

1                    IN THE COURT OF COMMON PLEAS2                    CUYAHOGA COUNTY, OHIO

DOC. 26

3                    TRAVIS CATES, et al.,                    )

4    Plaintiffs,                    )

5                    -vs-                    )

CASE NO. 167835

6                    CLEVELAND METROPOLITAN                    )

7                    GENERAL HOSPITAL, et al.,                    )

8    Defendants.                    )

9                    - - - -

10                    Deposition of BRIAN BATTERSBY, M.D., taken as  
11                    if upon cross-examination before Ralph A.  
12                    Cebron, a Registered Professional Reporter and  
13                    Notary Public within and for the State of Ohio,  
14                    at MetroHealth Medical Center, 3395 Scranton  
15                    Road, Cleveland, Ohio, at 11:25 a.m. on Tuesday,  
16                    March 27, 1990, pursuant to notice and/or  
17                    stipulations of counsel, on behalf of the  
18                    Plaintiffs in this cause.

19                    - - - -

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-and-

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On behalf of the Defendant  
Mary Blair Matejczyk, M.D.

- - - -

1                    BRIAN BATTERSBY, M.D., of lawful age,  
2                    called by the Plaintiffs for the purpose of  
3                    cross-examination, as provided by the Rules of  
4                    Civil Procedure, being by me first duly sworn,  
5                    as hereinafter certified, deposed and said as  
6                    follows:

7                    CROSS-EXAMINATION OF BRIAN BATTERSBY, M.D.

8                    BY MR. MELLINO:

9                    Q.    State your full name, doctor.

10                  A.    Brian John Battersby.

11                  Q.    Spell your last name.

12                  A.    B A T T E R S B Y.

13                  Q.    What is your address?

14                  A.    956 Cambridge, Cleveland Heights, Ohio 44121.

15                  Q.    Have you been deposed before, doctor?

16                  A.    I have.

17                  Q.    Okay.   I'll just remind you of two rules.   One  
18                                is you have to answer all my questions verbally  
19                                so that the court reporter can take them down.  
20                                The other is if you don't understand or hear any  
21                                of my questions, ask me to repeat the question  
22                                or rephrase it and I will do so.

23                                When and where were you born?

24                  A.    Born in Detroit.   6/30/1952.

25                  Q.    Where did you go to high school?

1 A. Trenton High School.

2 Q. Where is that?

3 A. It's in Trenton, Michigan. Suburb of Detroit.

4 Q. Okay. What year did you graduate?

5 A. 1970.

6 Q. And where did you go to college?

7 A. I went to Ohio State for most of my academic  
8 college.

9 Q. Did you graduate from Ohio State?

10 A. I did.

11 Q. What year?

12 A. 1975.

13 Q. Okay. You seem to indicate you went to another  
14 college or --

15 A. I had visited several universities.

16 Q. You visited several universities?

17 A. That's correct.

18 Q. What's that mean?

19 A. That means that I spent some time there.

20 Q. What universities were those?

21 A. University of Michigan.

22 Q. Okay.

23 A. Western Michigan University, and then Ohio  
24 State.

25 Q. Okay. You started out at Michigan?

1 A. Yes. I took a summer course at the University  
2 of Michigan.

3 Q. And then you went to Western Michigan and then  
4 you went to Ohio State?

5 A. I did indeed.

6 Q. Where did you go to medical school?

7 A. Medical University of South Carolina. Prior to  
8 that I went to graduate school.

9 Q. Where at?

10 A. Ohio State.

11 Q. Did you get a graduate degree?

12 A. I got a master's degree there.

13 Q. In what?

14 A. Master's of science.

15 Q. What did you get your undergraduate degree in?

16 A. Bachelor of science.

17 Q. What was your major?

18 A. Zoology.

19 Q. Okay. What year did you graduate from medical  
20 school?

21 A. 1985.

22 Q. What year did you get your graduate degree?

23 A. 1978.

24 Q. Did you go straight from college to graduate  
25 school?

1 A. No. There was a period of time because I  
2 finished up in like December and waited a  
3 year-and-a-half until the next season to start  
4 graduate school.

5 Q. Okay. What did you do for that  
6 year-and-a-half?

7 A. I practiced and played golf and earned money to  
8 support myself at graduate school.

9 Q. Okay. I take it there was a time in between  
10 graduate school and medical school?

11 A. There was.

12 Q. When did you start medical school?

13 A. Pardon?

14 Q. When did you start medical school?

15 A. I started in 1981.

16 Q. Okay. And what did you do between '78 and '81?

17 A. Studied for the entering exam for medical  
18 school, the MCATS, worked as a maitre d' at that  
19 time supporting myself, and then was on faculty  
20 at Ohio State for a year as a research  
21 associate. That was 1980/'81 was the faculty  
22 member at Ohio State. And then matriculated  
23 into medical school in '81.

