10]another physician, Dr. Frederic. I would

[11]presume that I read this, although I can't

[12]remember the context.

[13]Q You make reference to

[14]Dr. Frederic's report in your own report of

[15]October 1999, but no mention of Dr. Sachs'

[16]report; am I correct?

[17]A That is correct.

[18]Q Looking at your own report of
w

[19]October 20th, 1999, on page 2, the last

[20]sentence, **[*45]** you say there was x-ray evidence

[21]of changes in the bone which was not heeded.

[22]A Yes.

[23]Q What changes?

[24]A There were some changes on plane

[25]films and changes on the CT scan which were

[2]soft, but I think real.

[3]Q Tell me what those exact changes

[4]were and refer me to them.

[5]A The end plate of L5 was somewhat

[6]irregular, both on the CT and on the plane

[7]films, P

[8]Q Did you review those actual

[9]films?

[10]A At that time, no.

[11]Q When you wrote your report you

[12]didn't review the actual films?

[13]A That is correct.

[14]Q You came to an opinion that

[15]there were changes in the x-rays of the

[16]bones that were not heeded. You indicated

[17]today they were soft changes.

[18]A Yes.

[19]Q Did the radiologist in his

[20]report make any mention of changes in the

[21]bone?

[22]A There was mention in one report

[23]of -- an addendum report indicated lumbar

[24]spine indicates a pattern of regular bony --

[25]an addendum was dated February 14th.

66

[2]The bones were done some time

[3]before that.

[4]Q Did the radiologist **[*46]** have a

[5]conclusion in the review of that CAT scan as

[6]well as other scans, did he ever come to the

[7]opinion of indicating any infection or

[8]ongoing process?

[9]MR. O'CONNOR: Objection

[10]to the form.

[11]A Not to my recollection.

[12]Q You have subsequently

[13]re-reviewed these films?

[14]A Yes.

[15]Q Am I correct they show evidence

[16]of changes?

[17]A Yes.

[18]Q Are they soft changes, in your

[19]opinion?

[20]A Yes.

[21]Q Should the radiologist have

[22]alerted the clinician to these changes?

[23]A I'm note an expert in the

[24]standard of care in neurology.

" 25 Q If you reviewed them, would you

[2]have noted the changes and the significance

[3]of those changes?

[4]MR. O'CONNOR: Objection.

[5]As a neurosurgeon you'-re

[6]asking him?

[7]A I might have or I might not have

[8]depending on my level of suspicion. I

[9]certainly could have missed them easily.

[10]Q What films have you subsequently

[11]reviewed?

[12]A Multiple abdominal films. CT

[13]scan done early in February. The MRI scan

[14]which was diagnostic ultimately. I don't

[15]think any others, **[*47]** except saying multiple

[16]films which image the lumbar spine.

[17]Q When in your opinion did the

[18]process of discitis originate?

[19]A Probably sometime in early

[20]January.

[21]Q Early January?

[22]A To mid.

[23]Q Early to mid-January you believe

[24]this patient had discitis.

[25]Is that an opinion with a

[2]reasonable degree of medical probability?

[3]A Yes.

[4]Q Would you agree that the
I

[5]literature -indicates the discitis is often

[6]not diagnosable until it reaches a certain

[7]time period?

[8]A Yes.

[9]Q" What is that usual length of

[10]time period the literature refers to?

[11]A I don't recall the specific

[12]time.

[13]Q Would you agree it's five to six

[14]weeks it's not diagnosable?

[15]A That's reasonable.

[16]I don't recall the specific

[17]literature.

[18]Q In your case with Mr. Robinson,

[19]how long do you believe the discitis was

[20]ongoing?

[21]A Probably for four or five months

[22]prior to the final diagnosis.

[23]Q With respect to the CAT scan

[24]that was ordered in early February, that was

[25]ordered as a pelvic **[*48]** lumbar CAT scan; am I

[2]correct?

[3]A Correct.

[4]Q But it was interpreted as an

[5]abdominal CAT scan; am I correct?

[6]A I don't remember. I wouldn't

[7]disagree.

[8]Q Are you aware of the notation in

[9]any progress notes that the resident was

[10]told by radiology that the lumbar spine

[11]had no changes ?? had no ??

[12]Let me refer to it specifically,

[13]I'm sorry.

[14]Are you aware of a progress

[15]note in early February by one of the

[16]residents indicating that he was orally

[17]advised by the radiology department that

[18]there was no lumbar pathology on that CAT

[19]scan?

[20]A I wouldn't question that

[21]characterization. I would have to look for

[22]it if you like.

[23]Q No.

[24]Are you aware that the CAT scan

[25]of early February was officially

[2]re-interpreted as showing no evidence of

[3]lumbar pathology?

[4]A That's my understanding; yes.

[5]Q You looked at that same film?

[6]A Yes.

[7]Q You felt there was evidence of

[8]lumbar pathology?

[9]A I think the term hindsight has

[10]to be added in there.

[11]There are changes which are **[*49]**

[12]consistent with lumbar pathology.

[13]Q Did you rely upon your

[14]radiologist in terms of the third MRI

[15]performed when they reported it as normal?

[16]A It is the only thing that I had

[17]available, as I did not have the films and I

[18]was not sent the films as I was no longer

[19]caring for the patient.

[20]Q Was the third MRI taken while

[21]the patient was under your care?

[22]A Yes.

[23]Q Did you rely on the official

[24]report of that MRI since you did not have

[25]the films?

