

State of Ohio, )

County of Cuyahoga. )

- - -

IN THE COURT OF COMMON PLEAS

- - -

MARTIN T. McCUE, )

Plaintiff, )

v. )

Case No, 326206

PARMA COMMUNITY GENERAL )  
HOSPITAL, et al., )

Defendants, )

- - -

THE DEPOSITION OF PACITA GABRIEL-GARCIA, M.D.

WEDNESDAY, NOVEMBER 11, 1998

- - -

The deposition of PACITA GABRIEL-GARCIA, M.D., a Defendant herein, called for examination by the Plaintiff, under the **Ohio** Rules of Civil Procedure, taken before me, Lauren I. **Zigmont-Miller**, Registered Professional Reporter and Notary Public in and for the State of Ohio, pursuant to notice, at Parma Community General Hospital, 7007 Powers Boulevard, Parma, Ohio, commencing at 3:15 p.m., the **day** and **date** above set forth.

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## 1 APPEARANCES:

2 on behalf of the Plaintiff:

3 DAVID B. MALIK, ESQ.  
 4 8228 Mayfield Road  
 5 Chesterland, Ohio 44026  
 6 (440) 729-8260

7 MARK RUF, ESQ.  
 8 Hoyt Block Building  
 9 700 West St. Clair  
 10 Cleveland, Ohio 44113  
 11 (216) 687-1999

12 On behalf of the Defendant Dr. Garcia:

13 JOHN SIMON, ESQ.  
 14 Gallagher, Sharp, Fulton & Norman  
 15 7th Floor Bulkley Building  
 16 1501 Euclid Avenue  
 17 Cleveland, Ohio 44115  
 18 (216) 241-5310

19 On behalf of the Defendant Parma Community General Hospital:

20 JOHN W. JEFFERS, ESQ.  
 21 Weston, Hurd, Fallon, Paisley & Howley  
 22 2500 Terminal Tower  
 23 50 Public Square  
 24 Cleveland, Ohio 44113  
 25 (216) 241-6602

26 On behalf of the Defendant Southwest Orthopedics and Dr. Gittinger:

27 RICHARD A. VADNAL, ESQ.  
 28 Reminger & Reminger Co., L.P.A.  
 29 The 113 St. Clair Building  
 30 Cleveland, Ohio 44114  
 31 (216) 687-1311

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## 1 APPEARANCES CONTINUED:

2 On behalf of the Defendant Dr. Lopez-Valez:

3 DAVID H. GUNNING, II, ESQ.  
 4 Buckingham, Doolittle & Burroughs, L.L.P.  
 5 1375 East 9th Street  
 6 Cleveland, Ohio 44114  
 7 (216) 621-5300

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## 4 CROSS-EXAMINATION BY

5 MR. MALIK

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## 11 PLAINTIFF'S EXHIBITS MARKED

12 K

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- - -

## 18 OBJECTIONS BY

19 MR. SIMON

10, 20, 29931, 30, 32(2),

20 37, 39, 41(3)

21 MR. JEFFERS

18, 30, 39, 41

22 MR. VADNAL

30

23 MR. GUNNING

30

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1 PACITA GABRIEL-GARCIA, M.D.,

2 a Defendant herein, called for examination by the  
 3 Plaintiff, under the Rules, having been first duly  
 4 sworn, as hereinafter certified, deposed and said as  
 5 follows:

## 6 CROSS-EXAMINATION

7 BY MR. MALIK:

8 Q. Doctor, my name is David Malik, and I have  
 9 some questions for you. If there's something you don't  
 10 understand, let me know, okay?

11 A. Yes.

12 Q. Have you ever had your deposition taken  
 13 before?

14 A. Yes.

15 Q. In what kind of a case?

16 A. It involved a patient who was given  
 17 incompatible blood.

18 Q. And how long ago was that?

19 A. Oh, gosh, I don't exactly remember the  
 20 date, but it was in the early '80s.

21 Q. Was it at this hospital?

22 A. No, another hospital.

23 Q. Where?

24 A. Marymount Hospital.

25 Q. Do you remember the name of the case or

1 the patient?

2 A. I don't recall.

3 Q. For the record would you please state your  
4 full name and spell it?

5 A. First name Pacita, P-A-C-I-T-A, middle  
6 initial E., last name Gabriel-Garcia.

7 Q. What is your occupation?

8 A. Anesthesiologist.

9 Q. Are you an M.D?

10 A. Yes.

11 Q. Tell me a little bit about your training.

12 A. Okay. You want me to start from where I  
13 graduated from medical school?

14 Q. That would be fine.

15 A. I have it here. I finished my pre-medical  
16 education and my medical education at the University of  
17 the Philippines. I took a rotating internship at  
18 Philippine General Hospital. I came over here to this  
19 country 1967. I took another year of rotating  
20 internship with longer stay in the Department of  
21 Anesthesia at Marymount Hospital, then I took two years  
22 of residency in anesthesia at Marymount Hospital.