24 Q. Okay. What kind of residency programs did you  
25 do?

1 A. I was involved in a surgical internship here at  
2 Case. That was '85/'86.

3 Q. Okay.

4 A. Then did a graduate, actually a fellowship year  
5 in 1986. And then I was an orthopedic first  
6 year resident in '87.

7 Q. That started in what, July of '87?

8 A. That is correct.

9 Q. And are you still in that?

10 A. Yes, I am.

11 Q. When will you complete that?

12 A. In July of next season, '91.

13 Q. July of '91?

14 A. That's correct.

15 Q. It's a four-year program?

16 A. That is correct.

17 Q. Okay. What did you do your fellowship in in  
18 '86?

19 A. Orthopedic research.

20 Q. Orthopedic research?

21 A. Uh-huh.

22 Q. Okay. So currently you're an orthopedic  
23 resident at the hospital here, is that correct?

24 A. At the hospital here? I don't know what you  
25 mean.

1 Q. At Cleveland Metropolitan General Hospital or  
2 whatever name it is by now?

3 A. No. I'm a Case Western University resident. We  
4 rotate through here, but I'm not paid by this  
5 hospital.

6 Q. You're paid by who?

7 A. Actually I'm paid by the federal government.  
8 I'm a VA employee. It gets quite complicated.

9 Q. Why don't you try to explain it to me?

10 A. Well, I don't have the expertise to explain  
11 that. That's all the financial stuff, and, you  
12 know, for some reason I'm paid by the VA rather  
13 than University Hospital. Why, I don't know.  
14 Just some of the residents get paid by them and  
15 some don't.

16 Q. You don't know why?

17 A. No. I don't know why.

18 Q. Okay. But you're in the same orthopedic  
19 residency program, all the residents at  
20 University Hospital are in the same program?

21 A. Correct. Correct.

22 Q. Some of them are paid by --

23 A. Correct.

24 Q. Are they paid by University?

25 A. Some are paid by University.



1 Q. And the other ones are paid by the VA?

2 A. Yes. Some are paid by VA.

3 Q. Okay. And as part of that program you rotate  
4 through Cleveland Metropolitan General  
5 Hospital?

6 A. That is correct.

7 Q. Okay. And how often do you rotate through  
8 Cleveland Metro?

9 A. You rotate through as your first year and you  
10 rotate again through in your second year, again  
11 in your third year and again in your fourth  
12 year. So you spend some time here each year.

13 Q. Okay. How many months out of the year?

14 A. Generally four months a year.

15 Q. Would it be a month --

16 A. But that varies.

17 Q. Would it be a month at a time?

18 A. No. Generally they're longer.

19 Q. How long?

20 A. The shortest period is two, but generally  
21 they're four.

22 Q. Okay. And then I take it that part of the time  
23 you rotate through the VA?

24 A. Yes.

25 Q. And part of the time through University?

1 A. Yes.

2 Q. Would it be --

3 A. It's not equal.

4 Q. What is it?

5 A. Four months at VA as a junior resident and four  
6 months as a chief. And the rest of time is  
7 spent at University Hospital.

8 Q. All right. What's a junior resident?

9 A. At the VA?

10 Q. You said four months as a junior.

11 A. That's right. That's what he's called here.  
12 Juniors differ depending on what hospital you're  
13 talking about.

14 Q. I see. At what point in the residency program  
15 would you rotate through the VA? Would it be  
16 during all four years?

17 A. No. It would be in your second year and in your  
18 last year.

19 Q. So I take it then when you were second year you  
20 would be the junior and the last year you would  
21 be the chief?

22 A. That's correct.

23 Q. Okay. Would that be a four-month rotation?

24 A. Yes.

25 Q. Okay.

1 MR. ZELLERS: You don't really care  
2 about this stuff, do you?

3 MR. MELLINO: Yes.

4 Q. Do you remember what months in '87 you were at  
5 Metro?

6 A. Uh-huh.

7 Q. What months?

8 A. November through March.

9 Q. November of '87 through March of '88?

10 A. Yes. And I would have to look at my schedule to  
11 see. I think I was here some time in '88 also,  
12 but I would have to look at my schedule and I  
13 don't have it. I don't recall.

14 Q. Do you remember where you were prior to November  
15 of '87?

16 A. Yes. I was at University Hospitals.

17 Q. Are your duties the same at University as they  
18 are at Metro?

19 A. How so?

20 MR. ZELLERS: You mean as a first  
21 year resident?

22 MR. MELLINO: Yes.

23 A. Well, you don't do the same services, so your  
24 duties aren't the same.

25 Q. What are your duties as a first year resident?

1 MR. ZELLERS: At Metro? I'm just  
2 trying to narrow it down, Chris. Do you want  
3 him to talk about first year duties at all the  
4 hospitals he works at or first year duties at  
5 Metro?

