

TESTIMONY OF DALTON R. CARPENTER, M.D.
27th of December, 2004

1 Q Gram positive or gram negative?

2 A It's a gram negative, I believe.

3 Q And is it sensitive to Levaquin?

4 A It says there was -- the sensitivity report
5 was that it was resistant to all antibiotics except
6 Levaquin, Cipro, Bactrim, chloramphenicol and
7 Cefatilladine.

8 Q What continuing harm does Mr. Smith have
9 because of, as you describe it, a delay in diagnosing
10 his infection?

11 A The harm is that he can become septic. This
12 organism can get into his bloodstream and cause him to
13 go into septic shock and die.

14 Q So he may in the future become septic?

15 A No. I'm talking about at this point in time
16 when he sees Buza.

17 Q But it didn't happen, he didn't become
18 septic?

19 A No, because Buza took the appropriate
20 action. He put him on the antibiotic, he did the
21 appropriate institution of local care and put him on
22 hyperbaric oxygen.

23 Q My question to you was: What continuing
24 harm, if any, does Mr. Smith have because of the
25 alleged delay in diagnosing his infection?

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1 **A** From this point, what harm has he sustained
2 from this infection?

3 **Q** Yes, sir.

4 **A** Well, I think the pain he is having over the
5 wound site is directly related to that ongoing wound
6 where he got a lot of scar tissue formed.

7 And there is the main nerve through that
8 wound, which called the serial nerve, right beside
9 there. So he has developed a lot of scar tissue
10 that's tugging on the nerve and it's causing the nerve
11 type of hypersensitivity pain.

12 **Q** What other problems does Mr. Smith have as a
13 result of the alleged delay in diagnosing infection by
14 Dr. Ziegler and Dr. Robinson?

15 **A** He may have -- because of the character of
16 the skin not being normal where it has healed, he may
17 have further breakdown as he gets older. This is not
18 normal skin. It has healed with what we call
19 secondary intention, granulation tissue; and that is
20 not normal, healthy skin.

21 So if he does develop diabetes, which it
22 looks like he is, with a blood sugar that I saw in the
23 records of 230 at one point recently, then he is
24 likely to develop a diabetic ulcer at this same
25 location, because that skin is not normal.

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1 Q What other problems would you anticipate in
2 the future as a result of the delay in diagnosing
3 infection?

4 A That's all.

5 Q So it would be the pain at the incision site
6 and the possibility of healing problems in the future
7 if he gets a diabetic ulcer?

8 A Right.

9 Q Now, there's discussion in the records of
10 something called a tarsal-tunnel syndrome.

11 A Yes.

12 Q Did Mr. Smith have tarsal-tunnel syndrome?

13 A I can't tell you if he did or not but I
14 don't think that's related to the infection.

15 Q Is it related to the arthrodesis or fusion?

16 A It could be. By shifting around the
17 mechanics of the foot where the nerve comes down
18 through the tunnel, the tarsal tunnel, into the foot,
19 if you shift the bone structure, the mechanics of the
20 foot, you can impinge the nerve.

21 Q If Mr. Smith has tarsal-tunnel syndrome,
22 that might be causing or contributing to some of the
23 pain in his right foot?

24 A The tarsal tunnel is on the medial side of
25 the foot. Yeah, it can be contributing to medial foot

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1 pain and toe numbness and tingling which comes along
2 with that.

3 Q And that would not be in any way due to any
4 malpractice by Dr. Zigler?

5 A No.

6 Q Now, you read Dr. Ware's records; true?

7 A Yes.

8 (Beeper going off.)

9 MR. DUKES: Do you need to take that?

10 THE WITNESS: Yes. Sorry.

11 MR. DUKES: That's all right.

12 (Whereupon, a recess was taken, after which
13 the proceedings resumed as follows:)

14 MR. DUKES: All right. Is everybody ready?

15 MR. MOLETTEIRE: Yes.

16 THE WITNESS: Yes.

17 BY MR. DUKES:

18 Q We were talking about Dr. Ware.

19 You have read his records; correct?

20 A Yes.

21 Q And correct me if I am wrong: As I
22 understand Dr. Ware's testimony, when Mr. Smith went
23 to see Dr. Ware, the skin over the area of the
24 incision was well healed; correct?

25 A Right. And he noticed the hypersensitivity

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1 over the incision on his records.

2 Q And Dr. Ware thought what had happened was
3 that the fusion had not been completely successful;
4 correct?

5 A Right.

6 Q And he thought that was a primary
7 contributing cause to Mr. Smith's discomfort; true?

8 A True.

9 Q If that's true, then that failure of the
10 fusion is not caused by any malpractice by
11 Dr. Ziegler; correct?

12 A Correct.

13 Q It's simply a failure or a less than optimal
14 outcome from the surgery; correct?

15 A Correct.

16 Q One of the known risks of the procedure?

17 A Correct.

18 Q Dr. Remark is a plastic surgeon and I see
19 you have got some of his records.

20 A Yes.

21 Q Dr. Remark, as far as you know, never
22 treated Mr. Smith; is that true?

23 A Yeah, that's true.

24 Q It looks like he initially agreed to but
25 then backed out of treating the case; correct?

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1 **A** Correct.

