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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF SULLIVAN

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MIRA LONGOBARDO and ANTHONY LONGOBARDO,

Plaintiffs,

-against- Index No. 2496-2007

ABDUL R. SHAHZAD, MD, ABDUL R. SHAHZAD, MD, PC,  
SURYA CHALLA MD, SURYA CHALLA, MD, PC, SHELDON D.  
LEIDNER, MD, SULLIVAN INTERNAL MEDICINE GROUP,  
YELENA KOROBKOVA, MD, AND CATSKILL REGIONAL  
HOSPITAL,

Defendants.

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JURY TRIAL

Lawrence H. Cooke  
Sullivan County Courthouse  
Monticello, New York 12701  
March 13, 2017  
PM SESSION

B E F O R E:

HONORABLE STEPHAN G. SCHICK,  
Justice of the Supreme Court,  
And a Jury.

APPEARANCES:

EDGAR P. CAMPBELL, ESQ.  
Attorney for Plaintiff  
2 Madison Avenue  
Valhalla, New York 10595  
BY: EDGAR P. CAMPBELL, ESQ. and  
ELIZABETH M. HECHT, ESQ.

(Appearances continued next page)

Georgette H. Sayers, RMR,  
Senior Court Reporter.

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APPEARANCES CONTINUED:

VOUTE, LOHRFINK, MAGRO & MCANDREW, LLP  
Attorneys for Defendant Dr. Shahzad  
170 Hamilton Avenue  
White Plains, New York 10601  
BY: BRIAN D. MEISNER, ESQ.

CATANIA, MAHON, MILLIGRAM  
& RIDER, PLLC  
Attorneys for Defendant Dr. Challa  
One Corwin Court, P.O. Box 1479  
Newburgh, New York 12550  
BY: JOSEPH A. CATANIA, JR., ESQ.

BARTLETT, MCDONOUGH & MONAGHAN, LLP  
Attorneys for Defendant Hospital  
560 Route 303, Suite 202  
Orangeburg, New York 10962  
BY: MILES S. REINER, ESQ.

1 (Cross-Dr. Mayer/Meisner)

2 (Whereupon, the following took place  
3 in open court in the presence of the sworn  
4 jury and alternates.)

5 THE COURT: All right. Members of  
6 the jury, welcome back from lunch.

7 Continuing on, Mr. Meisner, your witness.

8 MR. MEISNER: Thank you, Judge.

9 CONTINUED CROSS-EXAMINATION BY MR. MEISNER:

10 Q Dr. Mayer, before we broke for lunch we  
11 were talking about your curriculum vitae, your  
12 resume. You had, I think your testimony ended when  
13 you -- well, ended before lunch when you testified  
14 that the curriculum vitae that I showed you was  
15 three years old, correct?

16 A Yes.

17 Q I'm sorry. I sometimes have a tendency to  
18 talk low, so apologize. Now, Doctor, I'm going to  
19 ask you to take a look at an affirmation that was  
20 signed by you on -- and it's dated November 30th,  
21 2016. Can we have this marked as a court exhibit,  
22 please?

23 (A document further described herein  
24 was marked for identification as Court's  
25 Exhibit Number 3, this date.)

1 (Cross-Dr. Mayer/Meisner)

2 BY MR. MEISNER:

3 Q Here you go, Doctor.

4 A Thanks.

5 Q Now Doctor, could you just take a look at  
6 that affirmation and let me know if your signature  
7 appears on the back page.

8 A Yes.

9 Q Your signature does appear on the back  
10 page?

11 A Yes.

12 Q You've seen that document before?

13 A Yes.

14 Q That was one of the documents that you  
15 reviewed in preparation for your testimony here  
16 today?

17 A Yes, it was my affirmation.

18 Q Did you write that affirmation or did  
19 somebody else write it?

20 A I think it was authored by someone from  
21 Mr. Campbell's law firm but I had input into the  
22 contents.

23 Q Understood. And you read the whole thing  
24 before you signed it?

25 A Yes.

1 (Cross-Dr. Mayer/Meisner)

2 Q And you agreed with its contents?

3 A Yes.

4 Q Okay. Now, I want to ask you to take a  
5 look at paragraph -- paragraph number 2, please.

6 A Yes.

7 Q Now, the second sentence of that paragraph  
8 reads that a copy of my curriculum vitae is annexed  
9 hereto which provides additional information  
10 concerning my background, training, professional  
11 experience, and hospital affiliations. Did I read  
12 that correctly, sir?

13 A Yes.

14 Q And the resume, the curriculum vitae that  
15 I showed you before was -- I assume you gave that  
16 to Mr. Campbell's office?

17 A I don't recall one way or the other.

18 Q Okay. Well, did you review a copy of the  
19 curriculum vitae that was attached to that  
20 affirmation?

21 A I don't believe so.

22 Q Okay. Now then how did you know that a  
23 copy of your curriculum vitae was annexed to the  
24 affirmation?

25 A 'Cause it says that, but I didn't have --

1 (Cross-Dr. Mayer/Meisner)

2 I didn't really have input into that process.

3 Q Didn't you -- into the process of stapling  
4 your curriculum vitae into to the affirmation?

5 A Yes.

6 Q When you were signing this affirmation --  
7 and you signed it under oath, correct?

8 A Yes.

9 Q You signed it with the penalties -- under  
10 the penalties of perjury, correct?

11 A Yes.

12 Q Didn't you want to make sure that the  
13 information that was being submitted and that was  
14 incorporated into that affirmation were accurate?

15 A Yes, but that is an accurate CV, it's just  
16 as of 2004. It wasn't the most recent.

17 Q Okay. Well, wouldn't it be -- wouldn't a  
18 curriculum vitae that is accurate be one that is  
19 attached to something dated November 30th, 2016,  
20 wouldn't it be accurate as of that date?

21 MS. HECHT: Form objection.

22 THE COURT: Overruled.

23 A Yes, I thought the most recent would be  
24 appended but I wasn't involved in that aspect of  
25 it.

1 (Cross-Dr. Mayer/Meisner)

2 Q Okay. Well, Doctor, please take a look at  
3 that CV again and tell me what, if anything, was  
4 missing as between the day that resume was prepared  
5 and when it was submitted on November 30th, 2016.  
6 Then I'm also going ask you if it's current today.

7 A It may be simpler just to give you an  
8 updated one which I --

9 Q Please do that.

10 A -- provided Mr. Campbell.

11 Q Then please tell me what is missing from  
12 that affirmation.

13 A I would have to compare it to the most  
14 recent. It's a long document. It's not going to  
15 be as simple as you're making it.

16 Q Well Doctor, just tell me from your  
17 professional background, from your professional  
18 employment --

19 A Okay.

20 Q -- what, if anything, has changed between  
21 the date you prepared that resume and today,  
22 please. I'm referring to the professional  
23 experience section.

24 A So the only thing is that for the past two  
25 years I've been back in the practice of medicine,

1 (Cross-Dr. Mayer/Meisner)

2 I've been doing outpatient surgeries at a certified  
3 OR, 79th and Park Avenue in Manhattan and another  
4 office in Woodbury, New York, and now that my  
5 health has returned fully, I'm -- I'm reapplying  
6 for hospital privileges. I have the application in  
7 process.

8 Q Where have you applied to, Doctor?

9 A North Shore LIJ, Huntington Hospital.

10 Q Doctor, your disability ended several  
11 years ago, correct?

12 A Ended about two years ago when I was  
13 physically fit again, yes.

14 Q Doctor, have you ever -- you've testified  
15 in court before, right?

16 A Of course.

17 Q And you know that there are transcripts  
18 taken of your testimony, correct?

19 A Yes.

20 Q Have you ever testified before today that  
21 your disability ended -- I'm sorry, you said your  
22 disability ended how long ago?

23 A I was operated in 2002 -- I'm sorry, 2012.  
24 It took me a couple years to recover, so probably  
25 by 2015 I was functional regarding surgery again.

1 (Cross-Dr. Mayer/Meisner)

2 Of course during that recovery time I, you know,  
3 was able to review charts and do other stuff,  
4 but --

5 Q Well Doctor, when did you close your  
6 medical practice?

7 A I closed it in the spring of 2011 in terms  
8 of actively seeing and operating on patients.

9 Q Doctor, you graduated from Hofstra Law  
10 School in May of 2010, correct?

11 A Yes.

12 Q And you said you had surgery when?

13 A In February 2012.

14 Q Okay. And what -- just generally what  
15 type of surgery did you have?

16 A Well, I had a complex hip reconstruction.

17 Q Okay. And between -- how long did your  
18 rehabilitation from that procedure take?

19 A Took about two years.

20 Q Okay. So that takes us to 2014, correct?

21 A Yes.

22 Q Not 2015 as you just testified, correct?

23 A Yes. By the end of 2014 I was recovered  
24 enough to consider going back to surgery, yes.

25 Q Okay. Well Doctor, in those over two

1 (Cross-Dr. Mayer/Meisner)

2 years since you recovered, have you -- you haven't  
3 been granted privileges at any hospital, correct?

4 A I haven't applied for them yet. I went  
5 back, I've been doing a lot of outpatient  
6 procedures getting the hands moving again, getting  
7 comfortable after my break, and now I feel my  
8 skills have returned sufficiently to do inpatient  
9 hospital surgery.

10 Q Doctor, you haven't had privileges at any  
11 hospital in New York or any other state since 2010,  
12 correct?

13 A That's correct.

14 Q Now, you testified earlier that you're  
15 currently doing outpatient procedures at a facility  
16 located at 79th and Park Avenue?

17 A Yes.

18 Q Is that in Manhattan?

19 A Yes.

20 Q And what is the address on Park Avenue of  
21 that facility?

22 A 903 Park Avenue.

23 Q Okay. What is the name of that facility?

24 A It's a certified outpatient surgery  
25 facility owned by a Dr. Shahar. I don't know

1 (Cross-Dr. Mayer/Meisner)

2 exactly the name of it.

3 Q And that's a -- that facility is only  
4 licensed for cosmetic surgery, correct?

5 A I know it's a Quad A certified for  
6 anesthesia and any type of surgery you do there.  
7 Obviously you're not going to do major invasive  
8 surgery. That has to be done in a hospital, but --

9 Q Dr. Shahar is a cosmetic surgeon, correct?

10 A Yes.

11 Q And when that facility applied for  
12 accreditation from the Accreditation Association  
13 for Ambulatory Health Care, it had to indicate what  
14 specialty, what types of procedures were being  
15 performed at that facility, correct?

16 A I'm not sure. I wasn't involved in the  
17 accreditation process.

18 Q Well, didn't you check before you  
19 performed surgery there to make sure it was an  
20 accredited facility or did you just accept  
21 Dr. Shahar's representation?

22 A No, I knew it was an accredited facility.

23 Q Okay. And did you check what the  
24 accreditation was for?

25 A I'm not sure I checked that but I wasn't

1 (Cross-Dr. Mayer/Meisner)  
2 performing major general surgery there, so it  
3 wasn't really an issue.

4 MR. MEISNER: Move to strike as  
5 nonresponsive the portion of the answer  
6 that's not responsive, please.

7 THE COURT: Overruled.

8 Q Now Doctor, when you last had privileges  
9 at a hospital to admit patients -- I'm sorry.  
10 Doctor, when you have privileges at a hospital, can  
11 you -- it means that you have the right to admit  
12 patients at that hospital, correct?

13 A Yes.

14 Q And it means that you have the right to  
15 see patients at that hospital, correct?

16 A Yes.

17 Q And in your case as a surgeon, it means  
18 that you have -- you can perform surgeries at a  
19 particular hospital, correct?

20 A Yes.

21 Q And in 2010, you had privileges at North  
22 Shore LIJ, correct?

23 A Yes.

24 Q You didn't have privileges at the  
25 Manhasset main campus at North Shore LIJ, did you?

1 (Cross-Dr. Mayer/Meisner)

2 A Yes, I did.

3 Q You did?

4 A Yes.

5 Q Well Doctor, did you perform surgeries  
6 there?

7 A Sporadically. Most of mine were done at  
8 Huntington and Syosset campuses.

9 Q Huntington and Syosset are small community  
10 hospitals, correct?

11 A Not really any more with North Shore being  
12 involved but they're smaller than Manhasset, yes.

13 Q Back in 2003 they were small community  
14 hospitals, correct?

15 A They were community hospitals but high  
16 volume community hospitals.

17 Q Doctor, how many beds does Syosset have,  
18 Syosset Hospital have?

19 A I don't know now but at that time it had  
20 75 beds.

21 Q Doctor, do you recall testifying in a case  
22 called Rosario versus Montefiore Hospital back in  
23 2010 that Syosset Hospital actually had 66 beds?

24 A I might have. I'm not sure. I'm  
25 remembering around 75, so it's not -- that's

1 (Cross-Dr. Mayer/Meisner)

2 possible that I testified to that.

3 Q Did you also testify that it was primarily  
4 an ambulatory facility, correct?

5 A It was a high volume advanced laparoscopy  
6 and bariatric surgery facility that I got  
7 credentialed as a center of excellence for those  
8 procedures. Many of them were ambulatory, meaning  
9 less than 24 hours.

10 Q Doctor, we had a discussion before where I  
11 asked you if you could -- if I asked you a question  
12 that called for a "yes" or "no" answer, you agree  
13 to abide by that as long as you knew the answer?

14 A Correct.

15 MS. HECHT: Objection.

16 Q Remember that discussion, Doctor?

17 MS. HECHT: Objection, Judge.

18 THE COURT: Overruled.

19 A Yes, I remember the discussion.

20 Q Okay. Now Doctor, when you're operating  
21 on a patient, you set the rules in the operating  
22 room, correct?

23 A Not -- not really. It's a -- there are  
24 hospital policies, procedures, you don't set the  
25 rules.

1 (Cross-Dr. Mayer/Meisner)

2 Q Okay. Doctor, when you operate on  
3 patients, you have staff in the -- in the room with  
4 you, correct?

5 A Yes.

6 Q And sometimes you might have a resident in  
7 the hospital -- in the operating room with you,  
8 correct?

9 A Yes.

10 Q And you set the rules in that operating  
11 room as to how the staff is going to participate in  
12 the surgery or not participate in the surgery,  
13 correct?

14 A Generally, yes.

15 Q Okay. And if one of the staff members or  
16 residents in the room breaks the rules that you've  
17 set, you let them know, correct?

18 A Usually, yes.

19 Q Okay. Well, Doctor, sometimes if you  
20 don't, couldn't it result in a departure from the  
21 standard of care in your care and treatment of the  
22 patient?

23 MS. HECHT: Object to that.

24 Speculative. I don't know what he's  
25 asking.

1 (Cross-Dr. Mayer/Meisner)

2 THE COURT: Overruled. If you can  
3 answer it.

4 THE WITNESS: I can't answer that  
5 yes or no, Your Honor.

6 THE COURT: Okay.

7 Q Now Doctor, if a resident or a nurse or a  
8 surgical assistant or anybody in the operating room  
9 breaks one of the rules that you've set forth as  
10 the primary surgeon, it can result in a departure  
11 from the standard of care, correct?

12 MS. HECHT: Objection, Judge, how  
13 could he answer that "yes" or "no"?

14 THE COURT: If he can, he will. If  
15 he can't, he won't.

16 A I can't answer that "yes" or "no".

17 Q Doctor, you can't answer the possibility?

18 MS. HECHT: Objection. He just  
19 answered.

20 THE COURT: He just said he  
21 couldn't.

22 A I do not really understand the question --

23 Q Okay. Fair enough.

24 A -- I don't know what you're saying the  
25 assistant is doing.

1 (Cross-Dr. Mayer/Meisner)

2 Q Fair enough, Doctor, you told me you don't  
3 understand the question --

4 A I'm sorry.

5 Q -- we'll move on.

6 A I apologize.

7 Q Now Doctor, before you came in here to  
8 testify today, at any time did you review counsel's  
9 copy of the medical chart?

10 A I'm not sure what you mean by "counsel's  
11 copy."

12 Q Did you review a medical chart from --  
13 that Mr. Campbell or Miss Hecht showed you this  
14 morning? Did you review any part of it?

15 MS. HECHT: Well, Judge, object to  
16 that. I handed him pieces out of my  
17 file--

18 A I'm not sure I understand that.

19 MS. HECHT: -- while he was on the  
20 stand.

21 A Yes, I reviewed documents that I was  
22 handed this morning.

23 Q Did those documents have any notes on  
24 them?

25 A Nope, they did not.

1 (Cross-Dr. Mayer/Meisner)

2 Q The documents that you reviewed this  
3 morning, did they have any notes on them?

4 A I didn't review any this morning besides  
5 those I was handed in court.

6 Q Let me actually rephrase. Maybe I wasn't  
7 clear, and I apologize. I meant before your  
8 testimony started this morning.

9 A Oh. No, I didn't review any documents by  
10 counsel that had notes.

11 Q I apologize. Sorry. I'm not used to  
12 having a microphone. Now Doctor, when I had a  
13 chance to ask you a few questions during the early  
14 part of Miss Hecht's testimony, I asked you  
15 questions about some records that you reviewed  
16 before you -- before you came in to testify today,  
17 and you testified that those were the only records  
18 that you looked at. You remember that testimony,  
19 correct, from this morning?

20 A Yes.

21 Q You didn't review Dr. Leidner's records  
22 before coming in to testify today, correct?

23 A His office records?

24 Q Yes.

25 A I don't believe I saw them, no.

1 (Cross-Dr. Mayer/Meisner)

2 THE COURT: You mean this morning

3 or --

4 MR. MEISNER: Ever.

5 A I might have. I'm not recalling having  
6 seen them.

7 Q So you have no recollection of reviewing  
8 an office record from Dr. Leidner, correct, from  
9 Sullivan Medical Group?

10 A I saw consults by him in the hospital  
11 records but I don't remember seeing the office  
12 record from that. I may have at one time.

13 Q Do you know when Dr. Leidner became her --  
14 became Mrs. Longobardo's primary care physician?

15 A I don't know the exact date, no.

16 Q Did you review any medical records  
17 pertaining to Mira Longobardo's care and treatment  
18 of whatever medical provider she saw prior to July  
19 of 2003?

20 A I saw a colonoscopy report. I don't think  
21 I saw prior medical records.

22 Q Okay. And the colonoscopy -- the  
23 colonoscopy report you say was -- what was the date  
24 of that colonoscopy report?