6 A. They differ.

7 MR. ZELLERS: He's got to tell  
8 you.

9 Q. Start with Metro.

10 A. You carry a beeper and you respond to that  
11 beeper, you take call, and you communicate with  
12 nursing and fellow members of your staff as well  
13 as attendings. On a daily basis you round on  
14 your patients. You go to the operating room  
15 when cases are scheduled. Generally you're a  
16 body, they, it is your education period as your  
17 first exposure to surgery, and you go to surgery  
18 with somebody and they instruct you on what to  
19 do and basically educate you.

20 Q. Okay.

21 A. There are clinic duties.

22 Q. What would those be?

23 A. You would go to clinic when you are available  
24 for clinic and see staff patients.

25 Q. Anything else?

1 A. You write notes and you dictate discharge  
2 summaries and you write prescriptions and you  
3 write orders, you draw blood. That's pretty  
4 much the extent of it.

5 Q. Okay. When you dictate discharge summaries  
6 where do you get the information from that you  
7 put in the discharge summary?

8 A. Well, the patient has been in the hospital and  
9 if they're your patient you would get it from  
10 your memory and from the hospital record.

11 Q. Okay. What patients would be your patients?  
12 When you say your patient, are you talking about  
13 you personally or the service?

14 A. The service. The service. But there will be  
15 patients that you will be personally responsible  
16 for.

17 Q. Okay.

18 A. And generally those are people who were admitted  
19 on your night of call.

20 Q. Okay. This is as a first year resident?

21 A. Yes. You would follow their basic needs.

22 Q. And these would be people that would be staff  
23 patients?

24 A. They can be either.

25 Q. Okay. If they're private patients then you're

1 still responsible for them if they're admitted  
2 on your night of call?

3 MR. ZELLERS: Objection. What do  
4 you mean by "responsible"?

5 MR. MELLINO: I don't know. He  
6 used that word.

7 A. The duties that I outlined to you you would be  
8 responsible for.

9 Q. Okay. When you put down a -- well, when you  
10 were a first year resident did you make  
11 diagnoses on your own of orthopedic patients?

12 MR. ZELLERS: Objection.

13 A. You have to rephrase that.

14 Q. Okay. When you, as a first year resident, do  
15 you diagnose patients on your own without input  
16 from an attending on patients?

17 A. I don't understand that question.

18 Q. All right. If you put --

19 A. You mean do I function independently?

20 Q. Yes.

21 A. No.

22 Q. If you put a diagnosis in a discharge summary,  
23 where would you get that diagnosis from?

24 MR. ZELLERS: Objection.

25 A. You would have to be more specific. I don't

1 know what you mean.

2 Q. Well --

3 A. Do you have something --

4 Q. You wouldn't come up with that diagnosis  
5 independent, on your own?

6 MR. ZELLERS: Objection.

7 A. You need to be more specific. Do you have a  
8 case you want me to look at to give you an  
9 answer for?

10 Q. You have looked at this Travis Cates chart,  
11 haven't you?

12 A. I have.

13 Q. Did you dictate the discharge summary in this  
14 case?

15 A. I did.

16 Q. And you put down a diagnosis of infected right  
17 total knee arthroplasty?

18 MR. ZELLERS: An admitting  
19 diagnosis?

20 A. An admitting diagnosis.

21 Q. Is there any other diagnosis on this discharge  
22 summary?

23 A. There should be. I will save you the time. I  
24 don't see it there.

25 Q. Okay. That was my question. Is there one?

1 A. Yes, there is a discharge diagnoses. It is not  
2 listed there.

3 Q. Why not?

4 A. I'm not sure.

5 Q. Okay. Are you the one responsible for listing  
6 it on the discharge summary?

7 A. I'm the one responsible for dictating it.

8 Q. Who is responsible for making sure it's listed  
9 on here?

10 A. I have no idea.

11 Q. Are you responsible --

12 MR. ZELLERS: Objection.

13 A. Which question are you asking me right now? I  
14 thought I answered the responsibility question.

15 Q. Are you responsible for making sure that any  
16 discharge diagnosis is listed on the discharge  
17 summary if you're the one that dictates it?

18 A. I don't know.

19 Q. Is the attending responsible?

20 MR. ZELLERS: Objection.

21 A. I don't know.

22 Q. If the discharge diagnosis is the same as the  
23 admitting diagnosis, is that put in the  
24 discharge summary?

25 MR. ZELLERS: Objection.



1 A. I mean, it certainly can be.

2 Q. Is it the usual practice to put it in --

3 MR. ZELLERS: Objection.

4 Q. -- if it's the same as the admitting diagnosis?

5 MR. ZELLERS: Objection.

6 A. What's the question?

7 Q. If the discharge diagnosis is the same as the  
8 admitting diagnosis, is it your usual practice  
9 not to list a separate discharge diagnosis?