[2]A Because I did not see the

[3]patient and was not going to see the patient

[4]again and was not being sent the MRIs, and

[5]the only information I had available was the

[6]report, it's my own personal standard to

[7]review the films. They were never sent to

[8]me, the patient never came back to me,

[9]therefore I never sought them.

[10]So, in that case, the only

[11]information I had available was the report.

[12]If I were to bd required to make any other

[13]suggestions or decisions or treatment, I
I
j 14 would have insisted on seeing the films.

[15]Q As of 1994 would you agree with

[16]me that there was **[*50]** controversy in the medical

[17]literature as to whether an MRI versus a

[18]bone scan verses a CAT scan was the test of

[19]choice in diagnosing a discitis?

[20]MR. O'CONNOR: Objection.
I

[21]A Do I have an opinion as to what

[22]I think, or m-

[23]Q No.
I

[24]Would you agree?

[25]A I don't believe there was an

[2]argument in the literature. I don't follow

[3]the radiology literature.

[4]Q You're not aware in '94 as to

[5]the controversy as to the test of choice.?

[6]A I think a variety of tests can

[7]be useful if one doesn't give you an answer.

[8]Q Would you agree in 1994 bone

[9]scans and CAT scans were being employed to

[10]rule in or rule out discitis?

[11]A They were being used, yes.

[12]Q And same for CAT scans?

[13]A Yes.

[14]Q Would you agree with me that

[15]with respect to your own personal standard

[16]of looking at lumbar CAT scans, that you

[17]would not have a similar expectation of an

[18]attending pulmonologist?

.w

[19]A Are we talking in

[20]I don't understand the question.

[21]Q You indicated to me before you

[22]don't necessarily rely **[*51]** on radiologists in

[23]reviewing films, you personally review them

[24]yourself.

[25]A Yes.

[2]Q Am I correct in saying you

[3]wouldn't expect a pulmonologist to have the

[4]same standard with respect to lumbar CAT

[5]scans?

[6]A We're referring to this case?

[7]Q Yes.

[8]A He didn't look at a lumbar CAT

[9]scan. He looked at abdominal. But no, I

[10]would not expect him to have the same

[11]standard as I would.

[12]Q Would an abdominal CAT scan

[13]include views of lumbar area?

[14]A It does include views of lumbar

[15]area.

[16]Q Does it include views of L4-L5?

[17]A Yes.

[18]Q Is there any indication when the

[19]radiologist re-interpreted that abdominal

[20]CAT scan in mid-February, on or about

[21]February 14th, that he had any difficulty

[22]making any assessment of lumbar pattiology

[23]when he did that official re-interpretation?

[24]MR. O'CONNOR: Objection.

[25]A It's a hard question to answer

[2]because if you -- if you're asking me could

[3]he have had a better view of the lumbar

[4]spine, had a better chance to make a

[5]diagnosis, I would say if **[*52]** he had a CT scan

[6]as opposed to abdominal CT scan which

[7]incidentally showed a lumbar spine, he would

[8]have a better chance on a specific lumbar

[9]scan which would be more finer cuts.

[10]If you're saying did he have

[11]trouble looking at the abdominal scan and

[12]saying I don't-see anything on the lumbar,

[13]no.

[14]Did he have the ability to

[15]further rule it out on the basis of the CT

[16]scan, yes, he did.

[17]Q Let me get back to my question.

[18]On his official interpretation

..

[19]report; does he indicate any problem in

[20]assessing lumbar pathology, because the film

[21]was interpreted at the time as an abdomen

[22]CAT scan?

[23]A No.

[24]Q You told me the official order

[25]that was sent in for this CAT scan was that

[2]it was to be a lumbar pelvic CAT scan,

[3]correct?

[4]A I characterized it. I didn't

[5]disagree with that.

[6]Q If the radiologist got this

[7]order and an abdominal CAT scan was

[8]performed instead, would the radiologist

[9]have reported that to the attending

[10]physicians?

[11]A He could have, yes.

[12]Q Woiild you agree with me that

[13]there is no mention **[*53]** by the attending

[14]radiologist, Dr. Wiley (phonetic) in this

[15]case, of any difficulty even on re-

[16]interpretation as of February 14th, 1994 of

[17]having any difficulty or any problem

[18]interpreting the lumbar area on that

[19]abdominal CAT scan?

[20]A I can agree that he had no

[21]difficulty interpreting what he had on the

[22]CAT scan available.

[23]Q Are you aware Dr. Wiley was

[24]having conferences with Dr. Knod before

[25]February 14th about this case, that's

[2]indicated in the progress notes?

[3]A I would trust characterization.

[4]Q Would you agree with me that if

[5]a radiologist was being consulted with

[6]various attending physicians as to a

[7]potential opinions as to suspected lumbar

[8]pathology, that he could have ordered or

[9]recommended a lumbar CAT scan if he thought

[10]the present CAT scan films were rapt

[11]sufficient for interpretation?

[12]MR. O'CONNOR: Objection?

[13]A I'm sure he could.

[14]Q Were you told anything about a

[15]Dr. Wiley before this deposition began?

[16]A I don't remember the name.

[17]'Q Were you told anything of a

[18]deposition **[*54]** of the attending radiologist

[19]before this deposition began?

[20]A I don't believe"so.

[21]Q Other than this irregularity

[22]that you referred to, soft changes on x-ray

[23]and CAT scan that you told me about, were

[24]there any other changes that you were

[25]referring to in that last sentence on page 2

[2]of your report?

[3]A Not to my recollection.

[4]Q I want you to refer to page 3 of

[5]your report. The failure to treat this-when

[6]it was first diagnosed led to the continued

[7]episodes of sepsis and with a high degree of

[8]medical probability, progression of the

[9]process in the vertebral bodies of L4-L5.