25 A Some time in 2000.

1 (Cross-Dr. Mayer/Meisner)

2 Q What were the findings on that colonoscopy  
3 report?

4 A She had diverticula in the left colon.

5 Q That diverticular disease that you saw on  
6 that report, it went all the way to the splenic  
7 flexure, correct?

8 A I would agree with that.

9 Q And can you tell this jury what the  
10 splenic flexure is?

11 A That's where the colon as it sweeps around  
12 makes a right angle turn to go down the left side  
13 to the rectum, so it turns at right near the spleen  
14 and that's called the splenic flexure.

15 Q The splenic flexure after it turns it  
16 becomes the transverse colon, correct?

17 A Yes.

18 Q Now, so Mira Longobardo had diverticular  
19 disease almost to the transverse colon, correct?

20 A She had some diverticuli but not really  
21 disease, the disease was localized to the lower  
22 left colon.

23 Q Doctor, did you make any notes about the  
24 colonoscopy report on that outline, that one-page  
25 outline that you brought here today?

1 (Cross-Dr. Mayer/Meisner)

2 A No, I didn't make a note.

3 Q Now Doctor, you're being paid for your  
4 testimony here today, correct?

5 A Yes.

6 MS. HECHT: Objection to the form of  
7 the question.

8 MR. MEISNER: I didn't even finish  
9 the question.

10 THE COURT: Overruled.

11 A Yes.

12 Q How much are you being paid, Doctor?

13 A \$6,000.

14 Q Is that your normal rate?

15 A It's -- I've charged more on certain  
16 occasions, but that's my compensation for my day in  
17 court today.

18 Q Okay. Is there a reason why you didn't  
19 charge your full rate?

20 A Well, that was a fair rate for the work  
21 and time away from my practice, so that's what we  
22 came up with.

23 Q Doctor, have you ever reviewed cases for  
24 Mr. Campbell's office before?

25 A I think I reviewed one other case. This

1 (Cross-Dr. Mayer/Meisner)  
2 is the first time I've been in court for  
3 Mr. Campbell's office.

4 Q And so you've only reviewed one other case  
5 for Mr. Campbell's office, is that what your  
6 testimony is here today?

7 A I think so, I believe so.

8 Q And that case involves a plaintiff named  
9 Candace Shera?

10 A There may have been two actually, it was  
11 Shera and one other one.

12 Q Now, the Candace Shera case that you  
13 reviewed for Mr. Campbell, it's coming up for  
14 trial, correct?

15 A Not to --

16 MR. CAMPBELL: Objection, Judge.

17 A I have no idea.

18 THE COURT: Yeah, all right. I'll  
19 overrule the objection. I don't know  
20 where we're going with that.

21 Q In fact it's on for trial on April 4th,  
22 correct?

23 A I'm not aware.

24 MR. CAMPBELL: Counsel knows that  
25 that question is misleading, Judge,

1 (Cross-Dr. Mayer/Meisner)  
2 because the case has been and I won't say  
3 what happened, okay?

4 THE COURT: All right. So  
5 sustained.

6 MR. MEISNER: Still on the trial  
7 calendar so --

8 THE COURT: I don't know if it's  
9 going to trial, not going to trial.

10 MR. MEISNER: I'm moving on, Judge.

11 THE COURT: All right.

12 BY MR. MEISNER:

13 Q Doctor, would you agree that it's well  
14 known by plaintiff's attorneys across the country  
15 that you're available for hire as an expert  
16 witness?

17 MS. HECHT: Objection, Judge,  
18 really?

19 THE COURT: Sustained.

20 Q Doctor, you've reviewed over 500 cases as  
21 an expert, correct?

22 A Yes.

23 Q Have you reviewed more than 500 cases?

24 A Probably around 650 in total over 30  
25 years.

1 (Cross-Dr. Mayer/Meisner)

2 Q Most of those are for the plaintiff,  
3 correct?

4 A The majority but I've been doing about 40  
5 percent defense work for the last four years.

6 Q You've been doing 40 percent work for  
7 defendants for the last four years, yet you've  
8 never come in to testify to support a defendant  
9 doctor --

10 MS. HECHT: Objection.

11 Q -- for trial, is that correct?

12 MS. HECHT: Judge, what are we doing  
13 with this?

14 THE COURT: Overruled, but, you  
15 know, where we going with that? All  
16 right. You can answer that question.

17 A Yes, last week I testified in New Jersey  
18 on behalf of a defendant.

19 Q What was the name of that case?

20 A The Arias case. I'm sorry I don't  
21 remember the whole caption, and --

22 Q You don't remember the name of the doctor  
23 you were testifying in support of?

24 A I think it's McGowan, I believe was the  
25 name. I'm trying to concentrate on one matter at a

1 (Cross-Dr. Mayer/Meisner)

2 time, so I'm --

3 Q Doctor, you've been in court many times  
4 and you know these questions are asked routinely,  
5 correct?

6 MS. HECHT: Objection to what he  
7 knows.

8 THE COURT: Yeah, sustained.

9 MS. HECHT: I object to this, Judge.

10 THE COURT: Sustained.

11 Q Doctor, you've been asked these questions  
12 before when you've testified in court, correct?

13 MS. HECHT: What questions?

14 Q Questions about your background and your  
15 career as an expert witness.

16 A Yes. No one's ever questioned me about  
17 the exact case or what doctor I represented, but --  
18 but I've been asked questions, yes.

19 Q Well, that's because -- I don't have to  
20 ask that question. In addition to the amount of  
21 times that you've testified in court, you've  
22 testified many other times at depositions, correct?

23 A Yes.

24 Q And in fact you testified at least 150  
25 times, correct --

1 (Cross-Dr. Mayer/Meisner)

2 A Well --

3 Q -- including court, depositions?

4 A Oh, yes, yes, that is correct.

5 Q And all those testimonies were given under  
6 oath, correct?

7 A Yes.

8 Q When is the next time after today you're  
9 scheduled to give testimony?

10 A I think next week I have a deposition  
11 testimony scheduled.

12 Q Is that on behalf of a plaintiff or a  
13 defendant?

14 A Not sure, actually. I would have to check  
15 the calendar.

16 Q Doctor, have you ever testified on behalf  
17 of a defendant doctor in a New York court?

18 A Yes.

19 Q When was that?

20 A That was over ten years ago.

21 Q What was the name of that doctor?

22 A Borrero or something like that.

23 Q Borrero was the name of the doctor, not  
24 the plaintiff?

25 A Yes.

1 (Cross-Dr. Mayer/Meisner)

2 Q Where was that testimony given?

3 A Suffolk County.

4 Q Now Doctor, you've testified in all five  
5 New York City boroughs, correct?

6 A Yes.

7 Q You've testified in Nassau County,  
8 correct?

9 A Yes.

10 Q Suffolk County, correct?

11 A Yes.

12 Q Westchester County, correct?

13 A Yes.

14 Q Putnam County, correct?

15 A Yes.

16 Q Dutchess County, correct?

17 A Yes.

18 Q Albany County, correct?

19 A Yes.

20 Q Orange County?

21 A Yes.

22 Q Tioga County?

23 A I don't know exactly where that is but  
24 probably if you have it on the list.

25 Q And now Sullivan County, correct?

1 (Cross-Dr. Mayer/Meisner)

2 A Yes.

3 Q You've also testified in states other than  
4 New York, correct?

5 A Yes.

6 Q You've testified in Maine?

7 A Yes.

8 Q Massachusetts?

9 A Yes.

10 Q New Jersey?

11 A Yes.

12 Q Pennsylvania?

13 A Yes.

14 Q Maryland?

15 A Yes.

16 Q Washington, D.C.

17 A Yes.

18 Q South Carolina?

19 A Correct.

20 Q Georgia?

21 A Yes.

22 Q Florida?

23 A Yes.

24 Q Pretty much up and down the east coast,  
25 correct?

1 (Cross-Dr. Mayer/Meisner)

2 A Yes.

3 Q You've also testified in Colorado,  
4 correct?

5 A Yes.

6 Q Texas?

7 A Yes.

8 Q Missouri?

9 A Yes.

10 Q Illinois?

11 A Yes.

12 Q California?

13 A Yes.

14 Q And you list your services with a number  
15 of services to help you or -- get expert witness  
16 work, correct?

17 A Yes, currently just one but I have used  
18 several in the past.

19 Q In the past you've advertised in places  
20 like the New York Law Journal, correct?

21 A Yes.

22 Q The New York State Lawyers Association,  
23 remember that organization we talked about a little  
24 while ago?

25 A Yes.

1 (Cross-Dr. Mayer/Meisner)

2 Q In their journal, correct?

3 A Yes.

4 Q You've also listed yourself with various  
5 websites or online services for experts for hire,  
6 correct?

7 A Yes.

8 Q American Medical Forensics, correct?

9 A Yes.

10 Q An organization called Med-Eval, correct?

11 A Yes.

12 Q An organization called Medical Legal  
13 Consultant, correct?

14 A Yes.

15 Q An organization called JurisPro, correct?

16 A Yes.

17 Q And also an organization called SEAK,  
18 S-E-A-K, correct?

19 A Yes.

20 Q And you're aware that SEAK provides those  
21 that list their expert services for hire on their  
22 website, that it provides courses for those persons  
23 on how to be effective expert witnesses, correct?

24 A I know about that. I've never taken them,  
25 but yes, they do offer it.

1 (Cross-Dr. Mayer/Meisner)

2 Q And also about 20 years ago or so you sent  
3 a mass mailing out to lawyers to solicit business  
4 from them to hire you as an expert witness,  
5 correct?

6 A Yes.

7 Q You did all of that in addition to  
8 practicing medicine at the time, correct?

9 A Yes.

10 Q By the way, you've also appeared in the  
11 federal court system to testify as an expert  
12 witness, correct?

13 A Yes.

14 Q In the past year, how many times have you  
15 testified?

16 A In court or --

17 Q In court.

18 A I would say six times.

19 Q And how many depositions have you given  
20 within the last year?

21 A About seven.

22 Q Now in addition to the \$6,000 that you've  
23 been paid for your testimony here today, you were  
24 -- did you also review some records?

25 A Yes.

1 (Cross-Dr. Mayer/Meisner)

2 Q And did you charge a fee for review of  
3 those records?

4 A Yes, I believe my 1500 retainer for that.

5 Q And how many hours did the retainer  
6 provide for?

7 A I usually just charge a flat fee for  
8 reviewing the records initially.

9 Q Doctor, there are times where you've  
10 charged an hourly rate for the review of records,  
11 correct?

12 A Sometimes, but on this case, I had charged  
13 my retainer fee and I charged hourly for work on my  
14 affirmation.

15 Q And how much did you charge hourly for  
16 your work on the affirmation?

17 A I billed at \$375 an hour, and I put in  
18 about five hours or so work on it.

19 Q Now, before you signed that affirmation,  
20 worked on that affirmation, did you read the  
21 depositions in this case? I'm just asking if you  
22 remember reading the depositions in this case  
23 before signing that affirmation, Doctor.

24 A May I refer to it?

25 Q You need to refer to your affirmation

1 (Cross-Dr. Mayer/Meisner)

2 to --

3 A To see what materials I --

4 Q Sure, sure.

5 A -- reviewed before.

6 Q Sure, Doc, go ahead.

7 A Looks like I did review the depositions,  
8 yes, of the defendants and plaintiff.

9 Q And you also reviewed the entire medical  
10 chart from Catskill Regional Medical Center?

11 A Yes, it was quite a big chart.

12 Q It was a big chart, right?

13 A Yes, sir.

14 Q Couple thousand pages, correct?

15 A Right.

16 Q And you read Dr. Shahzad's deposition?

17 A Yes.

18 Q And the plaintiff's deposition?

19 A Yes.

20 Q And -- well, when I say "plaintiff's", you  
21 read Mira Longobardo's deposition?

22 A Yes.

23 Q And you also read Anthony Longobardo's  
24 deposition?

25 A Yes.

1 (Cross-Dr. Mayer/Meisner)

2 Q Did you read the depositions of all the  
3 various nurses that were deposed?

4 A I may have. I don't recall specifically.  
5 I may have reviewed those afterwards.

6 Q Okay. Nonetheless the hospital chart.  
7 Did you review Dr. Leidner's deposition?

8 A I have before coming today but I don't  
9 know that I reviewed it for my affirmation.

10 Q Now Dr. Leidner's deposition was two days,  
11 correct?

12 A I don't remember.

13 Q How many days was Dr. Shahzad's  
14 deposition?

15 A I think it was a couple days.

16 Q It was four days, correct?

17 A I would have to check.

18 Q Doctor, do you remember it was over a  
19 thousand pages?

20 A It was a lot of pages, yes.

21 Q Do you remember that it was over a  
22 thousand?

23 A Yes.

24 Q And it would be your custom and practice  
25 to read the entire deposition before signing an

1 (Cross-Dr. Mayer/Meisner)

2 affirmation stating that you reviewed the  
3 affirmation, correct?

4 A Of course.

5 Q And you also read Dr. Challa's deposition  
6 which was two days of testimony, correct?

7 A Yes.

8 Q And how many pages was Dr. Challa's  
9 testimony?

10 A I couldn't tell you. It was shorter than  
11 the other co-defendant but --

12 Q That's for sure 'cause two days is shorter  
13 than four days, correct?

14 A That is a truism, yes.

15 Q It was over 500 pages, correct?

16 A I'll accept your representation. I don't  
17 remember how many pages exactly.

18 Q So you read the entire hospital chart,  
19 learned the hospital chart and read over a thousand  
20 pages of testimony from Dr. Challa, over 500 pages  
21 from Dr. -- I'm sorry over a thousand pages of  
22 testimony from Dr. Shahzad, over 500 pages of  
23 testimony from Dr. Challa, various nurses, the  
24 3,000 page hospital report and possibly  
25 Dr. Leidner's testimony in five hours?

1 (Cross-Dr. Mayer/Meisner)

2 MS. HECHT: Objection. It's not  
3 what he said.

4 THE COURT: Overruled.

5 A No, that's what I billed. I often do  
6 extra work uncompensated on cases.

7 Q Well Doctor, did you bring your bill with  
8 you today?

9 A I did not.

10 Q Doctor, you've testified in the past that  
11 you charge \$400 an hour for review of records,  
12 correct?

13 A Yes.

14 Q Is there a reason why you only charged  
15 Mr. Campbell \$375 an hour?

16 A That was a fee I -- we agreed on for the  
17 work, hourly work on this case.

18 Q Okay. Was there a specific reason that  
19 you agreed on that fee or did you just -- did  
20 Mr. Campbell just say I want you to accept this fee  
21 and I'm going to take it?

22 MR. CAMPBELL: Objection.

23 THE COURT: Yeah, sustained.

24 Q How did you and Mr. Campbell come to that  
25 agreement?

1 (Cross-Dr. Mayer/Meisner)

2 MS. HECHT: Objection.

3 THE COURT: Overruled.

4 A I thought it was a -- very close to my  
5 normal rate, and didn't seem like a problem to me.

6 Q Before coming here to testify at trial,  
7 you said you charged a \$1500 flat fee for review,  
8 correct?

9 A Yes.

10 Q How long did it take you to prepare for  
11 your testimony here today?

12 A No, that was the initial review when I  
13 first got the materials.

14 Q Okay. So are you saying that you didn't  
15 review the materials in preparation for your  
16 testimony here today?

17 A No, I reviewed everything extensively. It  
18 took about three days' work.

19 Q Okay. And what rate did you charge for  
20 that?

21 A That's part of the trial fee.

22 Q That's part of the \$6,000?

23 A Yeah, it assumes that you come in properly  
24 prepared.

25 Q Well Doctor, in the past you've charged

1 (Cross-Dr. Mayer/Meisner)

2 also for review and then your appearance in court,  
3 correct?

4 A Not generally.

5 Q Now Doctor, in the years 2011, 2012, 100  
6 percent, 100 percent of your income was derived  
7 from coming into court and testifying as an expert  
8 witness or testifying at a deposition, correct, or  
9 the review of cases --

10 A Pretty --

11 Q -- correct?

12 A Pretty much because I was disabled and  
13 wasn't able to do anything else, but the annual  
14 amount of income remained the same, it's just that  
15 I didn't have the other component.

16 Q Now Doctor, in the past you've charged as  
17 much as \$10,000 to testify in court, correct?

18 A I have.

19 Q And for testimony that you give out of  
20 state, out of state cases, you've charged as much  
21 as 15,000, correct?

22 A On occasion, yes.

23 Q Doctor, you've also -- you've earned over  
24 a million dollars in your career testifying as an  
25 expert witness, correct?

1 (Cross-Dr. Mayer/Meisner)

2 A Over 30 years, most likely. It comes out  
3 to about 35,000 a year, so --

4 Q Doctor, yes or no.

5 A Yes, that would be a total income over a  
6 lifetime.

7 Q That was a question you could have  
8 answered with a "yes" or "no," right, Doctor?

9 MS. HECHT: Objection to badgering  
10 and arguing.

11 THE COURT: Yes, ask a question.  
12 Don't make a statement, please.

13 MR. MEISNER: I did ask a question.  
14 I asked him if that was a question he was  
15 capable of answering with "yes" or "no".

16 MS. HECHT: Objection to this,  
17 Judge.

18 THE COURT: Yeah.

19 MR. MEISNER: I'm moving on.

20 Q Doctor, at some point you had a license in  
21 the State of Florida, correct?

22 A Yes.

23 Q And that license is no longer valid,  
24 correct?

25 A True.

1 (Cross-Dr. Mayer/Meisner)

2 Q You've never had any privileges in -- at  
3 any hospital in Florida, correct?

4 A True.

5 Q In 2009 your license became null and void  
6 in Florida, correct?

7 A I'm not sure when. I've never practiced  
8 in Florida. It was only in New York.

9 Q Well Doctor, at some point your --

10 MS. HECHT: Judge, he spoke right  
11 over him.

12 THE COURT: Can you finish the  
13 question -- finish that answer? I didn't  
14 hear the end.

15 THE WITNESS: I've only practiced  
16 medicine in New York, nowhere else.

17 MR. MEISNER: Okay. Move to strike  
18 as nonresponsive. My question was --

19 THE COURT: Denied.

20 BY MR. MEISNER:

21 Q Well Doctor, your license at some point  
22 became null and void in Florida, correct?

23 A I'm sure it did.

24 Q Okay. Now Doctor, is it important to  
25 stay -- for a physician to stay up to date on his

1 (Cross-Dr. Mayer/Meisner)

2 licensing requirements?

3 A At least in the state you practice in,  
4 yes.

5 Q Okay. So another state where you have a  
6 license, it's not required for the doctor to stay  
7 up to date on his filing requirements for that  
8 license?