10 A. No. No.

11 Q. You would list it as the same diagnosis as the  
12 discharge diagnosis?

13 A. It may -- it may -- what appears on that sheet  
14 of paper may or may not be the same. If you're  
15 asking me if is the admitting diagnosis and the  
16 discharge diagnosis in this case the same, the  
17 answer is no. But if you're going to ask me  
18 generalities, I don't know what you're talking  
19 about.

20 Q. Well --

21 A. If you're going to try to extrapolate --

22 MR. ZELLERS: Wait for him to ask  
23 you a question.

24 Q. When you dictate a discharge summary, you put up  
25 here admitting diagnosis?

1 A. Yes.

2 Q. That's the top of the page. If that diagnosis  
3 is the same as the diagnosis on discharge, do  
4 you necessarily --

5 A. It should be there. The discharge diagnosis  
6 should be there. And it's not. They are not  
7 the same and because one --

8 Q. Doctor, wait a minute. You're going to wait  
9 until I finish my question.

10 A. You finished your question.

11 MR. ZELLERS: Listen to his  
12 question.

13 THE WITNESS: Okay.

14 Q. My question is if the admitting diagnosis  
15 doesn't change, the same discharge diagnosis as  
16 the admitting diagnosis, do you necessarily  
17 include a separate discharge diagnosis on the  
18 discharge summary?

19 MR. ZELLERS: Objection.

20 A. I don't understand the question at all.

21 Q. When you dictate a discharge summary you put at  
22 the top here an admitting diagnosis?

23 A. That's correct.

24 Q. And if that admitting diagnosis is the same  
25 diagnosis on discharge, the diagnosis doesn't

1 change at all through the hospitalization, do  
2 you necessarily put a separate discharge  
3 diagnosis in the summary?

4 A. There should be a separate discharge diagnosis.

5 Q. Regardless of whether the diagnosis changes or  
6 not?

7 A. There should be.

8 Q. Okay. Where did this diagnosis, infected right  
9 total knee arthroplasty, come from?

10 A. Dr. Meyer's impression in his original history  
11 and physical.

12 Q. Okay. What was your involvement with this  
13 patient?

14 A. To the best of my recollection, Dr. Meyer went  
15 on vacation and I picked his patient up.

16 Q. Okay.

17 A. Midway through his course.

18 Q. When was the first time you saw him?

19 A. May I look at the chart?

20 Q. Sure.

21 A. I don't know the first time I saw him.

22 Q. Okay. When is your first note?

23 A. The 23rd of November.

24 Q. Do you remember when Dr. Meyer went on  
25 vacation?

1 A. Vaguely.

2 Q. What do you remember?

3 A. I remember that he went on vacation.

4 Q. The question was when.

5 A. I don't remember.

6 Q. What does your note say on November 23? Read  
7 it.

8 A. "Patient doing well. Continue dressing  
9 changes. Reorder vanco. Follow with ID. Check  
10 wound tomorrow."

11 Q. Why did you have to reorder vanco?

12 A. I believe it was going to run out. You have to  
13 keep the orders updated.

14 Q. Well, when an order for vancomycin is given, how  
15 long is it given for?

16 A. I don't know.

17 Q. Did you reorder it?

18 A. Yes.

19 Q. When?

20 A. The 24th.

21 Q. Is that a drug that needs to be approved by  
22 infectious disease before it is reordered?

23 A. Generally speaking, yes.

24 Q. Okay. Was it in this case, on the 24th?

25 A. I don't know.

1 Q. Is there anyway to tell by looking at the  
2 chart?

3 A. No, not that I can see.

4 Q. Okay. Above where it has, above your order it  
5 has a box that apparently is stamped in here  
6 "medication stop order"?

7 A. Uh-huh.

8 Q. Who puts that in the chart?

9 A. I believe nursing does.

10 Q. And what's the reason for that stop order?

11 A. It's kind of like a flag to you. The drugs  
12 don't necessarily stop.

13 Q. They don't?

14 A. No.

15 Q. Why not?

16 MR. ZELLERS: Objection.

17 A. They don't necessarily stop.

18 Q. Well, the box says these drugs will be stopped  
19 at 7:00 a.m. on 11/23/87 until reordered,  
20 doesn't it? Did I read that right?

21 A. That's what the box says, but --

22 Q. Okay. But what?

23 A. I told you they don't necessarily stop.

24 Q. Is the nurse supposed to keep giving these drugs  
25 even though there is a stop order?

1 MR. ZELLERS: Objection.

2 A. Who wrote the stop order? Did I write the stop  
3 order?

4 Q. I don't know. Why is this stop order put in the  
5 chart?

6 A. You would have to talk to nursing why they put  
7 that in there, or pharmacy. I don't know which  
8 one.

9 Q. Well, why did you reorder it if it's not  
10 stopped?

11 A. Protocol.

12 Q. How did you know it needed to be reordered?

13 A. I don't know. I could have been called or I  
14 could have seen that. I don't know. I don't  
15 remember what was the -- could have been told by  
16 somebody, could have been told by  
17 Dr. Matejczyk. I don't know the answer.