23 I passed the state medical Board of  
24 Ohio after finishing the residency, and since then I  
25 worked as an anesthesiologist at Marymount Hospital

1 until I retired from active practice of anesthesia  
2 October of 1990. I retired from active practice in  
3 1990 October. Then I started working here at Parma  
4 Hospital in the pre-admission testing department  
5 starting February of 1991 up until the present time.

6 Q. You are referring to a document, correct,  
7 the document in front of you?

8 A. This is my CV, curriculum vitae.

9 MR. MALE. Did we get a  
10 copy of that?

11 MR. SIMON It may have  
12 been sent to you, but you can mark that  
13 one and have that one.

14 MR. JEFFERS: Whatever you'd  
15 like. At whatever time I'll take them  
16 over to administration and get some copies  
17 made.

18 MR. MALIK: For purposes of  
19 identification mark it K.  
20 (Thereupon, Plaintiff's Exhibit K to the  
21 deposition of Pacita Gabriel-Garcia was  
22 marked for purposes of identification.)

23 MR. SIMON: Let the record  
24 reflect it's a handwritten type form that  
25 the doctor has filled out.

1 BY MR. MALIK:

2 Q. Doctor, were you part of a practice,  
3 private practice when you were at Marymount?

4 A. Will you please repeat your question?

5 Q. Sure. Were you on staff at Marymount?

6 A. Yes.

7 Q. Were you a part of any other  
8 anesthesiology practice?

9 A. Yes, I was part of the anesthesia group at  
10 Marymount Hospital.

11 Q. And what was the formal name of that  
12 group?

13 A. The first group was Dr. DePero &  
14 Associates. When he retired Euclid Anesthesia &  
15 Associates, I think, and then -- no, no, excuse me.  
16 After Dr. DePero retired the department was taken over  
17 by Dr. Herman and it was called the group, I was part  
18 of the group. Then when he retired Anesthesia of  
19 Euclid Group.

20 Q. Is there an anesthesia group in there  
21 whose name you don't remember right now, or have you  
22 told me the names of all the groups?

23 A. Yes, the three groups with whom I was a  
24 member.

25 Q. I understood two of them, I didn't

1 understand the one in the middle. Did you know the  
2 formal name?

3 A. I don't recall the formal name, but Dr.  
4 Herman was the head of the group.

5 Q. Was it Parma Anesthesiology? Have you  
6 ever been a part of that group?

7 A. Here in this hospital.

8 Q. So you are a part of the same group as Dr.  
9 Midias?

10 A. Yes.

11 Q. Am I pronouncing his name correctly?

12 A. Yes, Midis.

13 Q. Will you also tell your attorney the name  
14 of the other group when it comes to you, when you think  
15 of it?

16 A. Yes, I will.

17 Q. Okay. Why did you make the move from  
18 Marymount to Parma?

19 A. I was approached by some of the members of  
20 the Parma Anesthesia Group in this hospital and they  
21 asked me to do the pre-admission evaluation of patients  
22 in this hospital.

23 Q. Do you recall who approached you?

24 A. Yes, I was approached by them, I don't  
25 recall. I think it was Dr. Delafuente who talked to me

1 and invited me to come over and do the pre-admission  
2 testing at this hospital.

3 Q. Now, you had an active medical license at  
4 Marymount, correct?

5 A. Active medical license?

6 Q. Right.

7 A. Yes, I do.

8 Q. Do you have one here also at Parma?

9 A. Yes. By active medical license you mean  
10 the medical license of Ohio?

11 Q. Correct.

12 A. Yes, I do.

13 Q. Other than pre-admission testing  
14 evaluation, do you have any other duties here at Parma  
15 Hospital?

16 A. No.

17 Q. Are you the only M.D. that performs  
18 pre-admission testing here?

19 MR. SIMON: Objection.

20 Go ahead, you can answer.

21 A. If I am on vacation the members of the  
22 anesthesia group here, whoever is free goes to the  
23 department and does the pre-evaluation testing.

24 Q. But at times when you're not on vacation  
25 you were the only pre-admission evaluation physician?

1 A. Yes.

2 MR. SIMON: Just to clarify  
3 for the record, as far as  
4 anesthesiologists are concerned, Dr. Valez  
5 was already deposed and she's a physician  
6 and does pre-admission testing, but not  
7 specifically with respect to anesthesia.

8 BY MR. MALIK:

9 Q. So your role here at the hospital is  
10 limited to pre-admission evaluation for anesthesia?

11 A. Yes.

12 Q. Do you recall Martin McCue?

13 A. No. I recall only whatever I have written  
14 in my pre-evaluation sheet.

15 Q. I'm going to hand you a number of  
16 exhibits, they are premarked. The other attorneys have  
17 them and I have one here, and I want to ask you about  
18 them.

19 Referring first to Exhibit A, did you  
20 have any role in the explanation of this exhibit to Mr.  
21 McCue?

22 A. No.

23 Q. Generally as a matter of practice is one  
24 of your responsibilities to have the patient sign a  
25 consent to operation and treatment?