[10]You're referring to it when

[11]first diagnosis being discitis, aren't you?

[12]A The sentence is not accurate,

[13]but as it reads I am referring to the

[14]discitis.

[15]Q Because as the sentence stands,

[16]if one read it, one might infer that you are

[17]in some way criticizing the failure to

[18]perform surgery earlier when the discitis

[19]was initially diagnosed on February 18th?

[20]MR. O'CONNOR: Objection.

[21]A As it's written, that is

[22]correct. It's my fault. It's not the **[*55]**

[23]intent of my sentence, but I can't change

[24]it.

[25]Q Did you read this report before

[2]you signed it?

[3]A I'm sure I did.

[4]Q You would agree that with

[5]respect to your opinions in this case, if

[6]one interpreted it as the statement reads,

[7]that could be reflective of a significantly

[8]different opinion than you're offering here

[9]today?

[10]A That is correct.

[11]Q You've been cross-examined on

[12]your reports irr prior medical'malpractice

[13]cases; am I correct?

[14]A Yes.

[15]Q You know when you serve a report

[16]attorneys like this, people here, defendants

[17]attorneys rely on what you said and use this

[18]report in questioning you; am I correct?

[19]A Yes.

[20]Q What is the correction to this

[21]statement that you want to make now?

[22]A I would have preferred the

[23]sentence to read the failure to treat when

[24]discitis/infection could first have been

[25]diagnosed, or should first have been

[2]diagnosed.

[3]Q That is a lot different than

[4]what it reads; am I correct?

[5]A Yes.

[6]Q You make reference on page 2 of

[7] **[*56]** your report to bone scan. Excuse me, I'm

[8]going to have to take a second to find that.

[9]A End of the first paragraph.

[10]Q Thank you.

[11]The last sentence?

[12]A Yea.

[13]Q That first partial paragraph on

[14]page 2, there were two bone scans done in

[15]this case; correct?

[16]A Yes.

[17]Q You are correct in that last

[18]sentence when you are referring to the first

[19]one?

[20]A Yes.

[21]Q With respect to the second one

[22]that was taken, that's not true; am I

[23]correct?

[24]A Correct.

[25]Q In fact, the second bone scan

[2]which was taken in mid-February, well before

[3]the MRI was completely negative with respect

[4]to the lumbar spine; am I correct?

[5]MR. O'CONNOR: Objection

[6]to the form?

[7]A Yes.

[8]Q You already told me that a bone

[9]scan is a test as of 1994 that was often

[10]used to diagnose discitis; am I correct?

[11]A Yes.

[12]Q Were there opinions in the

[13]medical community at that time that a bone

[14]scan was the gold standard in diagnosing

[15]discitis as opposed to bone scan or MRI at

[16]that time?

[17]MR. O'CONNOR: **[*57]** Read that

[18]back.

[19](Whereupon, the above

[20]requested portion of testimony was

[21]read back by the reporter.)

[22]A I was not aware that that was an

[23]opinion rendered at that time.

[24]Q Would you agree with me that

[25]many physicians at that point in time

[2]thought a bone scan was just as good or even

[3]better in potentially diagnosing discitis as

[4]opposed to CAT scan or MRI, at that point in

[5]time?

[6]A I can really only offer my

[7]opinion, I don't think I poll the opinions

[8]of other physicians.

[9]Q With respect to determining

[10]standards of care, do you rely upon what

[11]other physicians think in your profession or

[12]what the literature says?

[13]A I try to accumulate all of that

[14]information and reach a conclusion, yes.

[15]Q You're telling me as of 1994

[16]you're not aware of what other

[17]neurosurgeons, neurologists, infectious

[18]disease specialists might have thought about

[19]whether a bone scan was as good as an MRI in

[20]determining discitis at that point?

[21]A If you were to ask me what my

[22]colleagues would use as a single most test,

[23]T would say **[*58]** they would uniformly say an MRI

[24]scan. That's not the same question as would

[25]some physicians feel a bone scan was a

[2]sensitive test to the diagnose discitis.

[3]Q Are you saying that when the MRI

[4]came out, that as of 1994 it was considered

[5]the gold standard in diagnosing discitia?

[6]A My understanding in the

[7]neurosurgical community and the infectious

[8]disease community is that if there was one

[9]test that could be done, would be an MRI

[10]scan, since that's the one test that's most

[11]likely to make the diagnosis, that's the one
.12 that's most useful.

[13]Q Would it be fair for me to say

[14]at least in Robinson case, the MRI didn't

[15]pick it up at least until the third try; am

[16]I correct?

[17]A That is correct.

[18]Q So, in fact, there was as of

[19]1996, two years after this case, inherent

[20]problems with the diagnosis of discitis by

[21]MRI; am I correct?

[22]A Yes.

[23]Q In fact, there are many

[24]physicians as reflected in the literature

[25]who would disagree that an MRI was the first

[2]test to be used in ruling in or ruling out

[3]discitis as of 1994; am I correct? **[*59]**

[4]A I didn't answer that question.

[5]I don't know independently if that's true or

[6]not.

[7]Q I would like to go to the last

[8]page of your report. You indicate in the

[9]second sentence, her subsequent course

[10]revealed this was a very difficult to treat

[11]infection, do you see that?

[12]A Yes.

[13]Q Would I be correct in saying

[14]that even if this diagnosis was made one to

[15]two weeks earlier the outcome could have

[16]been sooner?