18 Q. Was vancomycin given between 7:00 on the 23rd  
19 and 12:50 on the 24th?

20 A. What's the dates?

21 Q. 7:00 on the 23rd and 12:50 on the 24th.

22 A. Yes.

23 Q. It was continued in the same doses that he was  
24 receiving previously?

25 A. That's correct.

1 Q. Okay. When is your next note after the 23rd?

2 A. On the 24th.

3 Q. What's that note say?

4 A. "Patient doing well without complaints. Vital  
5 signs stable. Afebrile. Vanco Day 8. Wound  
6 cleaned with minimum drainage. Staple, continue  
7 antibiotics. Plan: Approximate with suture in  
8 a few days."

9 Q. When you were following this patient, what  
10 clinical signs and symptoms were you looking  
11 for?

12 MR. ZELLERS: Objection.

13 A. I was looking for subjective complaints,  
14 objective findings by vital signs, and changes  
15 in the wound.

16 Q. Okay. If you did notice any changes in the  
17 wound who would you tell?

18 A. Dr. Matejczyk.

19 Q. I take it since infectious disease was following  
20 this patient that you weren't necessarily, that  
21 you wouldn't get involved in the treatment of  
22 the infection itself?

23 A. I would listen to what infectious disease had to  
24 say.

25 Q. Okay. What's your next note?

1 A. The 25th.

2 Q. Could you read that note?

3 A. "Patient without complaints. Vital signs  
4 stable. Afebrile. Wound edges nonerythematous,  
5 base granulating. Plan: Suture under local  
6 Friday."

7 Q. Okay. What does the findings of wound edges  
8 non --

9 A. Erythematous.

10 Q. Yes. And base granulating?

11 A. It means that the wound is getting close to  
12 being ready to close.

13 Q. Okay. And who made the decision to close the  
14 wound?

15 A. Dr. Matejczyk.

16 Q. What's your next note?

17 A. The 26th.

18 Q. And read that note?

19 A. "Patient without complaints. Vital signs  
20 stable. Wound no change without exudates.  
21 Close tomorrow under local."

22 Q. Okay. What does "without exudates" mean?

23 A. It means that there is no exudative material, it  
24 is not producing anything.

25 Q. Okay. When is your next note?



1 A. The 29th.

2 Q. What's that note say?

3 A. "Patient doing well. Wound approximated with  
4 1408 silk in a vertical mattress. Plan: D/C  
5 soon. Off antibiotics in 24 hours."

6 Q. Okay. That is note reflecting that the wound  
7 was closed?

8 A. Yes.

9 Q. Did you do that?

10 A. Yes, I did.

11 Q. Okay. Where did you do it?

12 A. In his room.

13 Q. Was Dr. Matejczyk there?

14 A. Yes, she was.

15 Q. Had you ever closed a wound like this before?

16 MR. ZELLERS: Objection.

17 A. I have closed many wounds.

18 Q. Okay. Did she tell you why you were closing the  
19 wound?

20 A. We had discussed the case, but I don't recall  
21 her saying specifically.

22 Q. Okay. Did you know why?

23 A. Yes.

24 Q. Why?

25 A. The wound was ready to be closed. The biology

1 of the wound was such that it appeared to be  
2 ready to heal.

3 Q. Why did it need to be stitched?

4 A. Because to wait for those cells, the granulating  
5 base to epithelialize would take months and  
6 months.

7 Q. Why did you want to discontinue antibiotics  
8 within 24 hours of doing this procedure?

9 A. I don't recall.

10 Q. Would that have been your plan or  
11 Dr. Matejczyk's plan?

12 A. I don't recall.

13 Q. Is it appropriate to close a wound with a stitch  
14 if the knee prosthesis is infected?

15 MR. ZELLERS: Objection.

16 A. I have in many cases.

17 Q. I'm not sure if that answers the question or  
18 not.

19 A. I find it appropriate as a surgeon, yes.

20 Q. Do you have any other notes in this chart?

21 MR. ZELLERS: Other than the  
22 discharge summary?

23 Q. Right.

24 A. No other handwritten notes that I saw.

25 MR. SEIBEL: You're not including

1 orders, are you, Chris?

2 MR. MELLINO: No.

3 Q. There was an order, another order that you  
4 wrote, two orders, three. Let's look at the  
5 order -- well, it's the last order sheet.