1 A. No.

2 Q. Who here at Parma Hospital has that role?

3 A. I don't know.

4 Q. When the patient comes to see you what  
5 documents do you have in your possession?

6 A. The nurse gives me the chart. Clipped on  
7 the outside of the chart are the booking slip, the  
8 history and physical form, which she already has filled  
9 up, the upper part. If Dr. Valez sees the patient  
10 ahead of me she might have filled the chart, if not  
11 that part is blank, so only the nurse's part has been  
12 filled up. Also, the doctors orders sheet.

13 Q. Would you please look through that packet  
14 and tell me if any of the documents you receive are in  
15 that packet.

16 MR. SIMON: Go through them  
17 page by page and tell him what you would  
18 see and what you wouldn't.

19 A. I would see Exhibit E.

20 MR. SIMON: I don't know if  
21 it's Exhibit E or not. There's an E with  
22 red on the upper corner.

23 MR. MALIK: Yes, that's E.

24 A. This is the booking slip. Exhibit H.

25 These are blank. Exhibit I and Exhibit J are my forms,

1 I get them.

2 Q. You get those in blank?

3 A. Yes.

4 Q. Now I'm going to hand you my chart of  
5 medical records, and I'd like you to look through  
6 there. Is there anything additional that you receive,  
7 just in this section?

8 A. I see this (indicating).

9 Q. What is that called?

10 MR. SIMON: Physician's  
11 orders.

12 A. Physician's orders. Outpatient history  
13 and physical. Of course this is my form (indicating),  
14 this is my form (indicating).

15 Q. Do you see this patient care record?

16 A. No.

17 Q. That's all?

18 A. That's all.

19 Q. So for purposes of identification we'll  
20 mark as Exhibit L the outpatient history and physical.  
21 You see that, correct?

22 A. Yes, I see the page.

23 Q. Does the page have information on it when  
24 you see it?

25 A. Most of the time the nurse's part has been

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1 filled up. If I see the patient first the lower part  
 2 is blank. If Dr. Lopez or whoever the doctor assigned  
 3 there has seen the patient ahead of me I might see the  
 4 lower part, too.  
 5 Q. With respect to Mr. McCue, do you recall  
 6 what information was on the page when you saw it?  
 7 A. I don't recall.  
 8 Q. You also indicated you had the anesthesia  
 9 evaluation.  
 10 A. I get it.  
 11 Q. For purposes of identification this is M.  
 12 What information is on that page when  
 13 you see it?  
 14 A. When I get this?  
 15 Q. Yes.  
 16 A. It's blank.  
 17 Q. It's also blank when you get it?  
 18 A. Yes.  
 19 Q. And the standing pre-anesthesia pre-op  
 20 orders, do you get those?  
 21 A. Yes.  
 22 Q. Are they filled out?  
 23 A. No.  
 24 Q. These are also blank. So we're marking  
 25 that N.

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1 MR. MALIK: M is the  
 2 anesthesia evaluation?  
 3 MR. JEFFERS: I thought that  
 4 was J.  
 5 MR. MALIK: I stand  
 6 corrected, this is J. So then M is the  
 7 standing anesthesia pre-op orders.  
 8 MR. GUNNING: what is I?  
 9 MR. MALIK: No. I is in  
 10 the packet you have.  
 11 MR. GUNNING: It says  
 12 standing pre-op orders.  
 13 MR. MALIK: Then it's the  
 14 same thing, it's I. Thank you very much.  
 15 Exhibit J is the blank two-page form.  
 16 MR. SIMON: Anesthesia  
 17 evaluation form is what it is.  
 18 MR. GUNNING: I have J, I  
 19 have two pages, anesthesia evaluation,  
 20 that's J. Then L is the --  
 21 MR. JEFFERS: outpatient  
 22 history and physical. M is I?  
 23 MR. MALIK: No, we're  
 24 eliminating M and keeping it as I.  
 25 MR. VADNAL: we're

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1 eliminating N and keeping it as J.  
 2 BY MR. MALIK:  
 3 Q. Can you tell me what time of day you saw  
 4 Mr. McCue?  
 5 MR. JEFFERS: Is that it?  
 6 THE WITNESS: Yes.  
 7 MR. JEFFERS: That would be  
 8 Exhibit J.  
 9 A. I saw the patient about, you know -- on my  
 10 form I wrote the time when I finished interviewing him,  
 11 so I saw the patient about, you know, 12:10, 12:15,  
 12 something like that when I started interviewing him. I  
 13 note the time 12:50 p.m. when I finished interviewing  
 14 him when he signed the form and I wrote my pre-op  
 15 orders.  
 16 Q. And you are referring to Exhibit J for  
 17 that information, correct?  
 18 A. M-hm.  
 19 Q. Did you see the patient before Dr.  
 20 Lopez-Valez or after Dr. Lopez-Valez?  
 21 A. I said I don't recall.  
 22 Q. For pre-admission anesthesia evaluation  
 23 are there any protocols, written protocols that the  
 24 hospital has that you follow?  
 25 A. The anesthesia department has a protocol.