[17]MR. O'CONNOR: Objection.

[18]You only read --

[19]A You're referring to the ultimate

[20]outcome in terms of surgical intervention.

[21]Q Yes.

[22]A It's very, very possible'that

[23]could be true.

[24]Q When you say very possible, even

[25]if this diagnosis was made a week or two

[2]earlier, that in terms of the surgical

[3]intervention and in terms of her ultimate

[4]condition today, it's very possible that she

[5]would be left with the same neurological-

[6]impairments and same neurological

[7]disabilities?

[8]MR. O'CONNOR: Objection.

[9]A I don't agree.

[10]Q What were the reasons that

[11]Drs. Russian (phonetic) and Stein ultimately **[*60]**

[12]operated in this case?

[13]A Because she had on MRI scan

[14]evidence of discitis, had severe pain,

[15]neurological deficit, weakness in her legs.

[16]Q You know that was present five

[17]days before surgery?

[18]A Yes.

w

[19]Q What caused them to operate on

[20]day five as opposed to day one, do you have

[21]an understanding?

[22]A No.

[23]Q Did you review those records

[24]carefully?

[25]A I reviewed the hospital records
E
t

[2]from Cooper Hospital, yes.

[3]Q Did you review the Cooper

[4]Hospital records carefully and thoroughly?

[5]A I presume I did, yes.

[6]Q Are you telling us as of today

[7]you don't know why they operated on day five

[8]as opposed to day one?

[9]A No. I don't recall any reason.
f

[10]Q You would agree with me that the

[11]reasons you gave about a couple of minutes

[12]ago as to reasons for their operating was

[13]well known from day one as well?

[14]A Yes.

[15]Q I want you to continue with that

[16]sentence, her subsequent course revealed

[17]this was a very difficult to treat infection

[18]again with a high **[*61]** degree of medical

[19]certainty before debrided the harder it was

[20]going to be to treat.

[21]Do you see that sentence?

[22]A Yes.

[23]Q It was debrided the day of the

[24]surgery of February 23?

[25]A Yes.

[2]Q You told me within a reasonable

[3]degree of medical certainty the infection

[4]continued to progress between the dates;

[5]correct?

[6]A Yes.

[7]Q If I took this statement in your

[8]report, one could infer that the infection

[9]continued to progress and became more

[10]difficult to treat; am I correct?

[11]A You're choosing dates of the

[12]28th, 18th to the 23rd, it was not my

[13]intention, but you're referring back to the

[14]earlier sentence which locks me into that.

[15]That wasn't my intention.

[16]Q Let's go to the next sentence.

[17]It would have been appropriate

[18]if every effort had been made at the end of

[19]in the initial diagnosis to firm it up.

[20]The initial diagnosis was

[21]February 18th, 1994; am I correct?

[22]A The initial differential

[23]diagnosis on January 30th.

[24]Q It would have been appropriate

[25]if every effort had been made at **[*62]** the time of

[2]initial diagnosis to firm it up.

[3]You don't say initial.

[4]A The initial diagnosis of

[5]discitis was made on January 30th.

[6]Firm it up means to confirm it.

[7]Q Who made the differential '

[8]diagnosis of possible disc space infection

[9]on January 30th?

[10]A The infectious disease doctor

[11]and the neurologist both mentioned it as a

[12]possibility.

[13]Q Is that the epidural abscess?

[14]A Its infection, yes. The answer

[15]is the area of interest was defined then.

[16]Q My question was: Who on January

[17]13th made differential diagnosis of disc

[18]space infection?

[19]MR. O'CONNOR: Let me

[20]object.

[21]He said January 30th.

[22]A Neither.

[23]Q Getting back to my question: It

[24]would have been appropriate if every effort

[25]had been made at the time of initial

[2]diagnosis to firm it up.

[3]When was the initial diagnosis

[4]of discitis in this case?

[5]A The initial diagnosis that was

[6]written as discitis as opposed to more

[7]general term infection, I believe when the '

[8]MRI scan was finally done.

[9]Q February 18th; am I correct?

[10]A **[*63]** Yes.

[11]Q And the potential for disc space

[12]infection began two to three days before

[13]that?

[14]A No. I disagree.

[15]Q You told me before that the

[16]symptoms began in that two to three day

[17]period, the severe neurological symptoms?

[18]A Yes. But the symptoms from the

[19]discitis began probably sometime in January.

[20]Q I am going to get back to that

[21]in a second.

[22]Let's discuss this last sentence

[23]for a minute.

[24]If we assume that the initial

[25]diagnosis was made on February 18th,

[1]

[2]follow-up of that sentence, this would have

[3]led to more appropriate and antibiotic

[4]coverage and more importantly, surgical

[5]debridement earlier on.

[6]If we read that statement and

[7]put it together with the first and second

[8]sentence of this paragraph, one might infer

[9]from reading this that you're indicating
? 10 that surgical debridement should have been

[11]performed at the time of diagnosis on

[12]February 18th;"'am I correct?

[13]MR. 0 CONNOR: Objection.

[14]A I think we discussed this

[15]already.

[16]If you start -- if you take the

[17]first sentence to mean February 18th, which **[*64]**

[18]it was not intended to, then your statement

[19]is true.

[20]If you accept the first sentence

[21]as beginning on January 30th, then your
a

[22]statement is not true.

[23]Q On February 14th, 1994, is there

[24]an indication in the records that Dr. Knod,

[25]the physical rehabilitation specialist,
f
i

[2]reviewed specifically the radiologist

[3]studies with Dr. Wiley and noted the

[4]radiological cause of the pain in the lower

[5]extremity?

