IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

TRACY ANN SMITH, ADMINISTRATOR, etc.,	)	
Plaintiffs,	)	
vs	)	Case No. 327828
	)	Judge Fuerst
UNIVERSITY HOSPITALS OF CLEVELAND, et al.,	)	
Defendants.	)	

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DEPOSITION OF D.M.D. LANDIS, M.D.

TUESDAY, NOVEMBER 16, 1999

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The deposition of D.M.D. LANDIS, M.D., the Witness herein, called by counsel on behalf of the Plaintiff for examination under the statute, taken before me, Vivian L. Gordon, a Registered Diplomate Reporter and Notary Public in and for the State of Ohio, pursuant to issuance of subpoena notice and agreement of counsel, at the offices of University Hospitals, Hanna House, Cleveland, Ohio, commencing at 1:30 o'clock p.m. on the day and date above set forth.

APPEARANCES:

On behalf of the Plaintiff
Becker & Mishkind
BY: JEANNE M. TOSTI, ESQ.
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On behalf of the Defendant University Hospitals
Moscarino & Treu
BY: PATRICIA CASEY CUTHBERTSON, ESQ.
812 Huron Road Suite 490
Cleveland, Ohio 44115

On behalf of the Witness
Reminger & Reminger
BY: STEPHAN C. KREMER, ESQ.
The 113 St. Clair Building
Cleveland, Ohio 44114

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D.M.D. LANDIS, M.D., a witness herein, called for examination, as provided by the Ohio Rules of Civil Procedure, being by me first duly sworn, as hereinafter certified, was deposed and said as follows:

EXAMINATION OF D.M.D. LANDIS, M.D.

BY-MS. TOSTI:

Q. Doctor, would you please state your name for us.

A. Dennis Michael Dolan Landis.

Q. Your home address?

A. One Bratenal, Suite 706, Bratenal, Ohio, 44108.

Q. And what is your current business address?

A. Department of Neurology, University Hospitals of Cleveland, 11100 Euclid Avenue, Cleveland, 44106.

Q. Have you ever had your deposition taken before?

A. Yes.

Q. How many times?

A. Perhaps three.

Q. What was the reason that your deposition was being taken? In other words --

A. Expert witness testimony.

Q. ***So*** you have served as a medical expert?

A. Yes.

Q. In a medical/legal proceeding?

A. Yes.

Q. I want to go over a few of the ground rules for depositions. I am sure counsel has had a chance to talk to you. This is a question and answer session. It's under oath. It's important that you understand my questions. If you don't understand them, ask me and **I** will be happy to rephrase them or to repeat them. Otherwise I am going to assume that you understood my question and that you are able to answer it.

It's also important that you give all of your answers verbally because our court reporter can't take down head nods or hand motions.

Have you reviewed anything in preparation for this deposition?

A. I have a set **of** documents provided to me.

Q. Okay. And what documents were those? The documents that you have before you is the

subpoena with duces tecum and also a letter from our office addressed to the sleep lab that is signed by Justine Wells requesting the outpatient sleep center records; correct?

A. Yes.

Q. Have you reviewed any other documents than these two?

A. This isn't complete.

MR. KREMER: He has looked at some of the patient specific records, but those aren't applicable to this matter. He didn't have any direct care with this particular patient.

MS. TOSTI: I am asking him what he reviewed in preparation for the deposition.

Q. Now, you have reviewed the patient records of Patricia Smith in this case?

A. No. I reviewed a note written by Dr. Collins and his initial contact with the patient. This is fundamentally the file.

MS. TOSTI: I would like to see whatever the doctor has reviewed.

MR. KREMER: As long as what is contained in there isn't privileged.

MS. CUTHBERTSON: I will make the same objection for the record.

A. So this looks like the intake record for the scheduling when the test was scheduled.

Q. Okay. So we have a patient intake record. It says patient information at the top. A University Hospitals of Cleveland consent form with a signature line at the bottom that appears to have Patricia Smith's signature dated 2-6-96; a referral form from the University Family Medicine Foundation to a specialist dated November 3rd, '95; registration, a typewritten registration history page with the title registration history and University Hospitals of Cleveland at the top; a reservation form, patient name being Patricia Smith, admitting physician Dr. Brooks, referring physician Dr. Michael Rowane, primary care physician Dr. Collins; an overnight polysomnogram report for Patricia Smith dated February 6th of '96; a medical office record of Dr. Stephen Collins, date of visit 11-3-95; electroencephalogram report for Patricia Smith dated 10-10-95; and a letter addressed to Dr. Rowane signed by Dr. Brooks dated February 7th, 1996 which has previously been referred to in this case as the preliminary report.