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1 Q. And you are familiar or were familiar with  
 2 that protocol?  
 3 A. Yes.  
 4 Q. Does the group that you are employed by,  
 5 Parma Anesthesiology, have any protocols that you  
 6 follow?  
 7 A. Herman in Marymount.  
 8 MR. SIMON He's talking  
 9 about now, the group at Parma.  
 10 A. You said Herman.  
 11 Q. I stand corrected.  
 12 MR. SIMON: Can you repeat  
 13 the question, I think we're a little  
 14 confused.  
 15 A. Parma Anesthesia Associates --  
 16 MR. SIMON: Wait for the  
 17 question, Doctor.  
 18 BY MR. MALIK:  
 19 Q. Does Parma Anesthesia Associates have any  
 20 protocols that you follow, written protocols?  
 21 MR. SIMON Do they  
 22 personally have protocols in addition to  
 23 the ones by the hospital?  
 24 MR. JEFFERS: unless those  
 25 are one in the same.



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1 A. The anesthesia department has its own  
2 protocol.  
3 Q. So am I correct in understanding that  
4 you're telling me Parma Anesthesiology does not have  
5 its own protocols?  
6 A. I said the Parma Anesthesia Department has  
7 its own protocol.  
8 Q. Parma Anesthesia Department?  
9 A. Yes.  
10 Q. I'm trying to make a distinction between  
11 the hospital and Parma Anesthesiology. Are there two  
12 different protocols?  
13 A. I don't know.  
14 Q. But what you do know is that the hospital  
15 has them, correct?  
16 MR. JEFFERS: Objection.  
17 A. I don't know. I know that the Parma  
18 Anesthesia Department of this hospital has a protocol.  
19 Q. Have you received a copy of that protocol?  
20 A. It is in the department.  
21 Q. Did you review a copy of that protocol by  
22 January 25th, 1996?  
23 A. No.  
24 Q. Were you familiar with that protocol at  
25 the time you did this pre-anesthesia evaluation?

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1 A. Yes.  
2 Q. Were you familiar with it because you had  
3 reviewed it, or were you familiar with it because you  
4 just followed your normal custom and practice that you  
5 thought was the protocol?  
6 A. I don't understand -- will you please  
7 repeat your question?  
8 Q. Sure. Doctor, there's a written protocol  
9 at the hospital, correct, for pre-admission evaluation?  
10 A. Not hospital, anesthesia department.  
11 Q. The anesthesia department?  
12 A. Yes.  
13 Q. Prior to the time you saw Mr. McCue had  
14 you reviewed that protocol?  
15 A. No.  
16 Q. Do you know what that protocol contained  
17 then at the time you saw Mr. McCue?  
18 A. Yes.  
19 Q. How do you know what it contained?  
20 A. Because I have been working here for a  
21 long time, I know what is the protocol.  
22 Q. Would you tell me what the protocol is for  
23 pre-admission anesthesia evaluation?  
24 A. For this particular patient, Mr. Martin  
25 McCue, 38 years old, there is no particular testing

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1 needed. That is according to the anesthesia protocol  
2 of the Department of Anesthesia.  
3 Q. Now, referring to Exhibit H, which is the  
4 one you have in front of you, is your signature on that  
5 page?  
6 A. Yes.  
7 Q. And can you tell me what it says before  
8 your signature?  
9 A. The first order here?  
10 Q. Yes.  
11 A. 1-25-96, 7:45, no further testing required  
12 per anesthesia protocol. It was signed by the nurse  
13 and I counter-signed it.  
14 Q. Okay. Is the anesthesia protocol that you  
15 referred to there different than Exhibit I that you  
16 have which are the standing anesthesia pre-op orders?  
17 MR. SIMON: I'm going to  
18 object. I don't know how she could answer  
19 that question.  
20 BY MR. MALIK:  
21 Q. The Department of Anesthesiology has a  
22 protocol, right?  
23 A. Yes.  
24 Q. Is that protocol different than what's on  
25 this document (indicating)?

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1 A. That is not a protocol, that is a pre-op  
2 order sheet.  
3 Q. That is my question, thank you.  
4 Can you tell me what information is  
5 contained in the Protocol, what the protocol tells you  
6 to do?  
7 A. To order testings that are needed for  
8 individual patients.  
9 Q. And in this case you're telling me that  
10 there was no testing needed?  
11 A. No testing needed because of his age.  
12 Q. Now, let's refer to the actual document  
13 that you filled out, which is marked as Exhibit J, the  
14 anesthesia evaluation. At the time you saw Mr. McCue  
15 were you familiar with this document?  
16 A. Before I saw Mr. McCue?  
17 Q. Right. Had you used this document before?  
18 A. What do you mean?  
19 MR. SIMON: Before you saw  
20 Mr. McCue were you familiar with that  
21 document?  
22 A. With the form?  
23 MR. SIMON: Yes, the form.  
24 A. Yes. It's my anesthesia evaluation form.  
25 It is what I fill out every time I see a patient.