[6]A I would be glad to accept that

[7]as proper characterization without pulling

[8]it out?

[9]MR. O'CONNOR: Do you want

[10]him the look at the records?

[11]Q I am asking: Is.it in there?

[12]A I presume so, otherwise you

[13]wouldn't be reading it.

[14]Q Would I be correct in saying

[15]that the first real suspicion that a disc

[16]problem was going on, or serious suspicion

[17]of a disc problem is reflected in

[18]Dr. Salizzoni's note of February 14th, "Rule

[19]out poor compression"?

[20]A Which note are you looking at?

[21]Q February 14th, 1994,

[22]Dr..Salizzoni. That would be pulmonary.

[23]A I'm sorry. I don't have it yet.

[24]Q Maybe **[*65]** it's out of order.

[25]A Yes.

[2]MR. BUCKLEY: Off the

[3]record.

[4](Whereupon, a discussion

[5]was held off the record.)

[6]A Could you repeat the question?

[7](Whereupon, the above

[8]requested portion of testimony was

[9]read back by the reporter.)

[10]A I don't think this is

[11]Dr. Salizzoni's.

[12]Q My-fault, February 13th.

[13]Thank you, Doctor.

[14]Can you answer that with that

[15]amendment of February 13th?

[16]MR. O'CONNOR: Note my

[17]objection.

[18]A The statement by, I believe,

[19]Dr. Salizzoni, if we agree that's his

[20]signature, indicates polymyositis, rule out

[21]L-S disc cord compression versus post sepsis

[22]myopathy.

[23]Q Can you answer the question?

[24]A He doesn't mention discitis.

[25]You can't get cord compression in a lumbar
i

[2]spine, so I have to cross that out anyhow.

[3]Spinal cord ends six inches

[4]higher.

[5]Q Let me ask you this.

[6]Was there a note on or about

[7]February 14th, by a Dr. George Knod?

[8]A Would it have a heading on it?

[9]Q Yes.

[10]Can you read that note?

[4]

[11]A 2/14/94, 3:00 p.m. Patient seen

[12]rehab **[*66]** following. Complaints of low back

[13]pain with pain in both legs. Very difficult

[14]to examine. Complaints of intense pain with

[15]gentle range of motion left lower extremity.

[16]Currently receiving trial of Tens. I

[17]reviewed all radiographic studies with

[18]Dr. Wiley, radiology. No obvious

[19]radiological cause for her back pain.

[20]CT lumbar showed DJD. Bone scan

[21]today, no acute changes. Neuro consult

[22]noted. DTRs, hopotonic, both lower

[23]extremities, 1/4. No dermatomal sensory

[24]deficit Lower extremities, no spasticity.,

[25]Plan: Continue bedside PT as patient

[2]tolerates. Check plane films, lumbar. Rule

[3]out chronic parenold (phonetic) compression

[4]deformities. Doubt she would tolerate __

[5]something -- rehab.

[6]MR. O'CONNOR: O-L-O-L,

[7]Our Lady of Lords.

[8]A O-L-O--L rehab.

[9]Q If an attending pulmonologist

[10]read this report, is it your opinion that he

[11]should have suspected an ongoing discitis

[12]and ordered an"-MRI?

[13]MR. O'CONNOR: Objection

[14]to the form.

[15]A If that were the only piece of

[16]information he had, no.

[17]Q Doctor, with respect to this

[18]case, when **[*67]** from your review of these

[4]

[19]progress notes as recorded by the attending

[20]physicians, when was the first real

[21]suspicion of a lumbar pathology in this case

[22]in the area of L4-L5?

[23]A Around the 30th of January,

[24]January 31st.

[25]Q That's the one you were talking

[2]about epidural abscess?

[3]A That's what -- part of the

[4]differential diagnosis included epidural

[5]abscess at-that time.

[6]Q Was there mention after that
I

[7]point in time by various physicians in early

[8]February that they were leaving the area of
I

[9]a problem in the lumbar area in early
j 10 February and they didn't --

[11]MR. O'CONNOR: Objection.

[12]A I think they were'aware because
k 13 of continuing pain there was an ongoing

[14]problem. I think they left the pursuit of

[15]diagnostic studies to rule it in or out.

[16]Q February 1st to February 10th,

[17]in your understanding of the case, was the

[18]patient complaining of consistent lumbar

[19]pain, or was this something that was

[20]intermittent, coming and going?

[21]A My recollection of the chart was

[22]it was persistent.

[23]Q **[*68]** Your recollection is that it

[24]wasn't intermittent, but it was every

[25]progress note there was a reflection of

[2]persistent lumbar pain?

[3]MR. O'CONNOR: Objection.

[4]A I'm sure it wasn't listed in

[5]every progress note.

[6]Q You looked at the nurse's notes?

[7]A I'm sure I did. I don't recall

[8]specifically.

[9]Q Was there a note on February

[10]15th by Dr. Salizzoni requesting, infectious

[11]disease follow-up?

[12]A Would that have a heading?

[13]Q It should be pulmonary, I'm

[14]sorry.

[15]A I see a 2/15/94 note, pulmonary,

[16]which states most troublesome case. Patient

[17]can't'move legs -- can't move. Legs buckle

[18]under her. Severe pain. DSR graded 100.

[19]Assess: Rule out -- looks like myelo-

[20]something and I think it says evaluation

[21]bone marrow.

[22]Q That's Dr. Agia's note of

[23]February 15th.

[24]I'm asking you about

[25]Dr. Salizzoni's.
I
i
I

[2]A Here there's a note -- that's

[3]2/17. I'm out of order again.