9 MS. HECHT: Objection. Objection.

10 THE COURT: Overruled.

11 A Oh, if you're not practicing in the other  
12 state, you can just not pay the renewal fee and let  
13 it lapse, which is what I did in Florida, I mean, I  
14 never intended to practice there, so there was no  
15 reason to continue to license.

16 Q Well Doctor, when you're a -- testifying  
17 as an expert witness and you know that that  
18 question may be asked, don't you think it's  
19 important as a doctor and a lawyer as well to know  
20 what you're testifying to is truthful or not  
21 truthful --

22 MS. HECHT: Objection --

23 Q -- or accurate?

24 MS. HECHT: -- form, substance.

25 THE COURT: Sustained.

1 (Cross-Dr. Mayer/Meisner)

2 Q Doctor, as a physician that comes in to  
3 court to testify against physicians, is it  
4 important to stay abreast of your licensing status?

5 MS. HECHT: Objection. Would it  
6 matter if he was on the other side?  
7 Object to the question. Object to this  
8 whole line of questioning.

9 MR. MEISNER: Objection to the  
10 speaking objection.

11 MS. HECHT: I'll object to your  
12 objection.

13 THE COURT: Objection to the snow  
14 tomorrow.

15 MR. MEISNER: We can have some fun.

16 THE COURT: Overruled. You can  
17 answer the question.

18 A I'm aware that my only active license is  
19 New York. I don't understand really what you're  
20 driving at. Why would I keep an active license in  
21 the state where I've never practiced and never  
22 intended to practice?

23 Q Doctor, you applied for license in the  
24 State of Florida, correct?

25 A In 1980. So, you know, there'd be no

1 (Cross-Dr. Mayer/Meisner)

2 reason to keep it active.

3 MR. MEISNER: Mark this.

4 (A document further described herein  
5 was marked for identification as Court's  
6 Exhibit 4, this date.)

7 BY MR. MEISNER:

8 Q Doctor, I'm going to show you a document  
9 that -- from the Florida Department of Health. It  
10 is data as of March 11th, 2017. Can you take a  
11 look at that document. Let me know after you've  
12 had a chance to review it.

13 A I've reviewed it.

14 Q Doctor, does that document refresh your  
15 recollection as to the date that your license to  
16 practice medicine in the State of Florida was  
17 originally issued?

18 A No, I don't think it's accurate.

19 Q Doctor, does that document refresh your  
20 recollection as to the date that your license to  
21 practice medicine in the State of Florida became  
22 null and void?

23 MS. HECHT: Objection. He hasn't  
24 testified to any lack of recollection.  
25 It's a misuse of the document.

1 (Cross-Dr. Mayer/Meisner)

2 THE COURT: Sustained.

3 Q Doctor, what date did your license to  
4 practice medicine in the State of Florida become  
5 null and void?

6 A I think null and void is a misleading  
7 term. I didn't renew it because I was never going  
8 to use it. It says January 31st, 2009. I thought  
9 it was well before that. I don't really -- I can't  
10 comment on the accuracy. I don't know where this  
11 is from. It's some Internet site. I don't  
12 recognize the accuracy of this document.

13 Q Okay. I'm not asking if you recognize the  
14 accuracy. All I'm asking you is if it refreshes  
15 your recollection?

16 A No.

17 MS. HECHT: That's already been  
18 sustained.

19 Q So your testimony is that your license in  
20 Florida actually became null and void by virtue of  
21 you not renewing it before 2009, correct?

22 MS. HECHT: Objection.

23 MR. MEISNER: That was his  
24 testimony. I'm just clarifying his  
25 testimony.

1 (Cross-Dr. Mayer/Meisner)

2 THE COURT: Overruled, overruled.

3 If he can answer, he'll answer.

4 A I thought that was the case.

5 Q Okay. Now --

6 THE COURT: When was the last time  
7 you paid any dues or anything?

8 THE WITNESS: It's years and years  
9 ago. Must have been over ten years ago  
10 so --

11 THE COURT: All right.

12 BY MR. MEISNER:

13 Q Doctor, do you recall testifying in a case  
14 with the caption of Priolo versus Mt. Sinai Medical  
15 Center, you gave testimony on March 24th, 2010, it  
16 was in Richmond County Supreme Court, that's Staten  
17 Island?

18 A I don't recall that, no.

19 Q Now Doctor, I'm going to read your  
20 testimony. You're Dr. David Mayer, right?

21 A I don't remember ever testifying in a case  
22 by that name.

23 Q Doctor, I'll show you the transcript and  
24 let me -- let's see if that refreshes your  
25 recollection, you testifying in that case.

1 (Cross-Dr. Mayer/Meisner)

2 A I did testify in this case. I'm -- you're  
3 correct.

4 Q Okay.

5 A I'm sorry. I just didn't remember.

6 Q No problem. I know you can't remember all  
7 of them. Now Doctor, you were asked the following  
8 question and you gave the following answers on page  
9 209 of the transcript of the case of Priolo versus  
10 Mt. Sinai Medical Center, Richmond County Supreme  
11 Court, Index Number 150001/2006. This is on page  
12 209 at line 16:

13 "Are you a licensed medical doctor?

14 "Answer: I am since 1974."

15 Now -- "Question: And is that in New York or  
16 any other states?

17 "New York and Florida although I have never  
18 used the Florida license."

19 You testified in that case that you were  
20 licensed in Florida. You didn't testify that it  
21 was null and void, did you? I thought it was  
22 active?

23 MS. HECHT: He's trying to impeach  
24 him with an identical statement.

25 THE COURT: If that's an objection,

1 (Cross-Dr. Mayer/Meisner)

2 it's sustained.

3 Q Doctor, you just heard me read that  
4 testimony, correct?

5 A I did.

6 Q Did you testify in that case that your  
7 license was active in the State of Florida?

8 A What year was the case, sir?

9 Q It was 2010.

10 A I mean, I don't remember saying that. I  
11 may have --

12 Q You didn't say that your license had been  
13 either expired or null and void or anything like  
14 that --

15 MS. HECHT: Objection. Misuse of  
16 the document.

17 Q -- in that case?

18 MS. HECHT: If he wants to impeach  
19 him, that's not the way to do it.

20 THE COURT: Sustained.

21 Q Doctor, take a look at the transcript of  
22 that testimony and see if you gave any further  
23 testimony about that license.

24 MS. HECHT: That's not a proper use  
25 of it either, Judge.

1 (Cross-Dr. Mayer/Meisner)

2 THE COURT: Yeah.

3 MS. HECHT: Object to this.

4 MR. MEISNER: All right. I'll move  
5 on. That's fine.

6 Q Now Doctor, you testified before that you  
7 are a -- you have some affiliation with New York  
8 Medical College, correct?

9 A Yes.

10 Q And did you also testify that you have an  
11 affiliation with Hofstra?

12 A Yes.

13 Q Is that affiliation current?

14 A Yes.

15 Q What is that affiliation?

16 A I -- I teach voluntarily without pay in  
17 their structures course, that's their gross anatomy  
18 course that correlates gross anatomy with x-rays,  
19 with surgical videos. I teach the first and second  
20 year medical students.

21 Q Doctor, you're not on the faculty at  
22 Hofstra Medical School, correct?

23 A Well, I'm on the faculty in terms of doing  
24 that but I'm not a paid faculty member, correct. I  
25 volunteer my time.

1 (Cross-Dr. Mayer/Meisner)

2 Q And you don't -- your title is -- what is  
3 your title, special professor, something like that?

4 A Yeah, they use that term for volunteer,  
5 doctors that come in and help teach as adjuncts.

6 Q So if I went to the website of Hofstra  
7 Medical School and I looked at the faculty, I  
8 wouldn't find you, correct?

9 A I really have no idea --

10 Q Never checked?

11 A -- whether they -- no.

12 Q Doctor, you testified before that you  
13 perform general and vascular surgery, correct?

14 A Yes.

15 Q But you come in to testify against doctors  
16 of all different kinds of specialties, correct?

17 A Against or for doctors in all types of  
18 specialties, but if -- only if there's a surgical  
19 issue in the case.

20 Q Doctor, so if there's no surgical issue in  
21 the case, you wouldn't offer your testimony,  
22 correct?

23 A Of course not.

24 Q Would you -- if the case involved a -- a  
25 prescription error, would you -- would you offer

1 (Cross-Dr. Mayer/Meisner)  
2 testimony in that case, in such a case if there was  
3 no surgical issue involved?

4 A It's possible 'cause that's something that  
5 every doctor's aware of.

6 Q Okay. So when you told this jury that you  
7 would only offer your opinion if there was a  
8 surgical issue involved, you weren't being  
9 truthful?

10 MS. HECHT: Objection.

11 THE COURT: Sustained.

12 Q Doctor, you, yourself have been sued for  
13 malpractice, correct?

14 MS. HECHT: Objection.

15 THE COURT: Overruled.

16 A I have been named on a number of cases,  
17 yes.

18 Q Eight times, correct, at least eight  
19 times?

20 A Eight times in the 50,000 patients that I  
21 treated, yes, over 40 years.

22 MR. MEISNER: Oh, I thought you  
23 wanted to say something.

24 MS. HECHT: I do.

25 BY MR. MEISNER:

1 (Cross-Dr. Mayer/Meisner)

2 Q Doctor, one of the cases that you've been  
3 sued in involved an anastomotic leak after a  
4 colectomy, correct?

5 A What was that question again?

6 Q One of the cases that you've been sued in  
7 involved an anastomotic leak after a colectomy,  
8 correct?

9 A Yes, that's correct.

10 Q Doctor, by the way, is it possible for a  
11 surgeon to do everything right during the surgery,  
12 just general, is it possible for a surgeon to do  
13 everything right and there still be a bad outcome?

14 A Yes.

15 Q So a bad outcome is not necessarily  
16 indicative of malpractice on the part of the  
17 surgeon, correct?

18 A Not in and of itself.

19 Q And an infection following a surgery is  
20 not also itself not indicative of any negligence in  
21 the surgical technique, correct?

22 A It may or may not be, but you can't just  
23 look at that alone --

24 Q Doctor, I'm asking general.

25 MR. CAMPBELL: He interrupted the

1 (Cross-Dr. Mayer/Meisner)

2 witness.

3 MS. HECHT: Judge, he talked right  
4 over him again.

5 THE COURT: Try to let him finish  
6 his answer.

7 Q I'm sorry, Doctor, I didn't mean to. I  
8 thought you were done. I didn't mean to cut you  
9 off.

10 A Okay. I was finished, thank you.

11 Q Doctor, I'm not sure if I heard you  
12 correct before. You said at this current time  
13 you're not practicing law at all?

14 A Just that going to the DMV and clearing up  
15 a speeding ticket for my daughter or clearing up  
16 things that are hanging over, but I'm practicing  
17 medicine a hundred percent of the time now.

18 Q I know what you mean. My family asked me  
19 all the time to do things like that. My response  
20 to them is what power do I have? But is your --  
21 are you currently of counsel to any law firms?

22 A Nominally, but I'm not active, but I am of  
23 counsel to a couple of Nassau County, New York  
24 firms.

25 Q And one of those is Landers & Cernigliaro?

1 (Cross-Dr. Mayer/Meisner)

2 A Correct.

3 Q You're actually listed currently on the  
4 website as of counsel to them, correct?

5 A Yes. I've asked them to remove me but I  
6 don't know, I thought they had already.

7 Q That's a plaintiff's firm, correct?

8 A It is.

9 Q They don't represent doctors, correct?

10 A Correct.

11 Q Are there any other firms that you're  
12 currently of counsel to?

13 A Probably at this point, probably no, but  
14 there could be one other one in Nassau County. I'm  
15 forgetting the name.

16 Q Are you familiar with the Cohen Law Group?

17 A Yes, that would be the other one where I  
18 had done some work while I was recovering from the  
19 surgery.

20 Q I'm sorry. Were you done with your  
21 answer?

22 A I'm not active with either firms now but I  
23 was for a period of time, yes, correct.

24 Q Are you currently listed on their website  
25 as an attorney that practices with that firm?

1 (Cross-Dr. Mayer/Meisner)

2 A I couldn't answer that. I haven't checked  
3 in a couple years.

4 Q Well, have you asked them to remove your  
5 profile?

6 A I didn't know I was still listed, so I  
7 haven't asked them.

8 Q So in the last couple years you haven't  
9 asked them to take down your profile, correct?

10 A That's true.

11 Q You practiced for a period of time with a  
12 law firm called Sullivan and Papain, correct?

13 A Not as an attorney, but I worked there  
14 before I got admitted.

15 Q And you've also referred cases to that  
16 firm, correct?

17 A Yes.

18 Q And that's a plaintiff's law firm,  
19 correct?

20 A Yes.

21 Q They don't represent doctors or hospitals  
22 or medical providers, correct?

23 A I can't say that for sure.

24 Q Do they defend doctors, hospitals or  
25 medical providers in medical malpractice lawsuits?

1 (Cross-Dr. Mayer/Meisner)

2 A Not to my knowledge.

3 Q Have you ever referred a case to  
4 Mr. Campbell's office?

5 A I have not.

6 Q Now Doctor, would you agree with me that  
7 there's room for disagreement in medicine?

8 A As a general proposition, at times, yes.

9 Q Well, physicians, they're like any -- any  
10 other people, they have opinions, correct?

11 A Doctors shouldn't have an opinion. He  
12 should exercise his knowledge, training and  
13 experience in treating a patient. It's not an  
14 opinion business.

15 Q Okay. Well, didn't you come into this  
16 courtroom this morning to give opinions?

17 A Well, that's an expert opinion. I thought  
18 you were talking about hands-on treatment of a  
19 patient.

20 Q Oh, so you're here as an expert, not as a  
21 doctor, correct?

22 MS. HECHT: Objection.

23 THE COURT: Overruled.

24 MR. CAMPBELL: Couldn't be an expert  
25 without being a doctor.

1 (Cross-Dr. Mayer/Meisner)

2 A I'm here as a physician expert, not as a  
3 treating physician. I've never personally treated  
4 Mira.

5 Q You've never met Mira Longobardo, have  
6 you?

7 A I met her for the first time today in  
8 person.

9 Q You never -- you never examined her,  
10 correct?

11 A That's correct.

12 Q And you weren't in the operating room with  
13 Dr. Shahzad on September -- in September 2003,  
14 correct?

15 A Yes. I was not.

16 Q You were?

17 A I was not, no, I'm agreeing with you.

18 Q Understood.

19 A Right.

20 Q You weren't there when she was admitted  
21 for treatment for diverticulitis in July of 2003,  
22 correct?

23 A Correct.

24 Q And you weren't there in March of 2003  
25 when Dr. Shahzad performed a hernia repair,

1 (Cross-Dr. Mayer/Meisner)

2 correct?

3 A Correct.

4 Q You weren't there -- I'm sorry. That was  
5 March of 2004. You weren't there at that time  
6 either, correct?

7 A That's correct.

8 Q Okay. Well, did you need to look at your  
9 outline, Doctor, to realize that you weren't there  
10 at that time?

11 A No. You were giving different dates, so I  
12 was trying to reconcile the different dates you  
13 were giving.

14 Q Doctor, you've never been in the operating  
15 room with Dr. Shahzad, correct?

16 MS. HECHT: Judge, we'll stipulate  
17 to that.

18 THE COURT: Yeah, can we agree that  
19 he's never been there.

20 Q And you were never there when he examined  
21 the patient?

22 MS. HECHT: We'll stipulate to that  
23 too, Judge.

24 MR. MEISNER: With all due respect,  
25 this --

1 (Cross-Dr. Mayer/Meisner)

2 THE COURT: I think it's pretty  
3 clear that he hasn't been a treating  
4 physician.

5 MR. MEISNER: Fair enough. I'll  
6 move on.

7 Q So Doctor, back to there being room for  
8 disagreement in medicine, two doctors can agree on  
9 or they may -- excuse me. I apologize, ladies and  
10 gentlemen. I apologize. Doctor, two doctors may  
11 disagree on something yet both of their opinions  
12 might be within the standard of care, correct?

13 A That rarely happens but it can be  
14 possible.

15 Q Doctor, there's something in medicine  
16 called a judgment call, correct?

17 A Well, it has to be based in scientific  
18 principles, training and experience.

19 Q Okay.

20 A It's not just licking your finger and  
21 holding it up and making a decision.

22 Q With all due respect, Doctor, that's not  
23 what I asked. Is there something in medicine  
24 called the judgment call; yes or no or I don't  
25 know?

1 (Cross-Dr. Mayer/Meisner)

2 A I've heard the term. I don't think it  
3 applies to this case, but I've heard the term.

4 Q And a judgment call is when there are two  
5 acceptable alternatives pertaining to a course of  
6 treatment, correct? And when I say "acceptable" I  
7 mean accepted in the medical and scientific  
8 community, correct?

9 A Yes, if there are two accepted  
10 alternatives and both are validated and within the  
11 standard of care, then a doctor can choose between  
12 them. In this case that's not -- has no  
13 applicability, in my opinion.

14 Q Doctor, again, I'm asking you general  
15 questions, okay?

16 A Yes.

17 Q And you can answer these questions either  
18 "yes," "no," "I don't know," or "I don't remember"  
19 or "I don't recall".

20 MS. HECHT: Objection, Judge. Is he  
21 going to keep instructing him how to  
22 answer?

23 THE COURT: Ask your next question.

24 MR. MEISNER: Judge, if the witness  
25 would answer the question, that would

1 (Cross-Dr. Mayer/Meisner)

2 be --

3 MS. HECHT: Judge, the witness is  
4 doing just fine. I object.

5 MR. MEISNER: My client did it for  
6 Mr. Campbell.

7 THE COURT: Well, I think there  
8 might be two separate issues of opinion on  
9 that --

10 MR. MEISNER: Fair enough.

11 THE COURT: -- by two different  
12 lawyers, so --

13 MR. MEISNER: Are you saying that  
14 lawyers don't agree, Judge? Okay.

15 BY MR. MEISNER:

16 Q Well Dr. Mayer, when there are two  
17 acceptable alternatives in medicine, a physician  
18 can use a variety of sources of information to come  
19 to his decision, correct?

20 A I don't understand. What do you mean by  
21 "variety of sources of information?"

22 Q A physician can use clinical data, he can  
23 use laboratory data, subjective data, radiological  
24 studies or medical literature all in arriving at  
25 his decision, correct?

1 (Cross-Dr. Mayer/Meisner)

2 A That would be true.

3 Q And if it is supported in the medical  
4 literature or in the scientific community as to the  
5 course that the physician is taking, it's accepted,  
6 correct?