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1 Q. Did you develop the form?

2 A. No. The anesthesia department had this  
3 form when I arrived here and they told me to use this  
4 form.

5 Q. Did you add or detract anything from the  
6 form or modify the form in any way?

7 A. No.

8 Q. Let's pretend that I'm Mr. McCue and you  
9 are the physician doing the anesthesia evaluation.

10 Would you please just take me through the process, take  
11 me through the page of what information you need and  
12 what discussions you would have with me. Can we do  
13 that?

14 A. M-hm.

15 Q. Okay.

16 A. All right. I fill up the type of  
17 procedure scheduled, this I get from the booking slip.  
18 I fill up the vital signs, this has been done by the  
19 nurse, it is in the history and physical form, so I  
20 copy it and fill up my form here. Medical history,  
21 this is my conversation with Mr. McCue. I ask him  
22 about his medical history. My routine is -- do you  
23 want me to continue?

24 Q. Please.

25 MR. SIMON: sure, tell him

Page 23

1 what you do.

2 A. My routine is I start with the heart. I  
3 ask him if he has any medical problems concerning the  
4 heart, for example, chest pains, heart attack,  
5 irregular heartbeat, shortness of breath, especially  
6 even at rest. He did not have any problem or symptoms  
7 referable to the heart, so there is no note concerning  
8 heart. Then I go to the lungs. I ask him if he has  
9 any problem with the lungs, for example, asthma,  
10 bronchitis, pneumonia, emphysema. He said that he had  
11 a history of asthma, so I noted down he has a history  
12 of asthma for which he was hospitalized in 1989 and  
13 1990.

14 Then I go to the liver. I ask him if  
15 he has problems referring to the liver, like, for  
16 example, hepatitis, jaundice, cirrhosis. He did not  
17 have any problem referring to the liver, so there is  
18 nothing, no note that I wrote about the liver.  
19 Kidneys, he did not have any problem referring to the  
20 kidneys.

21 Then I ask him if he has any problem  
22 with high blood pressure, diabetes. I go to the head  
23 part, glaucoma in his eyes, headaches, migraines,  
24 tension headaches, sinus problems, ear problems,  
25 sinuses, for example, you know, frequent sore throat or

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1 post nasal dripping or anything like that. He did not  
2 have any problems regarding this, so there is no note  
3 on my chart.

4 I go to the neck. I ask if he has any  
5 problem with the thyroid. He did not have any problem,  
6 nothing there. Then I go to the stomach. If he has  
7 any problem with ulcers. He did have peptic ulcer  
8 disease, so there I wrote that he has peptic ulcer  
9 disease.

10 I ask him if he has any blood problems,  
11 you know, like bleeding, clotting problems, any problem  
12 with anemia, any kind of anemia. He did not have any  
13 problem, there's no note in my paper here. Then I go  
14 to muscle, nerve problems, carpal tunnel in the hands,  
15 convulsions, seizures, history of polio, multiple  
16 sclerosis, myasthenia gravis, any kind of muscle  
17 problem. He did not have any problem, so there's no  
18 note in my paper.

19 I ask him about if he has any problem  
20 with arthritis, he did not have any problem. No other  
21 problems that he said here, so there's nothing. Any  
22 other problem concerning other medical problems. He  
23 did have he told me an injury of the knee that occurred  
24 September 25th of 1995, so it's written down there.  
25 That is the medical history.

Page 25

1 Do you want me to continue?

2 Q. Please.

3 MR. SIMON Sure, go  
4 through your normal routine. I guess  
5 surgical history is next.

6 A. Then I go to the surgical history. I ask  
7 him the surgeries that he had. He said he had a  
8 pilonidal cystectomy which was done in 1980 under  
9 general anesthesia, he had a traumatic amputation of  
10 the left index finger which was done under local  
11 anesthesia, and he had a fracture of the right leg,  
12 which no surgery was done, but cast was applied, no  
13 anesthesia for that. I asked him if he had  
14 complications regarding anesthesia, he said no.

15 Then I go to the family history, if any  
16 member of his family had surgery did they have any  
17 complications, he said no. Then I go to his habits. I  
18 ask him about his smoking habit. He said he quit  
19 smoking in 1989, but before that he used to smoke one  
20 pack a day. He did not drink alcohol and he denied  
21 using drugs, recreational drugs, so there's nothing  
22 there.

23 He had no allergy. The nurse listed  
24 down the drugs in her form, I copied it down here, but  
25 I reviewed this with the patient. He took Theo-Dur,



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1 Lodine and he used Azmacort and ventilating inhalers.  
 2 He also took Paxil and Vicodin as needed.  
 3 Then I listened to his heart. It was  
 4 okay, normal sinus rhythm. I listened to his heart, it  
 5 was clear on auscultation.