[4]There's an undated note that

[5]locks like Dr. 5alizzoni.'s. Will check-ID
i

[6]recommendation for floxin (phonetic)
i

[7]duration. **[*69]** Diarrhea, check see different. I

[8]believe that refers to the diarrhea. Check

[9]CTL spine, x-rays, L spine.

[10]There's no date on that, but

[11]it's following a note on 2/15 at 7:20.

[12]Q Are you aware as you're sitting

[13]here today whether there have been patients

[14]who have had discitis as reported in the

[15]literature who have had severe neurological

[16]impairments and disabilities as a result of

[17]that condition, developing that condition?

[18]A Yes.

[19]Q Is that something that's not

[20]uncommon?

[21]A Discitis is uncommon, so

[22]multiply that by the percent of patients who

[23]develop that.

[24]I guess by your own definition

[25]it would be uncommona

[2]Q With respect to the patients who

[3]develop discitis, would the development of

[4]discitis followed by some type of

[5]neurological impairment be uncommon for-the

[6]patients who do develop it?

[7]A Based more on my own experience,

[8]yes.

[9]Q How about what's noted across

[10]the country?

[11]A I don't think I know the

[12]literature to give you a number of any kind.

[13]MR. BUCKLEY: No further

[14]questions.

[15]EXAMINATION **[*70]** BY

[16]MR. KOERNIG:

[17]Q The same instructions that

[18]Mr. Buckley gave apply to my questions.
w

[19]Do you understand that?

[20]A Yes.

[21]Q The David Robinson case, the

[22]three MRIs were performed on him.

[23]Were they performed on a high

[24]magnet MRI or low magnet MRI?

[25]A I don't recall.

[2]Q You don't recall?

[3]A No.

[4]Q In 1994, were you aware that

[5]they had both high and low magnet MRI units?

[6]A Yes.

[7]Q Was one considered more

[8]sensitive than the other in diagnosing

[9]intervertebral pathology?

[10]A I have to answer that in general

[11]by saying the higher test unit MRI would

[12]give more accurate pictures.

[13]I don't know if someone

[14]specifically said that a particular

[15]pathology such as a discitis would only be

[16]seen on a high or not seen on a low.

[17]Q It's generally your

[18]understanding that the high magnet would be
p

[19]more specific?

[20]A More accurate.

[21]Q In 1994 were you aware in

[22]community hospitals whether or not open MRI

[23]units were generally available?

[24]A That would have to **[*71]** be a

[25]hospital-by-hospital question. I have no

[2]way of answering it really.

[3]Q In this particular case you're

[4]aware that an MRI was attempted to be

[5]performed on Paula Beal in early February?

[6]A I don't know if they actually

[7]tried to put her in the machine or not, but

[8]it was felt that it couldn't be done with

[9]the MRI scan available in the institution.

[10]Q Do you know if she refused the

[11]study?

[12]A I'm not aware.

[13]Q Did you re-read her deposition?

[14]A I don't recall. I probably did.

[15]I don't recall that specifically.

[16]Q You don't recall whether Paula

[17]Beal as an individual refused the MRI study

[18]because she was claustrophobic?

[19]A No.

[20]Q There are some patients who are

[21]claustrophobic who don't want to go into the

[22]tube?

[23]A Yes.

[24]Q In that scenario, if a physician

[25]was considering even as a remote

[2]possibility, the possibility of an epidural
I

[3]discitisr and the patient refuses the MRI

[4]study, was a bone scan a very reasonable

[5]alternative in 1994 to try to answer that

[6]question whether or not **[*72]** discitis exists?

[7]MR. O'CONNOR: Objection

[8]to the form.

[9]A It was another Test that would

[10]give information.

[11]I personally don't think it's a

[12]reasonable alternative because of the higher
f

[13]accuracy, in my opinion, of MRI.
i

[14]Q We're taking the MRI out of the

[15]equation because the patient refuses it.
i

[16]You would agree that patients

[17]have a right to choose or refuse medical

[18]intervention?

[19]A Yes.

[20]Q If a patient refuses an MRI,

[21]isn't it true that in 1994 a bone scan and a

[22]CT of the lumbar spine would have been the

[23]next tests of choice to determine whether or

[24]not there existed discitis?

[25]MR. O'CONNOR: Objection

[1]

[2]to the form.

[3]MR. O'CONNOR: Read that

[4]back, please.

[5](Whereupon, the above -

[6]requested portion of testimony was

[7]read back by the reporter.)

[8]A I feel if an MRI were made

[9]impossible, can't happen, period, then a CT

[10]scan of the lumbar spine and/or a bone scan

[11]of the lumbar spine would be tests which

[12]would be appropriate backups.'

[13]Q When did you review the multiple

[14]images of the films themself **[*73]** for Paula Beal?

[15]Was that recently?

[16]A Recently.

[17]Q How recently?

[18]A Today.

[19]Q They were brought to you by

[20]Mr. O'Connor?

[21]A Yes.

[22]And I do not believe I saw them

[23]before.

[24]Q Did you look at them on one of

[25]the view boxes in the office?

[2]A Yes.

[3]Q Is there any order you looked at

[4]them?

[5]A The order they came out of the

[6]folder.

[7]Q Were you shown a report by a

[8]neuroradiologist Murray DeLinka (phonetic)

[9]before you looked at the films?

[10]A I didn't look at any reports

[11]today, no.

[12]Q Had you seen a report of Murray

[13]DeLinka before you looked at the films?

[14]A Help me with the name.