7 A It would depend what literature and  
8 whether --

9 Q Well Doctor, let's be clear. The standard  
10 of care --

11 MS. HECHT: Objection. He said  
12 "whether."

13 MR. MEISNER: I'm sorry. I didn't  
14 hear that. I apologize.

15 A Who the authors are, are they reliable  
16 sources or it's just an opinion of an author. It's  
17 too general a question. You shouldn't be looking  
18 at literature to know how to treat a patient. You  
19 should be properly trained. You do that for rare,  
20 unusual situations. This case had common problems  
21 that weren't handled right. They're not rare that  
22 you need to go to a library and figure out these  
23 issues.

24 Q Well, Doctor -- I'm sorry. Finished,  
25 Doctor?

1 (Cross-Dr. Mayer/Meisner)

2 A Yes.

3 Q I didn't say just literature, did I? I  
4 also said laboratory data, clinical data,  
5 radiological studies, subjective data?

6 A Of course.

7 Q Doctor, prior to July of 2003, how many  
8 bouts of diverticulitis did Mira Longobardo  
9 experience?

10 A I don't know the exact number, but they  
11 started at age 35, and it was more than one prior.

12 Q Well, wouldn't you want to know that?  
13 Wouldn't that be a consideration you'd want to know  
14 before coming in here and testifying against a  
15 physician and making a claim that a surgery was not  
16 indicated?

17 A No, the -- the number of bouts is -- is  
18 not an indication for surgery according to modern  
19 general surgery in 2003.

20 Q Doctor, before you set forth your opinions  
21 in coming in to testify here in court today, did  
22 you look in any of the medical literature to see if  
23 your opinions were supported in the scientific and  
24 medical community?

25 A Well, I'm generally familiar with the

1 (Cross-Dr. Mayer/Meisner)

2 literature on diverticulitis. I didn't seek  
3 specific sources. I'm cognizant of it.

4 Q Doctor, the standard of care for a  
5 physician is not David Mayer's standard of care,  
6 correct?

7 A Of course not.

8 Q Okay. The standard of care is the  
9 standard of care as accepted in the medical  
10 community, correct?

11 A Yes.

12 Q Okay. Didn't you want to know what that  
13 standard of care was precisely before coming in  
14 here to testify?

15 A I do know what it is precisely.

16 Q Doctor, isn't it true that there is  
17 literature out there that supports that the  
18 diverticulitis surgery as performed in 2003, not  
19 2017, in 2003 was indicated?

20 MS. HECHT: Judge, I object to that.  
21 If he wants to confront him with a  
22 particular source and ask him if he finds  
23 it authoritative, that's the way to do it.

24 MR. MEISNER: He said he's familiar  
25 with the literature.

1 (Cross-Dr. Mayer/Meisner)

2 A No, I disagree with you.

3 Q So if there was literature out there that  
4 supported that, you would dispute the literature,  
5 correct?

6 A It wouldn't be reliable literature. It  
7 would be contrary to -- it would be an opinion  
8 which would vary from standard of care.

9 Q Doctors don't give opinions, Doctor, isn't  
10 that what your testimony was before?

11 A Some scientific articles offer an opinion  
12 of the authors and they can't be relied on as  
13 reliable.

14 Q And you make that decision or does the  
15 scientific community make that decision?

16 A Well, I've been an editor of one of the  
17 major surgery journals in the United States, the  
18 Archives of Surgery for many years, and I make  
19 those decisions all the time in reviewing articles  
20 and dealing with the editorial board. So I'm very  
21 familiar with how to judge the reliability of an  
22 article from --

23 Q Yet you didn't refer to any of those  
24 articles to see, to go back, way back 14 years ago  
25 to 2003 to see what the standard of care was in

1 (Cross-Dr. Mayer/Meisner)

2 2003 before coming in here to testify today,  
3 correct?

4 A Treated many, many hundreds of patients  
5 with this condition, and I'm familiar with the  
6 standard of care.

7 Q Okay. Doctor, the standard of care has  
8 changed over the past 14 years, correct?

9 A It's always evolving but regarding  
10 diverticulitis, mild, uncomplicated case, 2003, no  
11 one would operate on it. It would be malpractice  
12 to operate on it.

13 Q Okay. And Doctor, you didn't go back to  
14 any literature, yes or no, to check whether the  
15 standard of care was the same in 2003, yes or no?

16 MS. HECHT: That's the third time,  
17 Judge, third time.

18 THE COURT: Overruled.

19 A I extensively read the literature every  
20 month through selective readings in general surgery  
21 and have done so since the '70s. So I'm a  
22 voluminous reader of surgical literature and I know  
23 the standard of care.

24 MR. MEISNER: Move to strike as  
25 nonresponsive, Judge.

1 (Cross-Dr. Mayer/Meisner)

2 THE COURT: Denied.

3 Q Doctor, yes or no, did you go back to  
4 review any literature pertaining to the standard of  
5 care in 2003 before coming in here to testify?

6 MS. HECHT: Objection.

7 Q Yes or no.

8 THE COURT: Overruled.

9 A I've read it and I'm familiar with it. I  
10 didn't go back and pull individual articles 'cause  
11 I'm familiar with the standard of care. I didn't  
12 need to look it up.

13 Q You read it in 2003, correct?

14 A I've read 'em every year, yes.

15 Q Doctor, you remember what you read 14  
16 years ago?

17 A About a common problem, yes.

18 Q Doctor, did you ever read any literature  
19 that stated that an elective re-section of the  
20 bowel --

21 MS. HECHT: Judge, I'm sorry, I  
22 didn't hear the question.

23 MR. MEISNER: Well, I stopped asking  
24 the question because Mr. Campbell was  
25 speaking.

1 (Cross-Dr. Mayer/Meisner)

2 THE COURT: All right. So  
3 withdrawn, and ask it again.

4 BY MR. MEISNER:

5 Q Okay. Thanks. Dr. Mayer, isn't it true  
6 that back in 2003 that an elective re-section of  
7 the diseased bowel segment was recommended after  
8 three episodes of uncomplicated diverticulitis?

9 MS. HECHT: Objection. Unnamed,  
10 unknown source, out of context. It's not  
11 the way to do it. Object to it.

12 Q I asked you if that's the standard of care  
13 back in 2003.

14 THE COURT: Overruled.

15 A No, that was not the standard of care in  
16 2003.

17 Q Now, when Mira Longobardo was admitted to  
18 Catskill Regional Medical Center in July of 2003,  
19 she was admitted -- that was the first time she was  
20 admitted for diverticulitis, correct?

21 A Yes.

22 Q And at that time she was prescribed I.V.  
23 antibiotics, correct?

24 A Yes.

25 Q For how long a period of time or how many

1 (Cross-Dr. Mayer/Meisner)

2 years prior to that do you know was she taking  
3 antibiotics to treat diverticulitis?

4 A It started at age 35, she was given first  
5 oral antibiotics.

6 Q And how old was she in July of 2003?

7 A I'm guessing 53, unless I'm off.

8 Q That's a good guess, Doctor.

9 A Okay.

10 Q So she had been treated for diverticulitis  
11 for 18 years?

12 A Not continually but there were some  
13 episodes there.

14 Q And you don't know how many episodes,  
15 correct?

16 A The medical records didn't quantitate  
17 them.

18 Q Okay. Well, you didn't go back to look in  
19 Dr. Leidner's records to see if it was in there,  
20 correct?

21 A I wasn't provided those, so it isn't like  
22 I ignored them.

23 Q Well, did you ask Mr. Campbell to see the  
24 records of her primary care physician?

25 A I didn't ask for that. I wasn't aware

1 (Cross-Dr. Mayer/Meisner)

2 they would have that information.

3 Q Doctor, you prosecuted medical malpractice  
4 cases in the past as an attorney, correct?

5 A I've answered that question, yes, on rare  
6 occasions.

7 Q Okay. And when you have done so, didn't  
8 you make it your duty to get all of the patient's  
9 medical records from a given period of time?

10 MS. HECHT: Judge, there's a  
11 difference between being the attorney of  
12 record and being the expert who receives  
13 the records, so I object to the question.

14 MR. MEISNER: Judge, this goes to  
15 his --

16 THE COURT: Overruled.

17 A It's important to look at all pertinent  
18 records, I agree.

19 Q And Doctor, before coming in here to  
20 testify and testifying against various -- various  
21 doctors, didn't you want to get a picture of what  
22 Mira Longobardo's medical condition was before  
23 2003?

24 A Well, I had a picture, she -- whether she  
25 had one attack, two attacks, three attacks or four

1 (Cross-Dr. Mayer/Meisner)

2 attacks that were just treated with pills, that's a  
3 non surgical disease. So it wouldn't have mattered  
4 to me to quantitate them precisely.

5 Q But this time she wasn't just treated with  
6 pills, correct?

7 A No.

8 Q Her --

9 A I said that she had one mild episode that  
10 required I.V. antibiotics.

11 Q Well, she was treated with oral  
12 antibiotics as an outpatient, the -- in the past  
13 that had worked --

14 A That is correct.

15 Q -- correct?

16 A That is right.

17 Q In this case it didn't work in 2003,  
18 correct?

19 A True, true.

20 Q She -- after she started taking oral  
21 antibiotics, she still had symptoms of  
22 diverticulitis, correct?

23 A Yes.

24 Q So she was admitted for -- to be  
25 administered I.V. antibiotics, correct?

1 (Cross-Dr. Mayer/Meisner)

2 A Yes.

3 Q So would you agree with me that her  
4 disease had progressed?

5 A No, it was still mild as proven by CAT  
6 scan.

7 Q Well Doctor, diverticulitis is something  
8 that's not only -- not diagnosed exclusively by CAT  
9 scan, correct?

10 A Largely is but you also examine the  
11 patient and you look at other factors, too.

12 Q The clinical examination is important,  
13 correct?

14 A Of course.

15 Q And the laboratory studies are important,  
16 correct?

17 A Yes.

18 Q So the decision on whether to operate or  
19 whether to recommend an operation, it's not based  
20 on just the CT alone, it's also based on the  
21 clinical findings, the lab findings, and the  
22 patient's own subjective complaints, correct?

23 A Sure. You never just look at an x-ray in  
24 a vacuum and make a decision solely on an x-ray.

25 Q A CT scan, it's just a picture, correct?

1 (Cross-Dr. Mayer/Meisner)

2 A A pretty accurate picture, but it's an  
3 x-ray picture, yes.

4 Q Doctor, have you ever operated on a  
5 patient and found that the findings operatively  
6 were either different, let's -- than what they were  
7 shown as on a CT?

8 A That's happened, yes.

9 Q And you never -- you never spoke with the  
10 radiologist that reviewed the CT scan, correct?

11 A I did not.

12 Q So you don't know what was in his mind  
13 when he wrote anything that's in that report,  
14 correct?

15 A Well, I assume he looked at the x-rays and  
16 interpreted them.

17 Q Okay. But you don't know what he was  
18 thinking at the time, correct?

19 A Well, what he was thinking he dictated in  
20 his report, so --

21 Q Well Doctor, you can't write everything in  
22 the report, correct?

23 A You only write the pertinent findings.

24 Q Now Doctor, you talked about something  
25 before called a perforated diverticulitis, do you

1 (Cross-Dr. Mayer/Meisner)

2 remember discussing that?

3 A Yes.

4 Q Now, if Mira Longobardo did not have the  
5 hemicolectomy and continued to suffer from  
6 diverticulitis, wasn't she at risk for having a  
7 perforated diverticulitis?

8 A I think I said that this morning. Her  
9 risk was less than 1 in 2,000. So it's minimal  
10 risk, not zero but minimal.

11 Q Okay. Well, where did that statistic come  
12 from?

13 A That's from my knowledge of surgery in the  
14 medical industry.

15 Q Did you look that statistic up in the  
16 literature?

17 A I'm aware of it. That's why we don't do  
18 surgery for uncomplicated mild diverticulitis  
19 because the chance of it developing into a serious  
20 problem is very low. The risk of surgery is higher  
21 than the risk medical management.

22 Q Doctor, how many surgeries did this  
23 patient have before July of 2003 in her life?

24 A I think two -- I'm just going to talk  
25 about abdominal surgeries, right, 'cause may have

1 (Cross-Dr. Mayer/Meisner)

2 had others but two laparoscopies, a  
3 cholecystectomy, I think a hysterectomy.

4 Q How many other surgeries did she have?

5 A I would have to look at the chart to tell  
6 you that.

7 Q Now, you testified before that what a  
8 surgeon writes in the post-operative diagnosis  
9 section of their operative report is based on the  
10 honest assessment at the time of surgery, that was  
11 your testimony. I heard that correctly, right?

12 A Yes.

13 Q Now, did you notice in Dr. Shahzad's  
14 report, I think you may have even cited this  
15 sentence before, that there were noted to be  
16 multiple inflammatory changes in the patient's  
17 colon. Did you mention that before?

18 A Not sure if I mentioned it, but --

19 Q Can we take a look at the -- can you take  
20 a look at the operative report from September 15,  
21 2003?

22 MR. CATANIA: Your Honor, while he's  
23 looking for that, can we take a short  
24 break?

25 THE COURT: All right. Ladies and

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(Cross-Dr. Mayer/Meisner)

gentlemen, we'll step down for about five minutes or so.

(A short recess was taken.)

(Whereupon, the following took place in open court in the presence of the sworn jury and alternates.)

THE COURT: Okay. Welcome back. Go ahead, Mr. Meisner.

BY MR. MEISNER:

Q Doctor, one more question about the CT scan that was taken before the patient has the hemicolectomy, the patient was taking antibiotics for several days before that scan, correct?

A Yes.

Q And it's also possible that the results that were seen on that scan were somewhat masked by antibiotics, correct?

A I don't believe so.

Q Not possible, that's what you're saying?

A No, I don't think that's possible.

Q Since the hemicolectomy, the patient has not had any problems with the anastomosis created in the large colon during the surgery, correct?

A Correct.

1 (Cross-Dr. Mayer/Meisner)

2 Q And she's never had another diverticulitis  
3 flare up, correct?

4 A True.

5 Q In fact the complications that she had  
6 after the laparoscopic surgery with Dr. Challa in  
7 July of 2006, those were in the small bowel,  
8 correct?

9 A They were.

10 Q Entirely different organ than the  
11 hemicolectomy was operated on, correct?

12 A Yes.

13 Q I know you've -- you've testified already  
14 that -- well, withdrawn. Would you say that the  
15 patient didn't have the hemicolectomy and did go on  
16 to have a perforated diverticulitis, okay, she  
17 would have been at risk of having a colostomy bag  
18 for the rest of her life, correct?

19 A Well, not the rest of her life, temporary  
20 colostomy, then it would be hooked up later.

21 Q There was a possibility could have been  
22 permanent, correct?

23 A I don't believe so.

24 Q Colostomy though, having a colostomy bag  
25 is not fun, correct?

1 (Cross-Dr. Mayer/Meisner)

2 A It is not.

3 Q Now Doctor, you'd agree with me that an  
4 objective finding is one that's based on hard  
5 scientific evidence, correct?

6 A Yes.

7 Q Hard medical evidence, correct?

8 A Yes.

9 Q And subjective findings are when you --  
10 you just asked the patient how she's feeling,  
11 correct?

12 A Yes.

13 Q Like patient comes into your office, the  
14 nurse -- nurse is the first one to see her when a  
15 patient comes into your office?

16 A Generally, yes.

17 Q Ask the patient how are you feeling, if  
18 the patient says -- those are subjective findings,  
19 correct?

20 A Yes.

21 Q Okay. Now, isn't it true that from a  
22 doctor's standpoint, from a medical standpoint that  
23 subjective findings are always less reliable than  
24 objective findings?

25 A I don't agree with that as a universal

1 (Cross-Dr. Mayer/Meisner)

2 rule.

3 Q Okay. Well Doctor, do you recall  
4 testifying in the case of Calvanico versus Staten  
5 Island Hospital on June 2nd, 2011?

6 A I don't recall that.

7 Q You were cross-examined by a defense  
8 attorney named Henry Schaub. Do you remember  
9 Mr. Schaub?

10 A Oh, yes, I remember.

11 Q I'm reading from page 13 of your  
12 testimony. This is testimony you gave under oath,  
13 correct?

14 A Assumably, yes.

15 Q Well, would you like to see the transcript  
16 to see if you were placed under oath to give this  
17 testimony?

18 A No, I don't need to see it.

19 Q Every time you've gone to court you've  
20 been sworn in, correct?

21 A Yes.

22 Q And you've been sworn in now; you've taken  
23 an oath to tell the truth, correct?

24 A Yes.

25 Q You did it on this occasion on June 2nd,

1 (Cross-Dr. Mayer/Meisner)

2 2011, correct?

3 A Yes.

4 Q Now, reading from page 13, line 19:

5 "Question: Okay. And can you explain to the  
6 jury what is an objective finding and what's a  
7 subjective finding?

8 "Answer: An objective finding would be hard  
9 scientific evidence like if you were evaluating  
10 numbness and weakness, you would take a pin prick  
11 of the leg to see how the sensation was for motor  
12 function. You would actually have to have --  
13 excuse me. You would actually have a move -- have  
14 to move the leg against resistance and you would  
15 say it's 2 over 5, 3 over 5, 5 over 5. Subjective  
16 is saying Mr. Calvanico, how does the leg feel, any  
17 better? He says, yeah, a little better. By then  
18 he is lying in a hospital bed, he is in, you know,  
19 comforting environment. Subjective is from a  
20 doctor's medical standpoint always much less  
21 reliable than objective findings."

22 That was your testimony, correct, Doctor?

23 MS. HECHT: Judge, I doubt that was  
24 read correctly.

25 MR. MEISNER: Would you like to take

1 (Cross-Dr. Mayer/Meisner)

2 a look at the transcript, ma'am?

3 MS. HECHT: No, I think you  
4 misspoke. I'm not trying to be difficult.

5 THE COURT: It doesn't change  
6 anything he's already testified to, so --

7 A I said it was not a universal rule but  
8 often objective can be more persuasive than  
9 subjective but not always. It's not universal.  
10 That involved a missing compartment syndrome of a  
11 leg, I believe, and the patient saying they feel  
12 better when the leg is cold and doesn't have pulses  
13 is not -- you want to look at the leg itself. It's  
14 a whole different context than -- when a patient  
15 expresses pain, that's reliable. Patient knows  
16 when something hurts. And that's, you know, when  
17 Mira said I have 10 over 10 pain after the  
18 laparoscopic hernia repair, that's reliable.

19 Q So are you saying that in this case the  
20 feelings that Mr. Calvanico had in his leg was less  
21 reliable than what Mira Longobardo told any of her  
22 doctors?