6 A. Okay.

7 Q. Is there a date on that note?

8 A. 12 something 87.

9 Q. There is no date written in there, it's a blank,  
10 right? I just want to make sure that yours is  
11 like mine.

12 A. Yes.

13 Q. Read that note?

14 A. "D/C to home in a.m. after ID is called for  
15 follow up and outpatient antibiotics question.  
16 Beep 2281. Follow up or though one week  
17 clinic."

18 Q. Okay. Are these initials in these boxes?

19 A. I don't know. They look like it, but I don't  
20 know.

21 Q. Okay. In your note apparently there is some  
22 question about outpatient antibiotics, you have  
23 a question mark after that?

24 A. I have a question mark after it.

25 Q. All right. What does that note mean, ID called

1 for follow up and outpatient antibiotics?

2 A. That I was not making the decision on whether or  
3 not there should be antibiotics.

4 Q. Okay. I take it infectious disease was making  
5 that decision?

6 A. That's my understanding.

7 Q. And what does beep 2281 mean?

8 A. I don't know whose beeper that is. I don't know  
9 if that's infectious disease or maybe even the  
10 beeper I was carrying then. I don't know.

11 Q. Why would you put your beeper down in that note?

12 A. I don't know. If they had problems they could  
13 call me. I put my beeper down many places.

14 Q. Did you ever talk to infectious disease about  
15 outpatient antibiotics?

16 A. I don't recall.

17 Q. Were any given?

18 A. I don't know.

19 Q. Well, wouldn't that be in your discharge  
20 summary?

21 A. I can look. I can't tell from my note whether  
22 or not there are any antibiotics or not.

23 Q. Your last sentence of your note, why don't you  
24 read that, where it says follow up?

25 A. "Patient is to call Dr. Matejczyk's office and

1 follow up with infectious disease to see if they  
2 wish to consider any outpatient antibiotics."

3 Q. When did you dictate this note, summary?

4 A. 1/14/88.

5 Q. 1/14/88. So at that time you didn't know  
6 whether or not outpatient antibiotics had been  
7 given?

8 A. I don't know if this was my original dictation  
9 or not.

10 Q. What difference would that make?

11 A. Well, it would change the date. You can dictate  
12 a chart into a computer and it not come out and  
13 then you receive a delinquency notice and end up  
14 redictating it.

15 Q. Well, what we see here though was dictated on  
16 1/14/88?

17 A. That's correct.

18 Q. So I guess what you're telling me, you could  
19 have dictated something before this?

20 A. That's right.

21 Q. But my question is as of 1/14/88 this doesn't  
22 reflect whether or not he received any  
23 outpatient antibiotics?

24 MR. ZELLERS: He said that.

25 Q. So apparently as of January 14 you didn't know

1           whether or not he had received them or not?

2       A.   Was he supposed to?

3                       MR. ZELLERS:   Answer his question.

4       A.   What's the question again?   I'm sorry.

5       Q.   As of 1/14/88 you didn't know whether or not  
6           Mr. Cates had received outpatient antibiotics?

7       A.   That is correct.

8       Q.   When your note says the patient is to call  
9           Dr. Matejczyk's office and follow up with  
10          infectious disease, who's supposed to follow up  
11          with infectious disease?   You're referring to  
12          the patient or Dr. Matejczyk?

13      A.   Well, that's a sentence, and the rest of that  
14          sentence pertains to the subject which is the  
15          patient.

16      Q.   So you expected the patient to follow up with  
17          infectious disease to see if he needed  
18          outpatient antibiotics?

19      A.   They make those decisions.   I just was thinking  
20          let him follow up with the people that he had  
21          seen in the hospital.

22      Q.   Well, he was Dr. Matejczyk's patient, wasn't  
23          he?

24      A.   That's correct.

25      Q.   You dictated an addendum to your discharge

1 summary, is that correct?

2 A. Uh-huh.

3 Q. That was dictated on the same day as the  
4 discharge summary?

5 A. Uh-huh.

6 Q. Why did you dictate that addendum?

7 A. It should be noted that the aspirate from his  
8 knee, there was no culture, there was no growth  
9 from his culture.

10 Q. My question was why did you add this onto your  
11 discharge summary?

12 A. It's pertinent.

13 Q. Why is it pertinent?

14 A. Because there was no growth.

15 Q. What does that tell us?

16 A. It tells us that the aspirate is not growing  
17 anything.

18 Q. When was the aspirate taken?

19 A. I'm not sure. That's to my recollection. I  
20 have to check in the chart. He only had one  
21 aspirate.

22 Q. When he was admitted. What was the discharge  
23 diagnosis?

24 A. Superficial wound breakdown.

25 Q. Okay. And you're looking at -- what's that page

1           called in the medical chart?

2       A.   That's the face sheet, I believe.

3       Q.   Okay.  That contains, it says "principal  
4           discharge diagnosis," and it says "infected  
5           total knee arthroplasty," correct?