[15]Q Neuropathologist, Hospital of

[16]Pennsylvania?

[17]A I don't remember.

[18]I'm not trying to Avoid the

[19]question.

[20]Q When you looked at the films in

[21]response to a question previously asked, you

[22]were able to identify the area of L4-L5?

[23]A Yes.

[24]Q There was no question you were

[25]able to identify that area on those films?

[2]A Which **[*74]** films are we talking

[3]about?

[4]Q Any films. The CT.

[5]A I was able to identify L4-5,

[6]yes.

[7]Q On your review of those films

[8]for the first time you were able to note

[9]some subtle pathology that was on that film

[10]in the area of L4-L5?

[11]A Yes.

[12]Q You believe they were early

[13]radiographic signs of the discitis that was

[14]later diagnosed?

[15]A Yes.

[16]Q Had those findings been reported

[17]to the physicians who ordered that

[18]radiographic study, the CT, you believe a

[19]diagnosis would have been made at that time

[20]and surgical intervention commenced earlier?

[21]MR. O'CONNOR: Objection

[22]to the form.

[23]A If it had been reported that

[24]there was a possible infection there, it

[25]would have led to a more aggressive

[2]evaluation and earlier diagnoses.

[3]Q Had that been done, do you have

[4]an opinion as to whether Paula deal's

[5]present condition would have been affected

[6]in any way, shape or form?

[7]A Yes, I do.

[8]Q What is that opinion?

[9]A If the diagnosis of infection,

[10]epidural abscess/discitis, had been **[*75]** made in

[11]January, prior to her development of

[12]significant degree of weakness which did not

[13]exist at that time, her prognosis for better

[14]neurological function would have been

[15]significantly improved.

[16]Q How significantly?

[17]A If she went into the process

[18]without having weakness, she, with a high

[19]degree of medical probability, would come

[20]out with a high degree of neurological

[21]function as opposed to going into it with

[22]weakness and maintaining it after surgery.

[23]Q Have you examined Paula Beal?

[24]A No.

[25]Q Have you been asked to do that?

[2]A No.

[3]Q Have you asked for the ability

[4]to do that?

[5]A - No. -

[6]Q Have you done any literature

[7]search in this case to support the opinions

[1]8 you have?

[9]A No.

[10]Q Is there any literature that you

[11]intend to specifically rely upon and point

[12]to, to base or"support the opinions you have

[13]in this case?

[14]A No.

[15]MR. KOERNIG: Thank you.

[16]EXAMINATION BY

[17]MR. DeLAURENTIS:

[18]Q Let me just follow-up on a

[19]couple of questions.

[20]You **[*76]** talked about things may have

[21]been different if diagnosis was made before

[22]she developed weakness. I think you

[23]referred to some entries in the chart.

[24]Can you give me a list of those

[25]signs or symptoms that fall into that

[2]category of weakness?

[3]A By I think the 14th or 15th as
I

[4]we've gone through notes, she wass unable to

[5]support hex- weight, which was not true urntil

[6]that point. Pain was present, but the real

[7]deficit that impressed her treating

[8]physicians were that her legs became much

[9]weaker. That caused them to, again,

[10]re'-ignite the idea of the MRI scan and

[11]finally get it done.

[12]Q Any signs or symptoms that would

[13]persuade you to be of the opinion that her
P

[14]prognosis would have been worse than what

[15]you've told us?

[16]A Increasing pain certainly can be

[17]indicative of worsening infection.

[18]Q I am talking about you came to

[19]an opinion in your own mind at a certain

[20]point of time her condition would not be

[21]helped of something along those lines with

[22]treatment. In other words, her prognosis

[23]changed; correct?

[24]MR. O'CONNOR: Objection. **[*77]**

[25]A That's a very bad question. Try
i
i

[2]again. I can't answer that.

[3]Q The Robinson case, you maintain

[4]a file somewhere?

[5]A Yes.

[6]Q With letters from your attorney?

[7]A Yes.

[8]Q Is it in the office?

[9]A I believe it's still at Aaronson

[10]Rappaport.

[11]Q You don't maintain your own file

[12]at home or in the office with correspondence

[13]maybe that your attorney sent or a copy of

[14]the complaint?

[15]A There is one file on the patient

[16]which I brought with me to the examination

[17]before trial. At this time it resides at
1s the offices of Aaronson Rappaport.
a

[19]Q You personally would not have a

[20]copy of the complaint or what they sent you

[21]in the State of New York telling you that

[22]you've been sued?

[23]A I believe it's in the file,

[24]although I'm not even 100 percent sure about

[25]that.

[2]Q You mentioned that you've

[3]reviewed 75 percent of your medical

[4]malpractice review as an expert on behalf of

[5]the defense attorneys or defendants.

[6]Have you ever reviewed a case on

[7]behalf of a New **[*78]** Jersey physician?

[8]A As a --

[9]Q As an expert.

[10]A Yes.

[11]Q Do you remember or recall the

[12]name of the attorneys that have retained

[13]your services?

[14]A I've reviewed cases for Post,

[15]Pollack, McNeill (phonetic) and somebody

[16]else, specifically for Jay Scott McNeill.

[17]Q How about in New York, what

[18]defense attorneys retain your services in

[19]New York?

[20]A Bower and Gardner, while they

[21]existed. Aaronson Rappaport. I dealt with

[22]Tony McAloon & Freedman, Gordon & Silber.

[23]Garbarini & Scher. Kaufman, Voorhees,

[24]Bryan. Pepper, Hamilton. Among others.