2 **Q** Because of, again, some problem with the
3 worker's comp carrier and the lawyers, things like
4 that?

5 **A** Correct.

6 **Q** There's some legal pleadings in some of
7 these records.

8 Have you reviewed some legal stuff, some
9 stuff by the worker's comp carrier, some stuff filed
10 by the work comp lawyers for Mr. Smith?

11 **A** Yes.

12 **Q** Did they play any role in your opinions?

13 **A** No.

14 **Q** Because who knows how accurate that stuff
15 is; right?

16 **A** Right.

17 **Q** That's what a lawyer says in a pleading
18 that's filed with a judge as opposed to something that
19 a doctor generated, for example; correct?

20 **A** Correct.

21 **Q** So those legal pleadings play no role in
22 your opinions?

23 **A** Right.

24 **Q** Are you aware that the American Academy of
25 Orthopedic Surgeons has certain pronouncements,

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1 literature that they promulgate or publish?

2 **A** About what?

3 **Q** A lot of things.

4 Have you ever heard of the American Academy
5 of Orthopedic Surgeons publishing on any subject?

6 **A** Yes, they do all the time, all kinds of
7 seminars and so forth; yeah, they do.

8 **Q** Do you generally accept the pronouncements
9 of the American Academy of Orthopedic Surgeons as
10 authoritative?

11 **A** Yes.

12 **Q** Have you ever heard of the American Academy
13 of Orthopedic Surgery's practice management
14 suggestions on prophylactic antibiotics?

15 **A** Yes, in terms of total joints, I sure have.

16 **Q** How about in terms of -- this wouldn't be
17 considered a total joint, would it?

18 **A** No, no.

19 **Q** For example, the American Academy, at least
20 as far as total joints, says, if that's your
21 reference, that you should be prophylactic -- should
22 use antibiotics for 24 hours around the time of
23 surgery perioperatively?

24 **A** Yes.

25 **Q** As was done here; correct?

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1 **A** Correct.

2 **Q** Then after that, you shouldn't use
3 antibiotics unless you become convinced that there is
4 an infection; correct?

5 **A** Yeah, that's -- that's what they have said,
6 yes.

7 **Q** But that's at odds with what you are
8 testifying to here; true?

9 **A** No, it's not; no, it's not.

10 **Q** It is.

11 **A** It's not at odds. If you have a normal
12 progression of your surgical wound, it's healing and
13 so forth, there is no reason to put a patient on
14 antibiotics. If you have problems, such as where
15 this -- that were present in this case, then you
16 definitely need antibiotics.

17 If the patient gets septic, they can die
18 from sepsis. That has happened where the infection
19 gets in the bloodstream.

20 So you can not only have local damage to the
21 tissue and horrendous problems, you can have death
22 from a bad infection. You don't want to have that.
23 You want to prevent that, just like you want to
24 prevent an infection when you put them on prophylactic
25 antibiotics when you do the operation, when you do the

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1 joints.

2 Prevention is the name of the game, not wait
3 until the cows are out of the barn and then try to get
4 them back in and treat it.

5 Q Did you see where Dr. Ziegler made a
6 reference actually to a plastic surgeon and that's how
7 the patient was officially sent to Dr. Remark?

8 A I believe I saw that somewhere.

9 Q Was that an appropriate reference to make or
10 an appropriate referral to make?

11 A No, because now you have got a big wound
12 that may not heal at all.

13 Q So sending Mr. Smith to the plastic surgeon
14 was the wrong thing to do?

15 A No, I didn't say that. It was the correct
16 thing to do.

17 Q Did Dr. Buza ever involve an infectious
18 disease expert?

19 A He mentioned it but he never did do it.

20 Q There was a tagged white blood cell scan
21 recommended at the end of Dr. Buza's treatment.

22 As far as you know, that was never done;
23 true?

24 A It was done. There is a report in the
25 records where the tagged white blood cell scan was

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1 done.

2 Q At the end of Dr. Buza's treatment, not the
3 beginning but the end?

4 A I'm not sure what -- I know he had one in
5 the beginning.

6 Q Yes, sir.

7 A And I'm not sure of the one at the end.

8 Q As far as you know, one wasn't done at the
9 end?

10 A Right.

11 Q What future care -- well, first of all, as
12 far as the risks for Mr. Smith in the future from the
13 alleged negligence of Dr. Ziegler, we have talked
14 about the hypersensitivity over the area; correct?

15 A Correct.

16 Q And the potential for skin breakdown if he,
17 indeed, becomes diabetic; correct?

18 A Correct.

19 Q That skin breakdown would be a possibility
20 but not a probability at this point; would that be
21 accurate?

22 A No. I think it would be a probability. I
23 think you are really in a bad situation if you have to
24 go back into this foot through that same area, such as
25 was proposed by Dr. Ware, I believe, of putting a