23 A Well, 'cause he had overwhelming objective  
24 findings of an emergent problem.

25 Q Well Doctor, your testimony here was

1 (Cross-Dr. Mayer/Meisner)

2 subjective is from the doctor's medical standpoint  
3 always, always much less reliable than objective  
4 findings, there's no equivocation there, correct?

5 A If there's an obvious objective finding  
6 that takes predominance, correct, but you have to  
7 do both. That's why we take -- we look at both  
8 findings, otherwise you would never ask the patient  
9 how they felt if it wasn't significant, but we do.  
10 So it's a factor.

11 Q Doctor --

12 MR. MEISNER: Judge, again, I'm  
13 going to -- the question called for a  
14 "yes" or "no" answer. I'm going to move  
15 to strike that portion that's  
16 nonresponsive.

17 THE COURT: Denied. I think it was  
18 responsive.

19 Q Doctor, you're not a certified wound  
20 specialist, correct?

21 A I thought a nurse would be a certified  
22 wound specialist.

23 Q Doctor, yes or no, are you a certified  
24 wound specialist? I didn't ask you if a nurse was  
25 a certified wound specialist. I asked you if you

1 (Cross-Dr. Mayer/Meisner)

2 were. Are you a certified wound specialist, yes or  
3 no?

4 A I'm an expert in wound care, but I don't  
5 -- I don't have a certification in it.

6 Q So the answer's no, right, Doctor?

7 A Well, I don't know what that is, actually.

8 Q Doctor, you're not aware of a  
9 certification that for -- as a certified wound  
10 specialist?

11 A I'm not.

12 Q Doctor, infections are a known risk of any  
13 surgery, correct?

14 A Yes.

15 Q And an infection can occur post surgically  
16 even if the technique performed during the surgery  
17 was correct?

18 A Yes.

19 Q Generally the signs of infection are a  
20 fever, correct?

21 A Can be, yes.

22 Q Hypotension?

23 A It's possible.

24 Q Tachycardia?

25 A Can be, yes.

1 (Cross-Dr. Mayer/Meisner)

2 Q Can you tell us, this jury, what  
3 tachycardia is?

4 A A rapid heart rate.

5 Q Hypotension is low blood -- excuse me, low  
6 blood pressure?

7 A Yes.

8 Q How about tachypnea or tachypnea?

9 A Rapid breathing, yes.

10 Q That could also be a sign of infection,  
11 correct?

12 A It can be.

13 Q And abnormal white blood cell count can be  
14 a sign of infection, correct?

15 A Yes.

16 Q Doctor, surgeons, as you testified before,  
17 they're trained to treat infections, correct?

18 A Routine ones by non resistant bacteria,  
19 yes.

20 Q Well Doctor, aren't some surgeons more  
21 comfortable handling certain types of wound  
22 infections than others?

23 A That may be true but no surgeon alone is  
24 competent to treat resistant bacteria. That's why  
25 we have infectious disease doctors.

1 (Cross-Dr. Mayer/Meisner)

2 Q Now Doctor, in your career, you've had  
3 patients with MRSA infections, correct?

4 A Yes.

5 Q And you called in an infectious disease  
6 doctor every time?

7 A Yes.

8 Q And that's your testimony?

9 A Yes.

10 Q That's not the standard of care, is it?

11 A Yes.

12 Q That's David Mayer's standard of care,  
13 that's not the standard of care in the community,  
14 correct?

15 MS. HECHT: Objection, is he  
16 testifying now, Judge? Objection.

17 THE COURT: Overruled.

18 A Yes, it's the standard of care in  
19 community and nationwide, not my individual  
20 standard of care, although I follow it.

21 Q And according to David Mayer it was that  
22 way in 2003, correct?

23 A Of course.

24 Q This patient did not have a systemic MRSA  
25 infection in October 2003, correct?

1 (Cross-Dr. Mayer/Meisner)

2 A It was always in the wound area.

3 Q That means it wasn't systemic, correct?

4 A I would agree with that.

5 Q Glad we agreed on something, Doctor.

6 THE COURT: All right, stop. No  
7 colloquy.

8 Q Now Doctor, MRSA is a -- it's a  
9 methicillin resistant staphylococcus infection,  
10 correct?

11 A Yes.

12 Q I'm sorry, methicillin resistant  
13 staphylococcus aureus infection, correct?

14 A Yes.

15 Q It's a type of staph infection, correct?

16 A Yes.

17 Q There are several types of staph  
18 infections, correct?

19 A Yes.

20 Q And MRSA, a MRSA infection is a bacterial  
21 infection that became highly resistant to certain  
22 antibiotics, correct?

23 A Yes.

24 Q And that's how the MRSA infection, how it  
25 became -- prevalent is not the right word but as it

1 (Cross-Dr. Mayer/Meisner)  
2 became -- you know what, I'm going to withdraw  
3 that. I apologize. MRSA is something that can  
4 easily infect healthy people, correct?  
5 A I don't know how easily but --  
6 Q Well, it can infect healthy people,  
7 correct?  
8 A It can, yes.  
9 Q Outbreaks of MRSA have been documented in  
10 places like health club gyms, correct?  
11 A Yes.  
12 Q Dormitories, correct?  
13 A Yes.  
14 Q Prisons, correct?  
15 A Yes.  
16 Q It can happen anywhere that crowded people  
17 get together, correct?  
18 A You need contact --  
19 Q Okay. That's fair enough.  
20 A -- in that situation, yes.  
21 Q Do you know if Mira Longobardo ever had a  
22 MRSA infection prior to 2003?  
23 A I wasn't aware that she ever did.  
24 Q Did she ever have any type of staph  
25 infection prior to 2003?

1 (Cross-Dr. Mayer/Meisner)

2 A I don't know.

3 Q To the best of your knowledge?

4 A I don't know the answer conclusively to  
5 that.

6 Q Is that something you would have liked to  
7 have known?

8 MS. HECHT: Well, Judge, it assumes  
9 that it exists. Object to the form of the  
10 question.

11 THE COURT: Sustained.

12 Q Well Doctor, wouldn't you have liked to  
13 review Mira Longobardo's past history to find out  
14 if she had a MRSA infection previous to 2003?

15 A It wouldn't be relevant to my opinions  
16 I've given today but if she had, I -- I wasn't  
17 aware she ever had a MRSA infection.

18 Q Well Doctor, aren't patients that have had  
19 MRSA infections in the past more susceptible to  
20 them in the future?

21 A They might be.

22 Q That wasn't something that you wanted to  
23 know, if Mira Longobardo was -- ever had a prior  
24 MRSA infection?

25 MS. HECHT: Asked and answered and

1 (Cross-Dr. Mayer/Meisner)

2 sustained.

3 THE COURT: Yeah, sustained.

4 MR. MEISNER: Okay. Fair enough.

5 BY MR. MEISNER:

6 Q Now Doctor, you testified before that Mira  
7 Longobardo had a MRSA infection in -- was  
8 discovered in October of 2003, correct?

9 A Yes.

10 Q And it was discovered after Dr. Shahzad  
11 took a culture, correct?

12 A Yes.

13 Q And that culture came back and it -- oh,  
14 I'm sorry, the microphone. And that culture came  
15 back positive for MRSA, correct?

16 A Yes.

17 Q And did you read Dr. Shahzad's testimony  
18 here today -- I mean, did you read Dr. Shahzad's  
19 testimony in this trial earlier?

20 A Yes.

21 Q And you read Dr. Shahzad's testimony that  
22 at the time that he took the culture and aspirated  
23 pus from the wound, he prescribed Bactrim, you read  
24 that testimony, correct?

25 A Yes, but it wasn't written in the note.

1 (Cross-Dr. Mayer/Meisner)

2 There was no record of it, so I wasn't sure it  
3 happened.

4 Q Well Doctor, did you know that when  
5 Dr. Shahzad took that culture, it was a Saturday?

6 A I didn't know what day of the week it was.

7 Q And did you know at that time that he saw  
8 Mira Longobardo in his office at her request, he  
9 opened up the office for her on that Saturday?

10 A I wasn't aware of that.

11 Q And you read -- and you read, Doctor --  
12 I'm sorry, withdrawn. Doctor, sometimes in the  
13 real world, in the real world of medicine, real  
14 world of every day medicine, you can't always write  
15 everything down, correct?

16 A No. You only try to write the significant  
17 things down, such as if you actually gave the  
18 patient an antibiotic, you would write that down.

19 Q Sometimes in the real world every day  
20 medicine like if a patient comes in to see you on a  
21 Saturday, you don't have your staff in the office,  
22 no copy machine available and things like that,  
23 they might forget, correct?

24 A Well, he wrote a note, so he didn't forget  
25 to write a note. You wouldn't think --

1 (Cross-Dr. Mayer/Meisner)

2 Q Do you know if he wrote the note that day  
3 or --

4 MS. HECHT: Judge, Judge --

5 Q I'm sorry, were you done?

6 A So if he took the time to author a note,  
7 why wouldn't he write how he's treating the  
8 patient? But it's -- the note indicates no  
9 antibiotics were given.

10 Q But Doctor, would you agree with me or not  
11 that sometimes in the real world, every day  
12 medicine that you can't write everything down,  
13 sometimes you forget things?

14 A Well, you wouldn't forget a prescription,  
15 that would be -- in a patient with a wound  
16 infection, so I don't think that's possible that he  
17 could have forgotten that, if he did it.

18 Q Doctor, before -- and I know we had a  
19 conversation about the yes or no questions, but are  
20 you going to answer any question that I ask with a  
21 "yes" or "no"?

22 MS. HECHT: Objection.

23 THE COURT: All right, sustained.

24 Q Doctor, do you recall testifying in a case  
25 called Borut versus Craig in 2003? This testimony

1 (Cross-Dr. Mayer/Meisner)

2 was given in Supreme Court, Suffolk County.

3 A I remember that case.

4 Q I'm sorry?

5 A Yes.

6 Q You do remember that case?

7 A Yes, I do.

8 Q That case involved diverticulitis surgery,  
9 correct?

10 A I don't remember what it involved.

11 Q Just remember the name of the case?

12 A The name, yeah.

13 Q Now Doctor, I'm reading from page 148 of  
14 the transcript of your testimony that you gave in  
15 that case, the question that was asked: "The truth  
16 of the matter is, Doctor, aside from what you  
17 testified to this morning in medical malpractice  
18 case, in the real world medical practice, outside  
19 those windows, you can't write everything down,  
20 correct?" Your answer: "That is correct." You  
21 gave that testimony, correct, Doctor?

22 A That's what I just told you today. You  
23 don't write everything down, just the important  
24 things. If you wrote everything down, you'd be  
25 writing all day and never treating a patient, but

1 (Cross-Dr. Mayer/Meisner)

2 if you give an antibiotic for an infection, what's  
3 more important than that to document if you  
4 actually did it.

5 Q Doctor, did you give that testimony?

6 A Yes.

7 Q Thank you. Now Doctor, after Mira  
8 Longobardo was released from the hospital after the  
9 diverticulitis surgery, do you know when the next  
10 time she saw Dr. Shahzad was?

11 A I think she saw for a post-op visit about  
12 a week later, everything was okay at that time, and  
13 then came back on October 4th when he drained the  
14 pus and blood from the wound.

15 Q Okay. In between her first office visit  
16 to Dr. Shahzad which we can agree was on September  
17 24th, 2003, and her next visit to Dr. Shahzad which  
18 was on October 4th, did she see any other doctors?

19 A I don't know that one way or the other.

20 Q Do you know if she canceled any  
21 appointments with Dr. Shahzad?

22 A I don't know.

23 Q Did you review Dr. Shahzad's records  
24 before coming here today?

25 A Those I did review, yes.

1 (Cross-Dr. Mayer/Meisner)

2 Q Did you notice that patient didn't show up  
3 for an appointment with Dr. Shahzad on September  
4 29th, 2003?

5 A I probably noticed it. I don't remember  
6 it off the top of my head.

7 Q Now going back to September 24th, 2003.  
8 What was the plaintiff's temperature at the time  
9 she saw Dr. Shahzad?

10 A On October 4th?

11 Q No, on September 24th, 2003.

12 A I don't remember what the temperature was  
13 on that date.

14 Q What was her pulse on that day?

15 A I would have to look at the document to  
16 answer that.

17 Q Now Doctor, if she had a temperature of  
18 97.9 on that day, was about correct, it's about  
19 normal, correct, it's within normal limits,  
20 correct?

21 A Yes.

22 Q And a pulse at 68 is within normal limits,  
23 correct?

24 A Yes.

25 Q And her blood pressure was 126 over 86,

1 (Cross-Dr. Mayer/Meisner)

2 that's just about within normal limits, correct?

3 A Yes.

4 Q And did you know that she told Dr. Shahzad  
5 on that day she was in no discomfort or pain?

6 A Yes.

7 Q And Dr. Shahzad removed the stitches, the  
8 sutures from the surgery on that day --

9 A Yes.

10 Q -- correct?

11 A Yes.

12 Q Okay. And to do that he would have had to  
13 examine the wound, correct?

14 A Of course.

15 Q And there was no pus in the wound at that  
16 time, correct?

17 A There was not.

18 Q Now, did you know the patient saw  
19 Dr. Leidner on October 1st, 2003?

20 A I'm not sure if I ever knew that or not.

21 Q Okay. You hadn't reviewed Dr. Leidner's  
22 records, correct?

23 A That's true.

24 Q So you don't know what her vital signs  
25 were at the time she saw Dr. Leidner on October

1 (Cross-Dr. Mayer/Meisner)

2 1st, 2003, correct?

3 A That's correct.

4 Q I'm going to represent to you that in  
5 those records Dr. Leidner wrote that she has no  
6 fever, fair enough?

7 A Yes.

8 Q Okay. That he performed a physical  
9 examination of her abdomen at that time.

10 MS. HECHT: Judge, at this point  
11 these records are not in evidence.

12 THE COURT: All right. So they're  
13 not in evidence. He's asking a question  
14 on cross.

15 MS. HECHT: He's reading from a  
16 document that's not in evidence.

17 THE COURT: Well, he's asking the  
18 Doctor, I assume, a preface to a question  
19 to assume certain things, whether they're  
20 good assumptions or not.

21 MR. MEISNER: You know what, I'll  
22 move on. It's fine. But at some point  
23 we're going to move those records into  
24 evidence, so -- I mean there's no record,  
25 they should be in evidence actually.

1 (Cross-Dr. Mayer/Meisner)

2 THE COURT: Then go ahead.

3 MR. MEISNER: Yeah, can we move them  
4 into evidence, Judge? Any objections?  
5 Subject to redaction?

6 MS. HECHT: We haven't seen them.

7 THE COURT: Well, I guess we can't,  
8 but I'm not going to prevent you from  
9 asking questions based on it, if you so  
10 choose.

11 BY MR. MEISNER:

12 Q We discussed Dr. Shahzad's -- or I'm  
13 sorry, we discussed Miss Longobardo's visit to  
14 Dr. Shahzad on October 4th already, correct?

15 A Yes.

16 Q That was the day when a culture was taken,  
17 correct?

18 A Yes.

19 Q When did the culture come back?

20 A I think on the 6th of October, roughly, or  
21 at least that's when he made a notation about it.

22 Q That's when he added the Rifampin,  
23 correct?

24 A It looks like he just gave Rifampin.  
25 Doesn't look like he added it to anything,

1 (Cross-Dr. Mayer/Meisner)

2 according to the records.

3 Q Well, assuming that Dr. Shahzad did  
4 prescribe Bactrim on October 4th and kept the  
5 patient on Bactrim, added Rifampin to the regimen  
6 when the culture came back, that would have been  
7 within the standard of care, correct?

8 A No, he needed an ID consult. They needed  
9 intravenous antibiotics.

10 Q Doctor, it's your testimony that  
11 intravenous antibiotics are to be given every time  
12 there's a MRSA infection?

13 A Post-op patient with a serious infection  
14 you need I.V. Vancomycin and maybe some other drugs  
15 guided by an infectious disease doctor. That's my  
16 testimony.

17 Q Doctor, what is your definition of serious  
18 infection?

19 A When MRSA colonizes a post-op wound, the  
20 patient's extremely vulnerable to a deep invasive  
21 infection that leads to disastrous results, eating  
22 away of the abdominal wall, hernias, persistence of  
23 infection.

24 Q Doctor -- I'm sorry, did I interrupt you?

25 A I'm done.

1 (Cross-Dr. Mayer/Meisner)

2 Q Doctor, this infection was in the surgical  
3 tract, correct?

4 A That's why it's serious.

5 Q But it never went outside the surgical  
6 tract, correct?

7 A I don't understand the question.

8 Q Did the infection ever go outside the  
9 surgical tract? It didn't, correct?

10 A No, but that was enough to cause  
11 significant harm to the patient.

12 Q Doctor, did it ever go outside the  
13 surgical tract, yes or no?

14 A Well, it went inside to the fascia, so  
15 that would be deepened, is what it did.

16 Q Doctor, the wound eventually closed,  
17 correct?

18 A Yes.

19 Q When did it close?

20 A Closed some time before April 19th, 2004,  
21 so probably closed within a few weeks of the  
22 drainage. I don't know the exact date.

23 Q Doctor, is it your testimony that the  
24 wound was open from October 4th, 2003 until April  
25 19th, 2004?

1 (Cross-Dr. Mayer/Meisner)

2 A That's not what I said. I said it closed  
3 within a few weeks of his draining it in the office  
4 on the 4th. I didn't say it persisted till April.

5 Q I'm sorry, I thought I heard you say  
6 April.

7 A No, I would have to look at the records to  
8 see the exact date that it closed. I haven't  
9 memorized that.

10 Q Doctor, are you aware that the patient  
11 went to the emergency room at Catskill Regional  
12 Medical Center on October 14th, 2003?

13 A Yes.

14 Q And at that time was there any sign of an  
15 open wound or infection?

16 A I don't remember seeing a notation to  
17 that.

18 Q And her temperature was within normal  
19 limits at that time, correct?

20 A Yes.

21 Q She didn't have any tachypnea, correct?

22 A Correct.

23 Q She didn't have any hypotension at that  
24 time, correct?

25 A Correct.

1 (Cross-Dr. Mayer/Meisner)

2 Q In fact she was there being treated for  
3 another condition entirely, correct?

4 A Yes.

5 Q And blood tests were taken at that time,  
6 correct?

7 A Yes.

8 Q Her white blood cell count at that time  
9 was within normal limits, correct?

10 A Yes.

11 Q And her neutrophils were within the normal  
12 limits correct?

13 A I'll accept your representation. I don't  
14 remember what they were exactly.

15 Q And the next day after that, she saw  
16 Dr. Shahzad, are you aware of that, on October 15,  
17 2003?

18 A Yes.

19 Q And at that time her temperature was  
20 within normal limits, correct?

21 A Yes.

22 Q And her pulse was within normal limits,  
23 correct?

24 A Yes.

25 Q And her blood pressure was within normal

1 (Cross-Dr. Mayer/Meisner)

2 limits, correct?