6 Q. Please continue.

7 A. Continue about what?

8 Q. Are you finished?

9 MR. SIMON: I guess he  
 10 wants you to go through the whole form.

11 A. Then we discussed the anesthesia  
 12 procedure. In deciding anesthesia I take into  
 13 consideration the type of surgery, what part of the  
 14 body the surgery will be performed, the preference of  
 15 the surgeon, the medical condition of the patient and  
 16 the patient's preference.

17 In this case I scheduled him for  
 18 general anesthesia with endotracheal intubation. He  
 19 agreed. I explained to him the general anesthesia. I  
 20 discussed, you know, the possible side effects or  
 21 complications, I discussed the alternatives to the  
 22 anesthesia in which case I told him about the spinal  
 23 and epidural.

24 Q. Let's go back for a minute. What did you  
 25 tell him about the general anesthesia?

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1 A. General anesthesia, that he will be  
 2 completely asleep and he will not know anything at all,  
 3 his whole system will be under complete anesthesia.

4 Q. And what were the risks that you told him  
 5 about?

6 A. Side effects, the most common are nausea,  
 7 throwing up, sore throat because of the breathing tube,  
 8 sometimes chills or shakes on waking up, also sometimes  
 9 dizziness, headache or a little confusion on waking up.

10 Q. What plan and alternatives did you tell  
 11 him?

12 A. Alternative is spinal or epidural.

13 Q. What is a spinal?

14 A. A spinal anesthesia involves the injection  
 15 of a local anesthetic into the cerebrospinal fluid.

16 Q. And what's an epidural?

17 A. Epidural anesthesia involves the injection  
 18 of the medication into the epidural space, and in this  
 19 case it is a long procedure. The anesthesiologist if  
 20 he does the epidural will have to thread a catheter  
 21 through the epidural needle into the epidural space,  
 22 then withdraw the epidural needle and tape the catheter  
 23 on his back so that the anesthesiologist can give the  
 24 local anesthetic intermittently as needed throughout  
 25 the whole procedure.

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1 Q. Y told him about the spinal and ut  
 2 the epidural?

3 A. As alternatives.

4 Q. As alternatives?

5 A. Yes.

6 Q. Did you ever discuss with Mr. McCue a  
 7 spinal injection of an analgesic?

8 A. I don't understand your question.

9 Q. Did you ever discuss with Mr. McCue that  
 10 he would receive a spinal injection of an analgesic  
 11 before his surgery?

12 A. No.

13 MR. JEFFERS: Before his  
 14 surgery?

15 MR. MALIK: Yes.

16 BY MR. MALIK:

17 Q. At the time of his surgery did you tell  
 18 him that that would occur?

19 A. No.

20 Q. Are you aware that Mr. McCue was given a  
 21 spinal injection of an analgesic at the time of his  
 22 surgery?

23 A. No.

24 Q. Handing you what I'm identifying as  
 25 Exhibit M. Had you known that Mr. McCue was going to

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1 be g a i injection with this hitacre needle  
 2 that m showing you ld .t have d him at e  
 3 time of the anesthesia

4 MR. SIMON: Objection.

5 A. Will you repeat the question, please?

6 Q. Had you known that Mr. McCue was going to  
 7 be given a spinal analgesic injection at the time of  
 8 his operation would you have told him?

9 MR. SIMON. objection.

10 You can answer it if you know.

11 A. Again, will you please repeat the  
 12 question?

13 Q. Sure. Did you know Mr. McCue was given a  
 14 spinal analgesic injection?

15 A. No.

16 Q. Did you know at the time you filled out  
 17 this form and spoke with him that that is what was  
 18 going to occur?

19 A. No.

20 Q. Did you discuss with him that he would be  
 21 receiving a spinal analgesic injection?

22 A. No.

23 Q. Is this the first time that you've heard  
 24 that Mr. McCue was given a spinal analgesic injection?

25 MR. SIMON: Objection. The

1 only conversation was between her and I to  
2 that effect that I did inform her that he  
3 did receive that.

4 BY MR. MALIK:

5 Q. So it wasn't until the lawsuit or until  
6 you talked with your attorney that you were aware that  
7 he received a spinal analgesic injection, correct?

8 A. Yes.

9 Q. What is the procedure when a patient is  
10 going to receive a spinal analgesic injection for  
11 informing the patient? In other words, would you be  
12 the person responsible for informing them at the time  
13 this evaluation was done?

14 A. No.

15 Q. Who would be?

16 MR. JEFFERS: I object to  
17 this. It's an assumption about the  
18 informant.

19 Q. Who would be the person responsible?

20 MR. VADNAL: objection.

21 MR. GUNNING: objection.

22 MR. SIMON objection.

23 You can answer if you know.

24 A. The person who is going to give the  
25 injection.

1 Q. Is there any part on this form that you  
2 could fill out if you knew he was going to receive a  
3 spinal analgesic injection?

4 A. No.

5 Q. So in terms of the protocol, it's not  
6 within the protocol to discuss the receipt of spinal  
7 analgesic injection, correct?