[25]Q What are your fees for reviewing

[2]records giving deposition testimony, giving

[3]trial testimony?

[4]A
$ 300 per hour reviewing

[5]deposition testimony, depending how it's-set

[6]up. Deposition is a set fee of $ 2, 500 for
f

[7]half, $ 4, 000 for full day. Same would apply a

[8]for testimony with some additional charge if

[9]there's significant travel involved.

[10]Q I understand you haven't done a

[11]literature search that you couldn't identify
s

[12]any textbooks as authoritative. **[*79]** I'm looking

[13]for what textbooks in the field of neurology

[14]do you have in your office or personal

[15]library at home?

[16]A None.

[17]Q What textbooks in the field of

[18]neurosurgery do you have either here or at

[19]your personal library at home?

[20]A A number which I would give you

[21]an incomplete list of.

[22]Q I'll take an 23 A loemans Textbook of

[24]Neurosurgery. Review of Neurosurgery by

[25]Michael Appuzo, A?P-P-U-Z-O. A Variety of

[2]texts on the spine, authors of whom I can't

[3]recall.

[4]Q Journals or periodicals that you

[5]receive and read on a regular base?

[6]A I receive the Journal of Spine.

[7]The Journal of Neurosurgery. And another

[8]journal called Neurological Surgery.

[9]Q Do you get the Clinics of

[10]Neurosurgery?

[11]A Occasionally. Not on a regular

[12]basis.

[13]Q If a resident or a medical

[14]student or a general surgical resident came

[15]to you and said, I have questions concerning

[16]discitis or infection of the spine, what

[17]textbook would you send him or her to as a

[18]good reference source?

[19]A Given that we're not training **[*80]**

[20]neurosurgical residents I more than likely

[21]would not send him to a textbook.

[22]Q Say I'm a neurosurgical resident

[23]and I come to you and say, Doctor, I want to

[24]learn about discitis, where should I start?

[25]What text book you would you send me to?

[2]A Any of the recognized

[3]neurosurgical textbooks, whether Yoemans or

[4]Wilkins, which is another one that exists, I

[5]don't know.'

[6]Q Have you had a chance in that

[7]Robinson case to personally review that

[8]third MRI film?

[9]A Yes.

[10]Q Did you agree with the

[11]radiologist's review and report?

[12]A No; I did not.

[13]Q How did your interpretation

[14]differ?

[15]A I felt that there was clear

[16]evidence of high probability of infection in

[17]that third film.

[18]MR. DeLAURENTIS: I don't

[19]have anything else.

[20]CONTINUED EXAMINATION BY

[21]MR. BUCKLEY:

[22]Q I have a couple of follow-up.

[23]With respect to the level or the

[24]quality of the MRI film Mr. Koernig was

[25]asking you, as of 1994, did you have an
t

[2]understanding whether open MRI had a high

[3]quality level as opposed to closed MRI? **[*81]**
[

[4]A That's the function of each MRI
t

[5]scan technique that's used to do the study

[6]and one of the big factors is how much the
I

[7]patient moved during the study. So I'm

[8]amazed that some open MRI scans can be

[9]incredibly clear and precise and others not,

[10]as with closed.

[11]Q Were you aware with literature

[12]as of 1994 that indicated radiological

[13]studies would often miss early discitis?

[14]A I know that's true. I can't say

[15]that I was familiar with the literature.

[16]Q When you say you know that's

[17]true, is that just based on your own

[18]experience from the David Robinson case, or

[19]something that you knew in general?

[20]A I think it's an accumulation of

[21]my own experience and my readering over the

[22]years, opposed to specific literature.

[23]Q When you talk about early

[24]diagnosis of discitis, that five the six

[25]week?
i

[2]A I think that's reasonable, yeah.

[3]Q You were talking about potential

[4]signs here of deficit in the terms of
i -

[5]weakness, increased pain, some things liske.
I

[6]that. I want to you ask you some questions.

[7] **[*82]** Before David Robinson went to ti

[8]Hopkins, before that third MRI was
E

[9]performed, was he complain of the increasing

[10]pain?
R

[11]A No.

[12]

[13]

[14]

[15]

[16]

[17]

[18]

[19](Cont'd on the next page

[20]to include the Jurat.)

[21]

[22]

[23]

[24]

[25]
I

[2]Q Was he complaining of any

[3]weakness whatsoever?

[4]A No.

[5]MR. BUCKLEY: Thank you.

[6]MR. DeLAURENTIS: Thank

[3]

[7]you.
I

[8]MR. KOERNIG: Thank you.

[9]MR. O'CONNOR: Thank you.

[10]

[11](Time noted: 11;30 p.m.)

[12]

[13]_
GEORGE VINCENT DiGIACINTO, M.D.

[14]Subscribed and sworn to before me

[15]this day of 2000.

[16]

[17]

[18]Notary Public

[19]

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[2]CERTIFICATION

[3]STATE OF NEW YORK]

[4]COUNTY OF NASSAU]
5'

[6]I, KAREN L. ROTH,

[7]a Shorthand Reporter and Notary Public of

[8]the State of New York, do hereby certify:

[9]

[10]That, GEORGE VINCENT DiGIACINTO,

[11]M.D., the witness whose examination is

[12]herinbefore set forth, was duly sworn, and

[13]that such examination is a true record of

[14]the testimony given by such witness.

[15]

[16]I further certify that I am not

[17]related to any of the parties to this action

[18]by blood or marriage; and that I am in no

[19]way interested in the outcome of this

[20]matter.

[21]

[22]

[23]KAREN L. ROTH DATE'

[24]--000--

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