3 A Yes.

4 Q And at that time Dr. Shahzad wrote that  
5 the wound was healing well, correct?

6 A Yes.

7 Q And that the pocket was getting closed,  
8 correct?

9 A Yes.

10 Q That there was no cellulitis, correct?

11 A Yes.

12 Q If there was cellulitis, it would have  
13 been evidence of infection, correct?

14 A That's one -- one indicator, yes.

15 Q But there was no cellulitis on that day,  
16 we've established that, correct?

17 A Yes.

18 Q And the patient also told Dr. Shahzad that  
19 she was in no discomfort at that time, correct?

20 A Yes.

21 Q And that was a little more than a week  
22 after the antibiotics or after -- it was more than  
23 a -- a little more than a week after the culture  
24 came back, correct?

25 A Yes.

1 (Cross-Dr. Mayer/Meisner)

2 Q Okay. Now, did the patient have another  
3 visit with Dr. Shahzad scheduled for October 24th,  
4 2003?

5 A I don't remember.

6 Q Do you remember seeing a note from  
7 Dr. Shahzad's office that the patient didn't show  
8 up but they called her and said she would keep her  
9 appointment for October 27th?

10 A I don't remember that.

11 Q And you're not aware that the patient also  
12 saw Dr. Leidner on the same day, correct, on  
13 October 24th, 2003?

14 A Correct.

15 Q And you're not aware because you didn't  
16 review Dr. Leidner's records that Dr. Leidner wrote  
17 in his records on October 24th, 2003, "now wound  
18 closed," you're not aware of that, correct?

19 A I didn't review his records.

20 Q And so you're similarly not aware that  
21 Dr. Leidner performed an abdominal inspection on  
22 that day and that he wrote that there was no mass  
23 or fluctuation, you're not aware of that, correct?

24 A You're telling me now, yes.

25 Q Well, before I told you that, you weren't

1 (Cross-Dr. Mayer/Meisner)

2 aware of it, correct?

3 A No, you keep asking the same question a  
4 hundred times. I have not reviewed Dr. Leidner's  
5 office records but I reviewed his hospital  
6 contributions and consults.

7 Q Well Doctor, when a doctor writes that  
8 there's no fluctuation, means there's no fluid,  
9 correct?

10 A Not to his determination, that's correct.

11 Q Well, this is the doctor performing the  
12 examination that writes that.

13 A He's not a surgeon but -- but --

14 Q He's a medical doctor, correct?

15 A Yes, yes. He's not accustomed to  
16 examining surgical wounds that a surgeon would be.

17 Q Have you ever asked Dr. Leidner if he's  
18 accustomed to inspecting surgical wounds? Have you  
19 ever spoken to Dr. Leidner?

20 A Well, that's the province of a surgeon, so  
21 --

22 Q Doctor, generally when a surgeon, a  
23 doctor, a medical doctor writes there's no  
24 fluctuation, means there's no fluid, correct, it's  
25 a term you're taught in medical school, correct,

1 (Cross-Dr. Mayer/Meisner)  
2 before you've taught -- you've picked your  
3 specialty, correct?

4 A Yes.

5 Q Now, the patient saw Dr. Shahzad again on  
6 October 27, 2003, correct?

7 A Yes.

8 Q And Dr. Shahzad wrote in his note on that  
9 day "MRSA infection completely resolved," you saw  
10 that note, correct?

11 A I saw the -- that he wrote that.

12 Q And that was consistent with what I've  
13 just told you that Dr. Leidner wrote on October  
14 24th, correct?

15 A No, I don't think he wrote anything about  
16 the MRSA being resolved. It obviously wasn't  
17 resolved 'cause it came back a few weeks later.

18 Q Few weeks later that it came back?

19 A I apologize, it came back a few months  
20 later.

21 Q And Doctor, after this patient saw  
22 Dr. Shahzad on October 27, 2003, when is the next  
23 time that she saw a doctor, any doctor?

24 A I think in February of '04, if I remember  
25 correctly.

1 (Cross-Dr. Mayer/Meisner)

2 Q Doctor, it was actually earlier than that,  
3 it was in January of 2004 --

4 A Okay, okay.

5 Q -- when she saw Dr. Leidner, okay?

6 A Okay.

7 Q 77 days between her last appointment to  
8 Dr. Shahzad and when she saw Dr. Leidner on January  
9 12th, 2004. In that period of time, we can assume  
10 that she didn't tell any doctor that she had any  
11 fever or had any pain in the abdominal wound,  
12 correct?

13 A I would assume that.

14 Q We know she didn't receive any treatment  
15 for it, correct?

16 A Yes.

17 Q Now on January 12, 2004, I know you  
18 haven't reviewed Dr. Leidner's records but I'm  
19 going to represent to you that on January 12, 2004,  
20 Dr. Leidner wrote that she feels great. That  
21 doesn't sound consistent with somebody who's got a  
22 ongoing infection, correct?

23 A With MRSA, the bacteria can be indolent in  
24 a wound and remain there to flare up later if it's  
25 not adequately treated the first time, so that

1 (Cross-Dr. Mayer/Meisner)

2 actually is consistent with a persistent MRSA  
3 infection.

4 Q Doctor, there's a difference between being  
5 colonized with MRSA and having an infection,  
6 correct?

7 A Yes, but both require eradication of the  
8 organism if it's in a surgical wound.

9 Q Doctor, how do you know it was --  
10 withdrawn. I'm going to move on. When's the next  
11 time she saw Dr. Shahzad, to your knowledge?

12 A I thought it was April 19th, 2004 but may  
13 be in February, had a visit. It might be helpful  
14 if I had the records in front of me, but I'm trying  
15 to go from memory here.

16 Q I'm sorry. Just bear with me one second,  
17 Doctor, if you would.

18 A Sure.

19 Q Now Doctor, the next time that she saw  
20 Dr. Shahzad was on February 18th, 2004, correct?

21 A Yes.

22 Q And at that time all the patient's vital  
23 signs were within normal limits, correct?

24 A Yes.

25 Q She didn't have any drainage from her

1 (Cross-Dr. Mayer/Meisner)

2 wound, correct?

3 A True.

4 Q She didn't have any swelling, correct?

5 A Yes. She did not.

6 Q So she didn't have cellulitis, correct?

7 A No.

8 Q That's not correct?

9 A No, she did not have cellulitis.

10 Q Fair enough. Now Dr. Shahzad did a  
11 complete blood count, blood test on that day,  
12 correct?

13 A I don't recall.

14 Q In fact he did a -- if Dr. -- I'm sorry.  
15 He ordered a CT scan, correct?

16 A Yes.

17 Q That CT scan was completed?

18 A Yes.

19 Q It came back and it showed that the  
20 patient had a hernia?

21 A Yes.

22 Q And that Dr. Shahzad scheduled surgery for  
23 the patient, correct?

24 A That's correct.

25 Q Now, did you see a -- in your review of

1 (Cross-Dr. Mayer/Meisner)

2 the records, did you see that Dr. Shahzad took a  
3 complete blood count on March 1st, 2004?

4 A I most likely did. I don't remember it.

5 Q Well, if I represent to you that the blood  
6 test came back with a white blood cell count at  
7 10.6, that's within normal limits, correct?

8 A Yes.

9 Q No sign of infection in the white blood  
10 cells, correct?

11 A There was not.

12 Q Now, patient underwent surgery on March  
13 5th, 2004, correct?

14 A Yes.

15 Q And during that surgery, Dr. Shahzad took  
16 one of the sutures out from the prior surgery and  
17 cultured it, correct?

18 A Yes.

19 Q There was no growth on that suture,  
20 correct?

21 A That's true.

22 Q And that was a suture from the fascia,  
23 correct?

24 A Yes.

25 Q And after that surgery white blood cell

1 (Cross-Dr. Mayer/Meisner)

2 counts were taken the day -- the next day and the  
3 day after, correct?

4 A Yes.

5 Q And they were within normal limits?

6 A I don't remember.

7 Q Before the patient was discharged on March  
8 8th, 2004, Dr. Shahzad took a nose culture,  
9 correct?

10 A Yes.

11 Q And that nose culture came back as normal  
12 bacteria flora, correct?

13 A Yes.

14 Q Explain to this jury what that means,  
15 please.

16 A Some patients have MRSA colonized in the  
17 nose, so Mira did not at that time.

18 Q Now after the surgery she saw Dr. Shahzad  
19 for the first full post-op visit on March 10th,  
20 2004, correct?

21 A Yes.

22 Q And at that time there was no evidence of  
23 an infection, correct?

24 A That's correct.

25 Q Her vital signs were all within normal

1 (Cross-Dr. Mayer/Meisner)

2 limits, correct?

3 A Yes.

4 Q And Dr. Shahzad -- she didn't have any  
5 cellulitis, correct?

6 A True.

7 Q There was no drainage from the wound,  
8 correct?

9 A Correct.

10 Q The patient came back five days later  
11 again, correct?

12 A Yes.

13 Q And she had no new complaints at that  
14 time, correct?

15 A Yes.

16 Q At that time the wound was closed,  
17 correct?

18 A Yes.

19 MS. HECHT: Judge, may I give the  
20 witness?

21 THE COURT: What is it?

22 MS. HECHT: I think it's what you're  
23 using. He asked if he could see the  
24 records.

25 MR. MEISNER: Sure, yeah, those are

1 (Cross-Dr. Mayer/Meisner)

2 the progress notes?

3 MS. HECHT: Yup.

4 MR. MEISNER: Sure, I have no --

5 A Thank you.

6 Q My pleasure. Doctor, at any time if you  
7 want to see any of the records, just please let us  
8 know, okay?

9 A Okay.

10 Q Now, none of Dr. Leidner's records are in  
11 there, correct?

12 A They are not.

13 Q Okay. So you wouldn't have known that the  
14 patient saw Dr. Leidner on April 15, 2004, correct?

15 A Correct.

16 Q Now, after -- I'm sorry. What was the  
17 date of the last visit that we spoke about with  
18 Dr. Shahzad was on March 15, 2004?

19 A Yes.

20 Q Okay. The next time that the patient saw  
21 Dr. Shahzad was on April 19th, 2004, correct?

22 A Yes.

23 Q And at that time the wound was clean,  
24 correct?

25 A On April 19th?

1 (Cross-Dr. Mayer/Meisner)

2 Q April 19th, 2004.

3 A No, there was a swelling and a lump in the  
4 lower abdomen.

5 Q But Dr. Shahzad cleaned the wound,  
6 correct?

7 A I don't see that on this note.

8 Q Can I see that note, please?

9 A Says "cleaned the wound."

10 Q It's a handwritten note, correct?

11 A Yes.

12 Q You know, got to be it for me if I can  
13 interpret that.

14 A Maybe I'm missing somebody's handwriting.

15 Q Handwriting's hard to read. We'll move  
16 on.

17 A Okay.

18 Q At that time the patient didn't have any  
19 temperature, correct?

20 A Correct.

21 Q Her pulse was within normal limits?

22 A Yes.

23 Q And her blood pressure was almost within  
24 -- was pretty much within normal limits, correct?

25 A Yes.

1 (Cross-Dr. Mayer/Meisner)

2 Q She came back to see Dr. Shahzad again on  
3 April 28th, 2004, correct?

4 A Yes.

5 Q That was 58 days after the surgery that  
6 was performed on March 5th, sound about right?

7 A Yeah, more or less, yes.

8 Q Doctor, as a lawyer I'm no expert in math  
9 either but you also have the added qualification of  
10 being a doctor, so I thought maybe you'd be a  
11 little better at math than me.

12 THE COURT: Not handwriting.

13 MR. MEISNER: I'm sorry?

14 THE COURT: Not handwriting.

15 BY MR. MEISNER:

16 Q At that time on April 28th, 2004,  
17 Dr. Shahzad took a needle aspiration of the wound,  
18 noticed that the wound was slightly reddened,  
19 correct?

20 A Yes.

21 Q And there was some swelling at the lower  
22 end of the wound, correct?

23 A Yes.

24 Q And by the way, that note also indicates  
25 that the patient called Dr. Shahzad the day before

1 (Cross-Dr. Mayer/Meisner)

2 and asked to be seen, correct?

3 A Yes.

4 Q And Dr. Shahzad saw her the next day,  
5 correct?

6 A Yes.

7 Q And at that time Dr. Shahzad prescribed  
8 Bactrim, correct?

9 A Yes.

10 Q And he sent the fluid that he aspirated,  
11 the pus he aspirated from the wound to the lab,  
12 correct?

13 A Yes.

14 Q And a wound culture was performed,  
15 correct?

16 A Yes.

17 Q And the wound culture came back and showed  
18 that there were few MRSA --

19 A Yes.

20 Q -- is that correct?

21 A That's correct.

22 Q And it also showed that it was susceptible  
23 to Bactrim, correct?

24 A Yes.

25 Q Now Doctor, a few days later on May 1st,

1 (Cross-Dr. Mayer/Meisner)

2 Dr. Shahzad prescribed a drug called Zyvox,  
3 correct, on 5/1?

4 A I don't see any entry here for 5/1.

5 Q Well, you don't have the complete chart,  
6 do you? Would you like to see Dr. Shahzad's  
7 complete chart that's in evidence?

8 A Sure. Regarding that 5/1 date?

9 Q Can we show --

10 A If you want to represent to me that he  
11 prescribed it on that date, I'll accept your  
12 representation.

13 Q You'll accept that?

14 A Yes.

15 Q Thank you, Doctor. Now before you --  
16 early this morning you testified that the lab  
17 culture did not show that the organism was  
18 susceptible to Zyvox. Remember that testimony,  
19 correct?

20 A Yes.

21 Q Now, in 2003 Zyvox was a pretty new drug,  
22 correct?

23 A Yes.

24 Q The -- it had a hundred percent -- I'm  
25 sorry, one second, please. Doctor, isn't it true

1 (Cross-Dr. Mayer/Meisner)

2 that culture panels are added as resistance of use  
3 of antibiotics increase?

4 A Yes.

5 Q And in 2003 isn't it true that Zyvox -- or  
6 that MRSA infections were a hundred percent  
7 sensitive to Zyvox?

8 A I don't agree with that.

9 Q And isn't it true that today, even today,  
10 14 years later, it's still more than 95 percent  
11 effective against all strains of MRSA?

12 A Well, it obviously wasn't effective  
13 against this MRSA because --

14 Q Doctor, that wasn't my question.

15 A But -- no, I disagree with that.

16 Q Isn't it true that Zyvox is more effective  
17 than Vancomycin?

18 A I disagree with that.

19 Q Doctor, do you know what the effectiveness  
20 rate of Zyvox was in 2003?

21 A I would defer to an infectious disease  
22 doctor on that.

23 Q Okay. Thank you, Doctor.

24 A That's not my area of expertise.

25 Q That's fine. That's fine, Doctor, thank

1 (Cross-Dr. Mayer/Meisner)

2 you. Now Doctor, when was the next time that a  
3 culture was done?

4 MS. HECHT: Judge, may I hand up?

5 Q I'll represent to him the next culture was  
6 on June 15th, 2004. Fair enough?

7 A Yes.

8 Q Now in between when Zyvox was prescribed  
9 May 1st, 2004, do you have any of those office  
10 notes from Dr. Shahzad there?

11 A Yes.

12 Q Now, on May 26, 2004, the surgical scar  
13 was well healed, correct?

14 A Yes.

15 Q There was no cellulitis on that day,  
16 correct?

17 A Correct.

18 Q Her blood pressure was normal?

19 A Yes.

20 Q Temperature was normal?

21 A Yes.

22 Q Her pulse was normal?

23 A Yes.

24 Q The patient was given a prescription for a  
25 CT scan of the pelvis, correct?

1 (Cross-Dr. Mayer/Meisner)

2 A Yes.

3 Q And the CT showed that there was no change  
4 other than surgical clips that were put in during  
5 one of the earlier surgeries was noted on that  
6 exam, correct?

7 A I think it said post surgical change or  
8 something.

9 Q Now Doctor, on June 1st, 2004, the patient  
10 saw Dr. Shahzad again, correct?

11 A Yes.

12 Q She told Dr. Shahzad on that day that she  
13 was feeling better, correct?

14 A Yes.

15 Q Again her vital signs were within normal  
16 limits, correct?

17 A Yes.

18 Q And the wound was closed at that time;  
19 there was no cellulitis, correct?

20 A Yes.

21 Q But Dr. Shahzad kept the patient on  
22 antibiotics, correct?

23 A Yes.

24 Q Kept her on Zyvox, correct?

25 A Yes.

1 (Cross-Dr. Mayer/Meisner)

2 Q Now, we talked before about a culture  
3 being taken on June 15th, 2004, correct?

4 A Yes.

5 Q And that was when the patient came to the  
6 office because she thought she had another abscess,  
7 correct?

8 A Yes.

9 Q An abscess is another way of saying that  
10 there's an infection, correct?

11 A I think it was June 16th that he opened  
12 the -- an abscess that had thick yellow pus again.

13 Q And but he -- okay. Either way he  
14 cultured that abscess, right? He didn't ignore the  
15 patient making that complaint, correct?

16 A No, he did not.

17 Q And he took a culture and sent it to the  
18 lab, correct?

19 A Yes.

20 Q And that culture came back with no  
21 anaerobic -- or aerobic growth, correct?

22 A Yes.

23 Q There was no MRSA at that time, correct?

24 A There was MRSA but it had been suppressed  
25 by the Zyvox and the culture was false negative.

1 (Cross-Dr. Mayer/Meisner)

2 Q Well, Doctor, you're not relying on the  
3 reports of the wound culture?

4 A I'm relying on his note from June 28th  
5 where he says "wound was draining" and he writes  
6 "MRSA on Zyvox," he knows there's MRSA there.

7 Q Well, she was originally put on MRSA for  
8 Zyvox, correct?

9 A Yes.

10 Q And again, being colonized with MRSA is  
11 different than having an infection, correct?

12 A This patient had an infection.  
13 Colonization implies it's on your skin without  
14 causing a problem.

15 Q Doctor, what was the color of the  
16 discharge from the wound noted on that day?

17 A On the 16th it was thick yellow pus.

18 Q On which day was that?

19 A The 16th and on June 28th.

20 Q I was asking about June 28th.

21 A Oh, it was green draining.

22 Q Okay. Now, pus from MRSA, from a MRSA  
23 wound is usually yellow, correct?

24 A Usually but not always.

25 Q The patient's vital signs again on that

1 (Cross-Dr. Mayer/Meisner)

2 day were normal, correct?