6       A.   Yes.

7       Q.   And then there is a line through that?

8       A.   Yes.

9       Q.   And then it's written "superficial wound  
10          breakdown"?

11      A.   That's correct.

12      Q.   Who put the line through "infected total knee  
13          arthroplasty"?

14      A.   I have no idea.

15      Q.   Who wrote "superficial wound breakdown"?

16      A.   I have no idea.

17      Q.   Do you recognize that writing?

18      A.   No.

19      Q.   Who wrote "infected total knee arthroplasty"?

20      A.   I have no idea.

21      Q.   Okay.  Is any of the writing on that page  
22          yours?

23      A.   Yes.

24      Q.   What?

25      A.   My name.



1 Q. Why would you have signed that?

2 A. Generally you do that. Sometimes they will  
3 bring the chart to you and ask you to sign it.  
4 Sometimes it will be there when you dictate and  
5 you can sign it, the face sheet.

6 Q. When did you sign it?

7 A. On the 16th.

8 Q. Of --

9 A. January.

10 Q. Okay.

11 A. See these aren't always included in the chart.

12 Q. When you signed it, was the principal discharge  
13 diagnosis infected total knee arthroplasty or  
14 had that been lined out at that time?

15 A. I don't know.

16 Q. Okay. You don't remember what this looked like  
17 when you signed it?

18 A. It could have been an empty sheet. It isn't  
19 uncommon to sign an empty sheet. The purpose is  
20 to record that I dictated and the date.

21 Q. That you dictated what?

22 A. The chart.

23 MR. ZELLERS: You mean the clinical  
24 resume?

25 A. Yes. That's the purpose of my signature on

1 here.

2 Q. To say that you dictated the clinical resume?

3 A. Yes.

4 Q. Okay. And you don't know who writes down the  
5 principal discharge diagnosis?

6 A. No.

7 Q. Okay. Were you aware of the change in diagnosis  
8 at the time that you dictated the discharge  
9 summary?

10 A. Yes.

11 Q. When did you become aware of it?

12 MR. ZELLERS: Objection.

13 A. From the looks of my notes, I never thought he  
14 had an infected total knee. So from the start I  
15 thought it was a superficial wound breakdown.

16 Q. But you didn't put that in the clinical resume  
17 anywhere?

18 A. I don't see it on that sheet of paper.

19 Q. Any of the three sheets of paper? I mean, you  
20 even added an addendum and it's not on that,  
21 isn't that true?

22 A. What's that, that I added an addendum? Yes, I  
23 added an addendum.

24 Q. That you added an addendum and you didn't even  
25 put on the addendum that the diagnosis changed

1 or the discharge diagnosis?

2 A. I added an addendum.

3 Q. You didn't even include in the addendum a  
4 diagnosis of superficial wound breakdown?

5 A. I dictated an addendum.

6 MR. ZELLERS: Are those words on  
7 that addendum?

8 A. Superficial wound breakdown?

9 MR. ZELLERS: Yes.

10 A. No.

11 Q. The only diagnosis that is in any of these three  
12 pages of your clinical resume is infected right  
13 total knee arthroplasty?