8 A. It is not in the protocol.

9 Q. May we please turn to page 2. Did you  
10 fill out this page?

11 A. I did not.

12 Q. Was this page attached to your anesthesia  
13 evaluation at the time you did your evaluation?

14 A. It is under the backside of the anesthesia  
15 information form.

16 Q. So it's one page with two sides?

17 A. Right.

18 Q. And who filled this out?

19 A. The signature here says Dr. Midis.

20 Q. Have you discussed this case at all with  
21 Dr. Midis?

22 A. No.

23 Q. Have you discussed this case with anybody?

24 A. No. Oh, with my lawyer.

25 Q. Other than your lawyer.

1 Now, in order to fill out your form,  
2 which is Exhibit J, you took your own history and  
3 physical here. correct?

4 A. Yes, I did.

5 Q. You didn't solely rely on what the nurse  
6 had in her records, correct?

7 A. No.

8 Q. Is there a separate form that you're aware  
9 of that a physician needs to fill out when the patient  
10 is going to receive a spinal analgesic?

11 A. No.

12 MR. SIMON I'm going to  
13 object.

14 A. There's none.

15 Q. And on the day this was filled out,  
16 January 26th of 1996, it was not your intention, was  
17 it, Doctor, to discuss the spinal analgesic injection  
18 with Mr. McCue?

19 A. Definitely not.

20 Q. As a physician and as an anesthesiologist  
21 are you familiar with the term informed consent?

22 MR. SIMON Objection.

23 You can answer.

24 A. Yes.

25 Q. What does it mean to you as a physician?

1 A. Informed consent, that a patient consents  
2 to something that is going to be done to him.

3 Q. Is it a fair statement to say that there  
4 is an obligation upon the physician to explain the  
5 risks and alternatives of a procedure?

6 MR. SIMON: Do you  
7 understand the question, or do you want  
8 him to repeat it?

9 A. No, why don't you repeat it.

10 Q. You have down here, fully discuss risks,  
11 plan and alternatives, correct?

12 A. Yes.

13 Q. So it's a fair statement to say that  
14 that's the physician's obligation with respect to  
15 anesthesia, correct?

16 A. Yes.

17 Q. Other than yourself and Dr. Midis were  
18 there any other anesthesiologists or persons connected  
19 with Parma Anesthesia Associates that came in contact  
20 with Mr. McCue?

21 A. I don't know.

22 Q. Is it your custom to discuss your  
23 anesthesia evaluation with Dr. Midis or whoever the  
24 anesthesiologist is?

25 A. No. On the day of surgery the

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gc

1 A. The head nurse in the pre-admission  
2 testing.

3 Q. And who is that?

4 A. At the moment there's several nurse RNs  
there. Whoever, you can ask any one of them.

6 (Thereupon, there was a discussion off the  
record.)

8 MR. MALIK: Let's put on  
9 the record that either Mr. Jeffers or Mr.  
10 Simon are going to retrieve the protocol  
11 that Dr. Garcia referenced today.

12 MR. JEFFERS: I'm leaving it  
13 to Mr. Simon for the record.

14 MR. MALIK: Can I take a  
15 two-minute break?

16 (Thereupon, there was a brief recess.)

17 BY MR. MALIK:

18 Q. At the time you interviewed Mr. McCue and  
19 you used these forms marked as Exhibit J were these  
20 forms that you received from Parma Community General  
21 Hospital?

22 A. Yes.

23 Q. At the time you interviewed Mr. McCue was  
24 there any medical doctor, supervisor, staff member or  
25 anyone else who was in control of what you did or

1 A. Yes, general anesthesia.

2 Q. If the anesthesiologist changes the method  
3 of administering the anesthesia to the patient is he or  
4 she required to explain the risks of that method to the  
5 patient?

6 A. Yes.

7 Q. Are the risks of administering a spinal  
8 injection different from those used in administering a  
9 general anesthetic?

10 A. Yes.

11 Q. And what are the differences?

12 A. You mean risks?

13 Q. For a spinal injection.

14 A. I already told you the complications,  
15 risks of general anesthesia.

16 Q. Correct.

17 A. Do you want to know now the risk of spinal  
anesthesia, complications?

19 Q. Please.

20 A. All right. Most common, headache,  
hypertension, prolonged recovery of the sensations and  
motor functions of the part that has been anesthetized.  
Sometimes urinary retention or soreness in the area of  
the back where the needle was introduced.

25 Q. Do you know what type of general

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1 didn't do during this anesthesia evaluation?

2 MR. JEFFERS: Objection to  
3 the term control.

4 MR. SIMON I'm going to  
5 object, but you can answer.

6 BY MR. MALIK:

7 Q. In other words, was there anybody over you  
8 who could tell you to do this differently?

9 A. No.

10 Q. Is the anesthesiologist required to follow  
11 your recommendation as to the method of the  
12 administration of anesthesia?

13 A. You mean the plan of anesthesia?

14 Q. Yes.

15 A. No.

16 Q. And why not?

17 A. The final decision of the type of  
18 anesthesia to be given lies on the anesthesiologist who  
19 will actually give the anesthesia. He may not agree  
20 with my plan.