3 A Yes, which is pretty characteristic of  
4 MRSA wound infections. They often are local and  
5 not systemic, so vital signs are not terribly  
6 useful for this problem.

7 Q Nonetheless, Dr. Shahzad took the patient  
8 back to the operating room on July 16, 2004,  
9 correct?

10 A Yes.

11 Q He performed a scar tract removal on that  
12 day?

13 A Yes.

14 Q And his operative diagnosis was that there  
15 was -- or he -- I'm sorry, he removed the scar  
16 complex at that time, correct?

17 A With an abscess, yes.

18 Q Right. And he sent it to the lab,  
19 correct?

20 A Yes.

21 Q And the lab noted that there was an  
22 infection inside the scar complex, correct?

23 A Yes.

24 Q Okay. And that formed as a result of a --  
25 it was encapsulated by the body preventing --

1 (Cross-Dr. Mayer/Meisner)

2 apologize, everybody. That encapsulation was  
3 created because the body itself develops a  
4 mechanism to make sure that the infection doesn't  
5 spread, correct?

6 A Yes.

7 THE COURT: Mr. Meisner, it's after  
8 4:00 o'clock and I'm going to have to  
9 determine whether I'm going to put in for  
10 overtime today. I don't know how much  
11 longer you think --

12 MR. MEISNER: Judge, I'm very sorry,  
13 but I'm going as fast as I can and I still  
14 have a little more to cover.

15 THE COURT: So I should put in for  
16 overtime?

17 MR. CAMPBELL: Can we have a couple  
18 minutes just there, Judge?

19 MR. MEISNER: Unless the doctor  
20 wants to come back.

21 MR. CAMPBELL: Can we have just a  
22 few minutes recess here for just a minute?

23 THE COURT: Okay.

24 MR. CAMPBELL: Thank you.

25 THE COURT: Step down a couple

1 (Cross-Dr. Mayer/Meisner)

2 minutes.

3 A JUROR: Is that yes or no?

4 THE COURT: I don't know. I'll find  
5 out.

6 (A short recess was taken.)

7 (Whereupon, the following took place  
8 in open court in the presence of the sworn  
9 jury and alternates.)

10 THE COURT: All right. So we're  
11 probably going to stop at 4:45 unless  
12 there's only a few more questions, and  
13 then -- no later than 5:00 o'clock. So  
14 thank you for your patience and your  
15 attention, and I'll remind you again when  
16 you leave that there will be no court  
17 tomorrow, no trial tomorrow, and Wednesday  
18 morning you'll come back on Wednesday  
19 afternoon at 1:00.

20 A JUROR: 1:30 you said.

21 THE COURT: 1:30.

22 A JUROR: I wrote it down.

23 (Discussion off the record.)

24 THE COURT: Go ahead, Mr. Meisner,  
25 if you're ready.

1 (Cross-Dr. Mayer/Meisner)

2 BY MR. MEISNER:

3 Q Now Doctor, have you seen the pathology  
4 report from the July 16, 2004, surgery?

5 A Yes.

6 Q Do you have a copy of it there?

7 A I do not.

8 Q Okay. Now, the pathology report from the  
9 July 16, 2004 surgery, what was the final  
10 diagnosis?

11 A Could I refresh my recollection looking at  
12 it?

13 Q Yeah, if we can get the copy of it -- you  
14 know what, Doctor, I'll just ask the question this  
15 way: It's true that the final pathological report  
16 from the 7/16/2004 surgery reported no MRSA,  
17 correct?

18 A From the -- you mean the culture?

19 Q From the pathology report of the abdominal  
20 scar?

21 A That wouldn't report MRSA. That would  
22 have to be a culture report.

23 Q Well, luckily we have the culture report  
24 here, too, and that I can show you -- I'll just  
25 show you my copy.

1 (Cross-Dr. Mayer/Meisner)

2 MS. HECHT: Here. I got it.

3 MR. MEISNER: You got it? Thanks.

4 Thanks.

5 A Yes, there was no MRSA identified in the  
6 culture.

7 Q Thank you. Now Doctor, since that day,  
8 patient hasn't had a MRSA infection, correct?

9 A I think in August of that year there was  
10 some pain in the wound again but MRSA was never  
11 cultured after that day.

12 Q What note are you referring to?

13 A I think there's a note from August 11th,  
14 2004. Dr. Shahzad's note it says: complains of a  
15 lump in incision. So it was -- but there was no  
16 drainage or redness.

17 Q There was no cellulitis either, correct?

18 A No, he writes MRSA is his impression but  
19 there was no culture that was positive on that  
20 date.

21 Q When's the next time she saw Dr. Shahzad?

22 A Looks like 9/13/04.

23 Q At that time she had no drainage, correct?

24 A Yes.

25 Q The wound was clean, correct?

1 (Cross-Dr. Mayer/Meisner)

2 A Correct.

3 Q And that the patient wanted to start  
4 exercising at that time, correct?

5 A Yes.

6 Q And then after that she didn't come back  
7 to see Dr. Shahzad again for nine months, correct?

8 A That's correct.

9 Q And in that period of nine months, the  
10 patient had physical therapy for her right ankle,  
11 correct?

12 A Yes.

13 Q Did you review the notes from the -- from  
14 Catskill Rehabilitation and Sports Medicine?

15 A I did not.

16 Q And again, just to be clear, you haven't  
17 reviewed any of Dr. Leidner's notes from that  
18 period of nine months in between visits to  
19 Dr. Shahzad, correct?

20 A True.

21 Q There's --

22 A I think she had some knee surgery or  
23 something.

24 Q She did, she had -- right, she had knee  
25 surgery in -- two knee surgeries, correct?

1 (Cross-Dr. Mayer/Meisner)

2 A Yes.

3 Q In early 2006?

4 A Yes.

5 Q And did you review the records from those  
6 surgeries?

7 A I didn't.

8 Q You didn't want to see in those records if  
9 any of those doctors performed a physical  
10 examination of her abdomen?

11 A I didn't review the records.

12 Q And before those surgeries you're aware  
13 that the patient had -- she had physicals and she  
14 had blood tests, correct?

15 A Yes.

16 Q You didn't want to see the results of  
17 those?

18 MS. HECHT: Judge, object to what he  
19 didn't want to see. He didn't see them.

20 Q Don't you think it would be helpful,  
21 Dr. Mayer?

22 A I can't answer that without viewing them.

23 Q Now, the patient came back to see  
24 Dr. Shahzad in June of 2005, correct?

25 A Yes.

1 (Cross-Dr. Mayer/Meisner)

2 Q At that time again her vitals were all  
3 normal, correct?

4 A Yes.

5 Q And there was a bulge on her right side  
6 near her umbilicus at that time, correct?

7 A Yes.

8 Q And that was patient had a recurrent  
9 hernia, correct?

10 A Yes.

11 Q Is that correct?

12 A Yes.

13 Q I'm sorry, I didn't hear you if you  
14 answered.

15 A Oh, yes.

16 Q Now, Doctor, there can be a lot of reasons  
17 for recurrent hernia, correct?

18 A Well, weak tissue or infection are really

19 --

20 Q But Doctor, those are not --

21 A -- main causes.

22 MR. CAMPBELL: He's just  
23 interrupting him.

24 Q Were you done, Doctor?

25 A Weak tissues or infection are really by

1 (Cross-Dr. Mayer/Meisner)

2 far the most common.

3 Q Okay. But also there are other potential  
4 causes for a recurrent hernia, correct?

5 A There may be.

6 Q Doctor, is the patient's body habitus, can  
7 that contribute to a recurrent hernia?

8 A It can.

9 Q And obesity can cause a recurrent hernia,  
10 correct?

11 A Doesn't cause it but it can contribute.

12 Q But it can contribute to causing a  
13 recurrent hernia, correct?

14 A Yes.

15 Q Okay. In fact straining when you're on  
16 the toilet can cause a recurrent hernia, correct?

17 A Not in and of itself.

18 Q Doctor, you've never heard that?

19 A No.

20 Q Doctor, lifting something heavy can cause  
21 a recurrent hernia, correct?

22 A That's possible.

23 Q Overexertion can cause a recurrent hernia,  
24 correct?

25 A I haven't heard of that.

1 (Cross-Dr. Mayer/Meisner)

2 Q Never heard of overexertion causing a  
3 hernia?

4 A No.

5 Q Internal pressure from coughing hard or  
6 sneezing or straining, that can cause a hernia,  
7 correct?

8 A It's possible.

9 THE COURT: Are we talking in  
10 general --

11 MR. MEISNER: In general.

12 THE COURT: -- or in a surgical  
13 wound?

14 MR. MEISNER: In general.

15 Q And it can also cause it in a surgical  
16 wound, correct?

17 A Usually there's other factors like  
18 infection.

19 Q Well Doctor, recurrent hernia can happen  
20 in the absence of infection, correct?

21 A Yes.

22 Q In a surgical wound?

23 A Correct, it can happen, yes.

24 Q Now, Dr. Mayer, you're aware that the  
25 patient went to the emergency room at Catskill

1 (Cross-Dr. Mayer/Meisner)

2 Regional Medical Center in June of 2005, are you  
3 not?

4 A Yes.

5 Q And that was for treatment for chest pain,  
6 correct?

7 A Yes.

8 Q She had been having some chest pain,  
9 stinging, correct?

10 A Yes.

11 Q At that time she had no fever, correct?

12 A Not that I remember.

13 Q And her -- I'm sorry, withdrawn. The  
14 emergency room physician that performed his  
15 examination of Mrs. Longobardo at that time  
16 performed an abdomen examination, correct?

17 A Yes.

18 Q And he found that her abdomen was soft,  
19 non tender, that there was no guarding, no mass, no  
20 palpable abdominal aortic aneurism, correct?

21 A Yes.

22 Q And a blood test was performed at that  
23 time, correct?

24 A Yes.

25 Q Her blood cells were within normal limits,

1 (Cross-Dr. Mayer/Meisner)

2 correct?

3 A I don't remember but I'll accept your  
4 representation.

5 Q Well Doctor, I'm going to represent to you  
6 that her white blood cell count was 8,000, correct?

7 A Okay. That's normal, that's normal.

8 Q Was that okay? That's within normal  
9 limits, correct?

10 A Yes.

11 Q At that time the patient wasn't taking any  
12 antibiotics, correct?

13 A No, I don't believe so.

14 Q Okay. So her white blood cell count or  
15 any signs and systems that weren't being masked as  
16 you claim by antibiotics at that time, correct?

17 A Not at that time.

18 Q Then the patient next saw Dr. Shahzad  
19 again on July 27th, 2005, correct?

20 A Yes.

21 Q You have that note in front of you,  
22 Doctor? If you don't, that's okay.

23 A I don't actually.

24 Q Okay. Well, do you know what the --  
25 excuse me. Withdrawn. The patient's pain scale at

1 (Cross-Dr. Mayer/Meisner)

2 that time, do you recall what it was?

3 A I don't recall.

4 Q Okay. Well, Dr. Shahzad noted that her  
5 pain scale was zero at that time. Can you accept  
6 that?

7 A Yes.

8 Q And at that time they discussed that --  
9 her having another hernia surgery, is that fair to  
10 say?

11 A Yes.

12 Q And at that time -- at this time they  
13 decided to use a mesh in the surgery, correct?

14 A Yes.

15 Q And that was because there was a new mesh  
16 on the market that was bio-absorbable --

17 A Correct.

18 Q -- correct?

19 A Yes.

20 Q And they proceeded with the repair of that  
21 hernia in September of 2005, correct?

22 A Yes.

23 Q Now after that procedure -- that  
24 procedure, by the way, was performed on September  
25 15, 2005 at Catskill Regional, correct?

1 (Cross-Dr. Mayer/Meisner)

2 A Yes.

3 Q And it was performed by Dr. Shahzad,  
4 correct?

5 A Yes.

6 Q And at the time of that surgery,  
7 Dr. Shahzad took a MRSA culture, correct?

8 A He took a culture, yes.

9 Q Well, he took a culture, correct --

10 A Yes.

11 Q -- and it came back negative, correct?

12 A Yes.

13 Q There was no MRSA, correct?

14 A True.

15 Q Now, the patient saw Dr. Shahzad again  
16 approximately, looks like it was 11 days after that  
17 surgery on September 26, 2005, that was her first  
18 post operative office visit to Dr. Shahzad?

19 A Yes.

20 Q At that time her temperature, all of her  
21 vitals again were all within normal limits,  
22 correct?

23 A Yes.

24 Q And at that time the patient told  
25 Dr. Shahzad that at the time of surgery she did not

1 (Cross-Dr. Mayer/Meisner)  
2 mention that she was having pain which was now  
3 steadily getting worse, do you see that note?

4 A I don't have the note in front of me.

5 Q Oh, I'm sorry.

6 MR. MEISNER: Liz, do you have any  
7 copy of that?

8 MS. HECHT: I gave him what I have  
9 for the --

10 MR. MEISNER: You know what, let me  
11 see if I can work without it.

12 Q Do you remember a note where the patient  
13 complained of pain on her right side next to her  
14 hip to Dr. Shahzad?

15 A Yes.

16 Q And that was -- do you remember that note  
17 being in September of 2005, that's fair to say?

18 A I don't remember when it was, but I'll  
19 accept your representation.

20 Q Thank you. Dr. Shahzad ordered a CT scan  
21 when the patient was making that complaint,  
22 correct?

23 A Yes.

24 Q He didn't ignore that complaint, correct?

25 A No.

1 (Cross-Dr. Mayer/Meisner)

2 Q And he also took a blood set -- a blood  
3 test, correct?

4 A Yes.

5 Q And her white blood cell count was within  
6 normal limits, correct?

7 A Yes.

8 Q As were her neutrophil count, correct?

9 A Yes.

10 Q So there was no left shift at that time,  
11 correct?

12 A Yes.

13 Q The CT scan, it showed a collection of  
14 fluid under the fascia, correct?

15 A Yes.

16 Q That was thought to be an abscess,  
17 correct?

18 A Could be, yes.

19 Q Okay. Now that CT guided -- that CT scan,  
20 it wasn't just a CT scan, it was a guided drainage  
21 of that fluid, is that correct?

22 A That's correct.

23 Q And after that fluid was drained, it was  
24 cultured, correct?

25 A Yes.

1 (Cross-Dr. Mayer/Meisner)

2 Q And it came back as negative for MRSA,  
3 correct?

4 A Yes.

5 Q Now, when the patient came back -- at a  
6 subsequent point the patient came back to see  
7 Dr. Shahzad on October 24th, 2005 complaining of  
8 pain in the right lower quadrant. Do you remember  
9 that visit?

10 A Yes.

11 Q You reviewed that note?

12 A Yes.

13 Q Dr. Shahzad noted in that note that the  
14 abdomen was well healed, the abdomen wound was well  
15 healed, correct?

16 A Yes.

17 Q And that there was no evidence of  
18 recurrence of the incisional hernia, correct?

19 A At that time, yes.

20 Q Patient had a newly developed inguinal  
21 hernia, do you remember that?

22 A I remember something about it. I would  
23 have to see it to --

24 Q Well, inguinal -- before, remember when  
25 Miss Hecht asked you if ventral and incisional can

1 (Cross-Dr. Mayer/Meisner)

2 be used interchangeably?

3 A Yes.

4 Q Inguinal and ventral can't be used  
5 interchangeably, correct?

6 A No, that's a different area.

7 Q Inguinal is more towards the groin,  
8 correct?

9 A Yes.

10 Q It's lower in the anatomy, correct?

11 A Yes.

12 Q Different area than where she had the  
13 incisional hernia, correct?

14 A Yes.

15 Q Now the patient came back to see  
16 Dr. Shahzad again in November 2005, correct?

17 A Yes.

18 Q And at that time they discussed whether  
19 she was going to have surgery to repair that  
20 hernia, correct?

21 A Correct.

22 Q And they elected after discussion to hold  
23 off on having that surgery for at least six months,  
24 correct?

25 A That's true.

1 (Cross-Dr. Mayer/Meisner)

2 Q So then the patient came back to see  
3 Dr. Shahzad in June of the following year, 2006,  
4 correct?

5 A Yes.

6 Q And by the way, it was during this period  
7 of time where the patient had right and left knee  
8 surgery, correct?

9 A Oh, I think you're correct, yes.

10 Q Now, when the patient came back to see  
11 Dr. Shahzad, that's when Dr. Challa was brought  
12 into the picture, correct?

13 A Yes.

14 Q And at the time that the patient came back  
15 and she saw Dr. Challa for the first time,  
16 Dr. Challa ordered a complete blood count, correct?

17 A Yes.

18 Q And her white blood cell count at that  
19 time was within the normal limits, correct?

20 A Yes.

21 Q And again, Dr. Challa did a differential  
22 on the white blood cells and it came back and  
23 showed that her neutrophils were in the normal  
24 limits, within normal limits, correct?

25 A I assume so.

1 (Cross-Dr. Mayer/Meisner)

2 Q So again, there was no left shift,  
3 correct?

4 A There was no what?

5 Q There was no left shift.

6 A No.

7 Q Doctor, I know we discussed Zyvox before,  
8 but I want to go back to Zyvox for a minute. Do  
9 you know what the bioavailability for Zyvox is?

10 A I would defer to an ID doctor on that.

11 Q Doctor -- so then, Doctor, you don't know  
12 what the effectiveness of Zyvox -- Zyvox can be  
13 administered both intravenously and orally,  
14 correct?

15 A Yes.

16 Q And isn't it also true that the  
17 effectiveness of whether it's administered  
18 intravenously or orally is the same?

19 A I don't agree with that.

20 Q But you would defer to an infectious  
21 disease doctor on that, correct?

22 A Yes.

23 Q You've never read any studies on the  
24 bioavailability of Zyvox, correct?

25 A I have not.

1 (Cross-Dr. Mayer/Meisner)

2 Q And bioavailability, just for the jury's  
3 frame of reference, means the ratio that is --  
4 ratio of the drug of the moiety, M-O-I-E-T-Y, that  
5 reaches the systemic circulation, correct?

6 A Yes.

7 Q So if a drug has --

8 A I'm not really sure what moiety exactly  
9 means in that situation, but -- but it's a amount  
10 of drug that would get into the bloodstream and  
11 circulate.