14 A. The admitting diagnosis.

15 Q. Were you involved at all in the outpatient  
16 procedure on December 22?

17 A. What procedure was that?

18 Q. The outpatient procedure that he had done on the  
19 22nd?

20 A. I would have to look. Yes.

21 Q. All right. What was your involvement in that?

22 A. I was an assistant surgeon.

23 Q. Okay. And what was the surgery that was done?

24 A. Irrigation, debridement and closure of a right  
25 knee wound.

1 Q. Was this the same wound that you closed on, was  
2 it, the 29th?

3 A. It wasn't the 29th of November?

4 Q. Yes.

5 A. Yes. That's correct. Yes. It was the same,  
6 same wound.

7 Q. Okay. And apparently it hadn't closed from the  
8 time that you had closed it?

9 A. No, it was closed when he left the hospital.

10 Q. Why did it need to be closed on the 22nd of  
11 December?

12 A. Because it had mechanically broken down.

13 Q. What does that mean?

14 A. That means that it came apart at its edges.

15 Q. What came apart?

16 A. The skin.

17 Q. What happened to the stitch?

18 A. I don't know.

19 Q. Was it in there on the 22nd?

20 A. I don't recall.

21 Q. Does it stay anything about it in the operative  
22 report?

23 A. No.

24 Q. Who dictated the operative report?

25 A. I did.

1 Q. Did you do this procedure?

2 A. I did.

3 Q. On the 22nd?

4 A. I did.

5 Q. Okay. And what did you do? What was the  
6 procedure involved?

7 A. Cultured the wound and ellipsed the wound,  
8 washed it out, and closed it.

9 Q. Okay. What does it mean to culture the wound?

10 A. Take a swab and brush it across the open  
11 surface.

12 Q. Okay. What's the purpose of doing that?

13 A. To get a look at any bacteria there.

14 Q. Okay. What does the bacteria tell you?

15 A. Doesn't tell me anything.

16 Q. Then why do you do it?

17 A. I guess so other people can look at it.

18 Q. Infectious disease? You have to answer  
19 verbally.

20 A. Oh, I'm sorry. Yes, infectious disease.

21 Q. What does it mean to ellipse the wound?

22 A. It means to remove the edges from the wound so  
23 that they're fresh.

24 Q. And you close it with a stitch again?

25 A. Yes.

1 Q. Just one stitch?

2 A. I don't recall.

3 Q. Okay. Was Dr. Matejczyk there during the  
4 procedure?

5 A. Yes, she was.

6 Q. Okay. Did you follow up on the results of the  
7 swab?

8 A. No, not that I recall.

9 Q. How would that get followed up on?

10 A. Either through Dr. Matejczyk or infectious  
11 disease.

12 Q. Did you notify infectious disease that you were  
13 doing this procedure?

14 A. I don't know.

15 Q. Is that something that you would chart if you  
16 did tell them?

17 A. Sometimes you will. Not always.

18 Q. All right. You didn't chart here that you  
19 notified infectious disease?

20 A. No.

21 Q. And you don't know if you followed up on the  
22 swab?

23 A. I didn't follow up on it to my knowledge.

24 Q. Okay. Why were you deposed before?

25 MR. ZELLERS: Objection. You can

1 answer.

2 A. I was involved in a Life Flight case where a  
3 young man had been intoxicated and was involved  
4 in an accident and they were interested to know  
5 what his condition was at the scene of the  
6 accident.

7 Q. Okay. Was that the only time you were deposed?

8 A. That is correct.

9 Q. Have you ever been sued before?

10 A. No.

11 Q. Okay. I shouldn't say before. Have you ever  
12 been sued?

13 MR. SEIBEL: He hasn't been sued  
14 here, by the way.

15 MR. MELLINO: That's what I meant.  
16 I know that.

17 Q. Did you have any contact with Mr. Cates after  
18 this procedure on the 22nd but before he was  
19 readmitted to the hospital on January 3rd?

20 A. Not to my recollection.

21 Q. Okay. Did you -- strike that.

22 You only saw staff patients in the clinic,  
23 is that what you told me at the beginning?

24 A. Yes.

25 Q. And since he was a private patient of

1 Dr. Matejczyk you would only have seen him in  
2 the hospital?

3 A. That's correct.

4 Q. Okay. Who made the diagnosis of superficial  
5 wound breakdown? Was that Dr. Matejczyk's  
6 diagnosis?

7 A. I don't know. It was my impression, but I don't  
8 know who made that diagnosis.

9 Q. Is that diagnosis in the chart anywhere except  
10 for above that line-out?

11 MR. ZELLERS: Objection.

12 A. I don't know.

13 Q. Well, you reviewed the notes before the  
14 deposition, didn't you?

15 A. Yes.

16 Q. Did you see it in there anywhere?

17 MR. ZELLERS: Objection.

18 A. I don't remember.

19 Q. Well, it wasn't in any of your notes? We read  
20 through all your notes and you didn't have  
21 anything that contained a diagnosis in it, isn't  
22 that true?

23 A. I don't see it in my notes.

24 Q. What's the standard of care for treatment of an  
25 infected right total knee arthroplasty?



1 MR. ZELLERS: Objection.

2 A. I'm not qualified to answer that.

3 Q. Okay.

4 MR. MELLINO: Doctor, I don't have  
5 anymore questions.

6 MR. SEIBEL: Nothing here.

7 MR. ZELLERS: We will not waive  
8 signature. You're done.

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BRIAN BATTERSBY, M.D.

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C E R T I F I C A T E

The State of Ohio, ) SS:  
County of Cuyahoga.)

I, Ralph A. Cebron, a Notary Public within and for the State of Ohio, authorized to administer oaths and to take and certify depositions, do hereby certify that the above-named BRIAN BATTERSBY, M.D., was by me, before the giving of his deposition, first duly sworn to testify the truth, the whole truth, and nothing but the truth; that the deposition as above-set forth was reduced to writing by me by means of stenotypy, and was later transcribed into typewriting under my direction; that this is a true record of the testimony given by the witness, and was subscribed by said witness in my presence; that said deposition was taken at the aforementioned time, date and place, pursuant to notice or stipulations of counsel; that I am not a relative or employee or attorney of any of the parties, or a relative or employee of such attorney or financially interested in this action.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office, at Cleveland, Ohio, this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 19 \_\_\_\_.

Ralph A. Cebron, Notary Public, State of Ohio  
1750 Midland Building, Cleveland, Ohio 44115  
My commission expires August 20, 1993