21 Q. And we're talking about the type of  
22 anesthesia that would put you to sleep for the  
23 operation, correct?

24 A. The anesthesia that I --

25 Q. That you indicated in your document?

1 anesthesia was given to Mr. McCue?

2 MR. SIMON: Objection.

3 A. No.

4 Q. Do you know what type of spinal anesthesia  
5 was given to Mr. McCue?

6 MR. JEFFERS: objection.

7 MR. SIMON: objection.

8 MR. JEFFERS: I disagree with  
9 you that this patient was given a spinal  
10 analgesic, spinal analgesia.

11 BY MR. MALIK:

12 Q. I stand corrected. Do you know the type  
13 of spinal analgesia the patient was given?

14 MR. SIMON: Objection.

15 You can answer.

16 A. I don't know.

17 Q. Does asthma contra-indicate Astramorph?

18 A. No.

19 Q. What is Astramorph?

20 MR. SIMON: objection.

21 We're going too far afield with this. She  
22 testified she didn't administer it. We've  
23 gone over what she did in the case. She  
24 hasn't practiced operating room anesthesia  
25 for eight to ten years, so I'm going to

1 object and instruct her not to answer  
2 these general questions. If you want to  
3 pose those to Dr. Midis who administered  
4 the anesthesia, you can.  
5 BY MR. MALIK:  
6 Q. Do you know what Astramorph is?  
7 A. Yes.  
8 Q. Can you tell me what it is?  
9 A. It's a derivative, a form of Morphine.  
10 Q. And in your experience is it given by  
11 spinal injection?  
12 MR. SIMON: If you know.  
13 A. Will you rephrase your question, please?  
14 Q. In your experience is Astramorph given by  
15 spinal injection?  
16 A. It can be given.  
17 Q. Did Mr. McCue tell you that he did not  
18 want a spinal anesthesia?  
19 A. From my record here I do not recall  
20 exactly the conversation that we had, but if he did  
21 mention that he did not want a spinal anesthesia I  
22 would have recorded it here. Just like what I did in  
23 my medical history, if there was no problem I did not  
24 record it.

25 MR. MALIK: Doctor, I don't

1 STATE OF OHIO, ) CERTIFICATE  
2 COUNTY OF CUYAHOGA, )  
3 I, LAUREN I. ZIGMONT-MILLER, Registered  
4 Professional Reporter and Notary Public within and for  
5 the State of Ohio, duly commissioned and qualified, do  
6 hereby certify that the within-wed witness, PACITA  
7 GABRIEL-GARCIA, M.D. was by me first duly sworn to  
8 tell the truth, the whole truth and nothing but the  
9 truth in the cause aforesaid; that the testimony then  
10 given by her was reduced to stenotypy in the presence  
11 of said witness, and afterwards transcribed by me  
12 through the process of computer-aided transcription,  
13 and that the foregoing is a true and correct transcript  
14 of the testimony so given by her as aforesaid.  
15 I do further certify that this deposition was  
16 taken at the time and place in the foregoing caption  
17 specified.  
18 I do further certify that I am not a relative,  
19 employee or attorney of either party, or otherwise  
20 interested in the event of this action.  
21 IN WITNESS WHEREOF, I have hereunto set my hand  
22 and affixed my seal of office at Cleveland, Ohio, on  
23 this 7th day of December 1998.

24  
25  
Lauren I. Zigmont-Miller, RPR and Notary  
Notary Public in and for the State of Ohio.  
My commission expires December 3, 2000.

1 have anything else. Thank you.  
2 MR. JEFFERS: I have no  
3 questions.  
4 ---  
5 (DEPOSITION CONCLUDED)  
6 ---  
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10 PACITA GABRIEL-GARCIA, M.D. (D 30)

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December 7, 1998

Pacita Gabriel-Garcia, M.D.  
Parma Community General Hospital  
Anesthesia Department  
7007 Powers Boulevard  
Parma, Ohio 44129

**Re:** Martin T. McCue vs. Parma Community General Hospital,  
et al.  
Case No. 326206  
Certified Mail No.: P 345 710 522

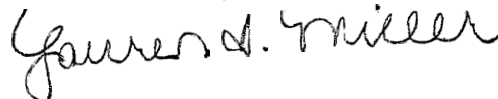
Dear Dr. Garcia:

Enclosed **is** a condensed transcript **of** your deposition given in the above-captioned case. It is sent to you so that you may read and sign it.

If **you** find an error in a word, a name, a number, etc., please indicate the correction by page and line number on the "Lawyer's Notes" sheet at the end **of** the transcript and verify same with your initials. However, please try to avoid editorial or "second-thought" changes, since the record should accurately reflect the actual testimony.

After you have finished, please **sign** on page 43, date it and return it to me so that **I** may notify counsel of any changes. If the deposition **is** not signed within seven (7) days, by agreement of counsel, it may be used without your signature.

Very truly yours,



Lauren I. Miller  
Registered Professional Reporter

Enclosure

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