12 Q So if a drug has a hundred percent  
13 bioavailability, it is the same administered orally  
14 as it is intravenously, correct?

15 A I don't know that to be true.

16 Q But you don't know it to be false either,  
17 correct?

18 A It doesn't sound medically logical to me.

19 Q Doctor, isn't it true that a -- by  
20 definition a medication that is administered  
21 intravenously has a hundred percent  
22 bioavailability?

23 A It would have to be because it would be  
24 right in the bloodstream, yes.

25 Q So if a drug that's administered orally

1 (Cross-Dr. Mayer/Meisner)

2 also has a hundred percent bioavailability, it  
3 would be the same whether it's administered  
4 intravenously or orally, correct?

5 A No, 'cause oral absorption can vary with  
6 various conditions in the GI tract, so it isn't  
7 always true.

8 Q Well, if a drug has a hundred percent oral  
9 bioavailability, it would mean that it was the same  
10 intravenously as administered intravenously,  
11 correct?

12 A I can't answer that. It's outside the  
13 area of my expertise.

14 Q Fair enough, Doctor. Now Doctor, do you  
15 still have the copy of the operative report from  
16 July 3rd, 2006 there that you referred to this  
17 morning?

18 A Yes.

19 Q Now, Doctor, that report wasn't prepared  
20 by Dr. Shahzad, correct?

21 A It was not.

22 Q It was prepared by Dr. Challa?

23 A Yes.

24 Q Now, this type of surgery generally, a  
25 laparoscopic hernia repair, the assistant in the

1 (Cross-Dr. Mayer/Meisner)

2 surgery doesn't have to be a surgeon, correct?

3 A You don't have to be. You can be a  
4 physician assistant or a tech.

5 Q A surgical assistant, correct?

6 A Yes.

7 Q Doesn't have to be a physician, correct?

8 A That's true.

9 Q Do you know if Dr. Shahzad billed for  
10 being the -- I'm sorry, withdrawn. Have you  
11 reviewed the bills from Catskill Regional Medical  
12 Center?

13 A I asked to see them but was told that they  
14 weren't available.

15 Q Okay. So you don't know if Dr. Shahzad  
16 billed for being the assistant in that procedure,  
17 correct?

18 A It's my understanding he wouldn't bill but  
19 the hospital might have billed because he was an  
20 employee of the hospital.

21 Q Okay. Well, do you know if that was the  
22 case?

23 A I -- I -- Mr. Campbell believes he was an  
24 employee of the hospital and he told me.

25 Q Well, you don't know if there was a bill

1 (Cross-Dr. Mayer/Meisner)

2 ever sent to Mira Longobardo for Dr. Shahzad as the  
3 first assistant from that July 3rd, 2006 surgery,  
4 is that fair to say?

5 A I did not see such a bill. I assumed it  
6 would be billed, but I didn't see an actual bill.

7 Q So your testimony was based on an  
8 assumption, correct?

9 A Well, a custom and practice in the  
10 industry that you bill for all the acts of hospital  
11 employees who are physicians. That's what I was  
12 going on.

13 Q Well, to this jury this morning you  
14 intimated that Dr. Shahzad fraudulently billed for  
15 his presence in the procedure.

16 MR. CAMPBELL: Objection.

17 Q For his presence in the procedure or his  
18 lack of presence in the procedure, is that your  
19 testimony?

20 A I don't -- I didn't say he billed. I said  
21 if a bill for assistance was submitted and he  
22 wasn't physically there, that would be -- that  
23 would be fraud. I don't think he bills himself.  
24 The hospital did the billing, so --

25 Q Okay. Fair enough. So we cleared that

1 (Cross-Dr. Mayer/Meisner)

2 up.

3 A Maybe a solution should the hospital to  
4 produce the billing records for this procedure --

5 MR. REINER: Objection, Your Honor.

6 A -- so we can solve the problem.

7 THE COURT: Well, he's responding to  
8 what he's been asked. Overruled.

9 MR. MEISNER: That wasn't quite what  
10 I asked, but -- move on.

11 Q Now, Doctor, did you read -- you testified  
12 you did read Dr. -- I'm sorry, Dr. Mayer. I think  
13 I called you Dr. Challa by mistake. I apologize.

14 A Oh, okay. All right.

15 Q You testified you did read Dr. Challa's  
16 deposition testimony?

17 A I did.

18 Q And in his deposition testimony he  
19 testified consistently with what you just testified  
20 that the assistant in the laparoscopic hernia  
21 repair need not be a physician, correct?

22 A Yes.

23 Q And he also testified in that deposition  
24 that even if Dr. Shahzad wasn't there, it wouldn't  
25 have made any difference, correct?

1 (Cross-Dr. Mayer/Meisner)

2 A I don't really agree with that 'cause  
3 complex --

4 Q Doctor, I'm not asking you that.

5 MR. CAMPBELL: He just shuts him  
6 off, Judge, objection. He should be  
7 permitted to answer.

8 MR. CATANIA: Excuse me, Your Honor,  
9 can we have one attorney per witness  
10 instead of both Mr. Campbell and Miss  
11 Hecht? It's just not right, it's not  
12 proper.

13 THE COURT: Well, the objection's  
14 overruled.

15 A In a case where you're lysing complex  
16 adhesions for over two hours, you need a physician  
17 assistant. That's a very difficult case. If it's  
18 a simple laparoscopy, a tech or assistant, nurse  
19 assistant can help you. Depends on the case. You  
20 can't say that a physician assistant is never  
21 necessary.

22 Q I'm not saying that there was no assistant  
23 there. I'm saying that two -- that Dr. Challa  
24 testified that two physicians need not be present  
25 during that procedure. You would agree with that,

1 (Cross-Dr. Mayer/Meisner)

2 correct?

3 A No, I think that procedure was so  
4 complicated that if you're going to foolishly push  
5 the envelope for laparoscopic surgery, you need two  
6 physicians.

7 MR. CATANIA: Objection, motion to  
8 strike his editorializing and summation.

9 THE COURT: Denied. Denied.

10 Q That -- Doctor, that would be the  
11 surgeon's call, correct, the primary surgeon?

12 A I'd agree with that, yes.

13 Q Now Doctor, is it fair to say that it's  
14 not unusual for a patient to have a high fever  
15 following surgery?

16 A Can you define "high fever"?

17 Q Doctor, is it unusual for a patient to  
18 have an elevated temperature post surgically?

19 A That's not unusual.

20 THE COURT: All right. It's 4:45.  
21 I think we've reached the end of today's  
22 testimony.

23 Ladies and gentlemen of the jury,  
24 we'll see you at 1:30 on Wednesday, not  
25 tomorrow, so I wish you not, please do not

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1  
2 discuss this case amongst yourselves or  
3 with anyone else, your family or friends  
4 or otherwise. And I wish you good luck  
5 tomorrow with the snowstorm and don't put  
6 your back out.

7 MR. CATANIA: Your Honor, just  
8 something quickly on the record after the  
9 jury goes.

10 (Whereupon, the following took place  
11 in open court outside the presence of the  
12 sworn jury and alternates.)

13 MR. CATANIA: I respectfully ask,  
14 Your Honor, that the Court admonish the  
15 witness three things. One, that between  
16 now and when he returns to the stand he  
17 not discuss with plaintiff's counsel any  
18 aspect of his testimony other than travel  
19 arrangements to get here. Two, that he  
20 not review any literature in connection  
21 with this case; three, that he not review  
22 any medical records that he has not  
23 heretofore reviewed and as part and parcel  
24 of that, that counsel not provide him with  
25 any medical records that haven't been

## P R O C E E D I N G S

1  
2 provided previously.

3 MR. MEISNER: Join in that  
4 application.

5 MS. HECHT: I'm unaware of any  
6 authority for the third one. The first  
7 one the Court's already established, that  
8 doesn't need to be repeated, but I'd like  
9 to know where it is in the CPLR that says  
10 he can't do whatever he wants on his free  
11 time other than speak about his testimony.  
12 I'd like to see the authority.

13 MR. CATANIA: There is no rule in  
14 the CPLR, Judge. It is appropriate trial  
15 direction. One of the issues that has  
16 already been brought up in this case has  
17 to do with the availability of records  
18 that this witness may have reviewed or not  
19 reviewed. Dr. Leidner's records, for  
20 example. It is inappropriate for him to  
21 now do that simply because we're having  
22 the several day break.

23 THE COURT: What day break?

24 MS. HECHT: What?

25 MR. CATANIA: Several day.

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2 THE COURT: All right. Hold on till  
3 they leave.

4 MS. HECHT: Are you looking to me?

5 THE COURT: I'm waiting till the  
6 jury leaves.

7 All right. As to the request number  
8 one, that's granted. The witness should  
9 not, must not talk to anybody about his  
10 testimony between now and the end of his  
11 testimony, whenever that should be. The  
12 other two requests relate to his seeing  
13 medical records that he hasn't already  
14 seen. I hope that doesn't mean he's going  
15 to be criticized for not during the break,  
16 I mean, there's been an implication in  
17 some of the cross-examination that he  
18 somehow isn't doing his job if he doesn't  
19 see every single scrap of medical record  
20 that exists on the plaintiff. I certainly  
21 don't want the defense to request that he  
22 not do that and then when he -- when we  
23 come back for testimony he's, you know,  
24 attacked for that.

25 MR. CATANIA: We can confine our

## P R O C E E D I N G S

1  
2 impeachment to the time period before he  
3 gave his opinions.

4 THE COURT: Okay.

5 MR. CATANIA: Today. For myself,  
6 I'm not going to talk about between today  
7 and when he comes back, if that's what  
8 Your Honor's is concerned about.

9 MR. MEISNER: I'll agree to that  
10 too, Judge.

11 THE COURT: All right. So does the  
12 plaintiff have any objection to that?

13 MS. HECHT: I'd like to just have a  
14 little clarity on what the direction is.

15 THE COURT: Well, I don't know that  
16 he had any intention to do it but he's not  
17 to look at any records he's not already  
18 seen.

19 MR. CATANIA: That's correct, Judge.

20 THE COURT: I think that's the  
21 entirety of it, really.

22 MR. CATANIA: That's correct, Judge.

23 MS. HECHT: I would just again ask  
24 for what possible authority is being  
25 relied upon for this direction.

## P R O C E E D I N G S

1  
2 MR. CATANIA: Your Honor, it's the  
3 same rationale, seems to me, as the  
4 prohibition against discussions with  
5 counsel. He's given an opportunity now to  
6 rehab his testimony because he has a break  
7 in between, and that is inappropriate.

8 MS. HECHT: I've never heard such a  
9 creative argument and I think that there  
10 are points for the creativity. However,  
11 there is no authority that I know that  
12 this man's conduct is going to be  
13 constrained in any way whatsoever or that  
14 anyone has a right to do that other than  
15 input from counsel. I'd like -- I would  
16 like to see the authority.

17 MR. CATANIA: Counsel is suggesting  
18 that he has a right now to go do some  
19 research on some papers, I take it. These  
20 things are clearly inappropriate.

21 THE COURT: I thought you were  
22 referring to the plaintiff's medical  
23 records.

24 MS. HECHT: So did I.

25 MR. CATANIA: I had both, two

## P R O C E E D I N G S

1  
2 prongs. One, that he not do any research  
3 that he hasn't done. He's been asked  
4 questions on cross-examination now about  
5 knowledge of prior literature and if he's  
6 allowed to go and in the intervening days  
7 do research, I think that's inappropriate.  
8 Furthermore, if he's allowed now to take a  
9 look at Dr. Leidner's records, that's  
10 inappropriate.

11 MS. HECHT: Why is this -- I mean, I  
12 don't think that -- with great respect  
13 that Mr. Catania's sense of what's  
14 appropriate and what isn't appropriate is  
15 binding on anybody.

16 THE COURT: Well, this isn't an eye  
17 witness. This is an expert witness. So I  
18 mean, if he does look up something, then  
19 you can cross-examine him on it. If your  
20 point being that if he was wrong about  
21 some point then looks it up and admits he  
22 was wrong, how improper for him to look it  
23 up and admit he was wrong -- he was either  
24 right or wrong. If he's wrong, he's  
25 wrong, I mean, why can't he look it up and

## P R O C E E D I N G S

1  
2 find out that he's wrong? If -- if --  
3 that's supposition. I don't know if  
4 that's true, but what's the difference?

5 MR. MEISNER: It's a credibility  
6 issue, Judge.

7 THE COURT: Well, it is, but then  
8 you'll bring it out, I'm sure. I'm sure  
9 you'll bring it out anyway, and if you've  
10 got a medical treatise that says he was  
11 wrong about something and you show it to  
12 him the next time he testifies and he  
13 admits he's wrong, what's the difference  
14 between that and looking it up now and  
15 finding he's wrong?

16 MR. CATANIA: There's no difference  
17 if he's prepared to authenticate as  
18 reliable whatever we show him, but we know  
19 what the response to that question's going  
20 to be.

21 THE COURT: All right. Well, he's  
22 already said he hasn't looked up any  
23 treatises other than what he already knows  
24 from his practice and experience, so I  
25 think the foundation is there if in fact

## P R O C E E D I N G S

1  
2 he does look up something. So yeah, I'm  
3 not going to prohibit him from doing that,  
4 and if he does, I'm going to ask that  
5 before the jury comes in that he says he  
6 either did or didn't.

7 MR. CATANIA: And what about the  
8 other aspect, the Leidner records, for  
9 example?

10 THE COURT: I don't know how he's  
11 going to get the Leidner records.

12 MR. CATANIA: Counsel can provide it  
13 to him. That's my concern is that now  
14 that this issue has been opened on cross,  
15 it will be -- quote -- "cured" -- closed  
16 quote -- between now and the time he  
17 continues cross.

18 THE COURT: I don't think so. I'll  
19 certainly allow you to point out that he  
20 gave his opinion testimony prior to  
21 looking at Dr. Leidner's question, but if  
22 you're going to cross-examine him  
23 extensively about what Dr. Leidner's  
24 records state, wouldn't it be better for  
25 him to read them now rather than take an

## P R O C E E D I N G S

1  
2 extra two or three hours while he has to  
3 read them when you're cross-examining him,  
4 you know, he's already testified he hasn't  
5 seen them. So if he sees them between now  
6 and the next time he testifies, you know,  
7 whether that affects his expert opinion or  
8 not, I mean, I don't -- the only other  
9 thing was you confront him with it, he  
10 hasn't seen them before, it will take a  
11 lot longer for him to either say they're  
12 important or they're not important or they  
13 change his opinion or don't change his  
14 opinion. So I -- you know, he's already  
15 testified he hasn't seen them up to now.  
16 If he looks at them from now on, you've  
17 got your point.

18 MR. CATANIA: But there's going to  
19 be, I'm sure, redirect. This goes toward  
20 a credibility issue, it goes toward the  
21 accuracy of his opinions, the adequacy of  
22 his opinions and the ability to cure that.  
23 Now that cross-examination has opened up,  
24 is in my estimation improper, but that's  
25 my -- that's my motion.

## P R O C E E D I N G S

1  
2 THE COURT: Well, I'm going to give  
3 you ample opportunity to inquire about it,  
4 so if he does read Dr. Leidner's records,  
5 he reads them and he'll either change his  
6 opinion or he won't, but the jury already  
7 knows he hasn't read them up to now and  
8 you can remind the jury of that and remind  
9 the witness of that.

10 MS. HECHT: The same thing holds for  
11 the defendants who are going to be  
12 returning on their own case. Are they not  
13 allowed to read anything or think about  
14 anything?

15 MR. CATANIA: We didn't put them on  
16 as part of any direct testimony at this  
17 point. Big difference.

18 MS. HECHT: They've given testimony.

19 MR. CATANIA: That's a big  
20 difference. It was all on cross. There's  
21 been no direct testimony put in by any  
22 defendant in this lawsuit.

23 MR. REINER: If I just may be heard  
24 for a second. Your Honor, what this --  
25 what may happen is if he does review the

## P R O C E E D I N G S

1  
2 records now, we have just expanded the  
3 cross-examination by hours potentially.

4 MR. MEISNER: That I would agree  
5 with.

6 THE COURT: I think the opposite is  
7 true because if you're going to cross-  
8 examine him on records he's never seen,  
9 he's going to have to go through and read  
10 them all. Are we going to have to break  
11 for --

12 MR. REINER: No, no, I think  
13 Mr. Meisner's pretty much done with the  
14 questioning about Dr. Leidner's office  
15 records. Now if Dr. Mayer has an  
16 opportunity to go through them, we're  
17 going to hear a whole bunch on redirect  
18 which is going to expand it and quite  
19 frankly, if Dr. Mayer's testimony was  
20 concluded today, there wouldn't even be  
21 this issue.

22 THE COURT: Well, whose fault is  
23 that, I mean, I --

24 MR. REINER: I'm not blaming -- it's  
25 not a matter of fault, Your Honor. It's a

## P R O C E E D I N G S

1  
2 fundamental fairness. If he now reviews  
3 -- if he now goes back and looks at  
4 everything, now all of a sudden he's  
5 looked at everything, oh, my opinion still  
6 hasn't changed. This is not right. It's  
7 not right to the defendants.

8 MS. HECHT: Judge, there's a lot of  
9 fantasy going on here. I mean, I can't  
10 make the least --

11 THE COURT: I know. I've never  
12 heard such a blown up attempt at -- at  
13 creating an issue that doesn't exist. So  
14 I'm going to let this witness either read  
15 -- read further exhibits or not. It will  
16 be up to him, and you'll be able to cross-  
17 examine him on it whether he did or  
18 didn't. If he didn't --

19 MR. CATANIA: Note my exception,  
20 Your Honor. I think it's highly  
21 prejudicial, particularly with a witness  
22 of this witness's sophistication.

23 THE COURT: Well, I never -- I never  
24 have before concluded that information by  
25 an expert witness -- information learned

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by an expert witness is prejudicial. So I'll leave it up to the witness to do what he feels is the right thing to do and with the understanding that whatever he's done will be explained before he comes back.

MS. HECHT: Thank you, Judge.

(Discussion off the record.)

MS. HECHT: I'd like everybody to know we are driving the good doctor back to the hotel, and we will abide by the Court's directive, but you're going to see him get in my car and I'm taking him back to the hotel.

THE COURT: And he'll determine what he wants to read or not read. He'll tell the other attorneys when he comes back, have you read or not.

\* \* \* \* \*

C E R T I F I C A T I O N

Certified to be a true and correct transcript of the proceedings held above.

Georgette H. Sayers

Georgette H. Sayers, RMR,  
Senior Court Reporter.