Doctor, now, aside from the records

that I just reviewed and the subpoena with duces tecum and attachments, and the letter from our office with attachments, is there anything else that you have reviewed in this case?

A. No.

Q. Okay. Now, who provided you with the documents that you have in front of you?

A. I don't know the original source. The information was handed to me by my secretary.

Q. Did you make a request for it?

A. No.

Q. The medical records of Patricia Smith, did you request that someone provide you with those records?

A. No. My secretary usually tries to provide me with the information I need when I have to deal with something in the office, so I don't know the questioning source or the route by which the information was obtained.

Q. Okay. And you have never treated Patricia Smith; is that correct?

A. No.

Q. And did you have any permission from Patricia Smith's administrator of her estate to obtain her medical records for review?

A. I did not.

Q. Aside from Mr. Kremer and individuals from his office, have you been contacted with any other attorneys or attorney's office other than my contact with the subpoena?

A. I think that I was informed months ago that I was not to contact attorneys from the hospital about this action.

Q. Okay. Who informed you?

A. That's wrong. That was another case. I beg your pardon.

Q. So let me reask my question. Aside from --

A. Other than those contacts.

Q. Let me reask my question. Aside from any conversations you had with Mr. Kremer and people from his office, have you had any contact with any other attorneys that are involved in this case?

A. No.

Q. Have you discussed this case with any physicians?

A. I have called Dr. Rosenberg about this case.

Q. Why did you call Dr. Rosenberg? Let

me ask this. When did you talk to Dr. Rosenberg?

A. I spoke with him this morning.

Q. And why did you call Dr. Rosenberg?

A. My question was about the nature of the interval between the preliminary report and the final report.

Q. And can you tell me the contents of that conversation between you and Dr. Rosenberg?

A. I asked him if that was unusual.

Q. What interval did you relate to him?

A. The interval in the preliminary report is signed out the 2nd. There is a note that the final report was typed nearly a month later.

Q. Okay. And what did Dr. Rosenberg tell you?

A. He said it was not unusual for that time.

Q. ***So*** it was not unusual to have a final report issued?

A. A month after the preliminary report. And in fact that's the whole reason for the preliminary reports.

Q. Okay. Did you and Dr. Rosenberg talk about anything else when you spoke?

A. No.

Q. Have you spoken to any other physicians aside from Dr. Rosenberg about this case?

A. No.

Q. Now, in the subpoena that was served upon you for this deposition, you were asked to bring several documents with you to the deposition. Did you bring those documents with you?

A. I don't have any documents.

Q. And why is it that you were not able to produce those particular documents?

A. I have never been in possession of those documents.

Q. Do you know who is the custodian of those documents?

A. I think most of the documents that you describe would be in the custody of the laboratory, the laboratory personnel.

Q. To your knowledge, do those documents exist?

A. I don't know that they exist. I presume they exist.

Q. Now, in February of 1996, were you an employee of any professional medical group?

A. Yes, University Neurologists Association Incorporated. In February I was also the president.

Q. And are you still a member of that medical group?

A. Yes.

Q. And the business address that you just gave me, is that the business address of your medical group?

A. I should think so.

Q. Now, in February of '96, did you have any other employers besides University Neurologists Associates?

A. It's a complicated question because I can be variously regarded as an employee of the School of Medicine at Case Western Reserve University and of the corporation we just talked about.

Q. Being University Neurologists Associates?

A. Yes.

Q. Now, do you practice a particular medical specialty?

A" Neurology.

Q. Do you have any particular expertise

in the field of sleep disorders?

A. No.

Q. And doctor, are you board certified in any area?

A. Yes. I am board certified in internal medicine and in neurology.

Q. Can you tell me when you received those board certifications, approximately?

A. Neurology looks like it's 1979 and medicine -- can anybody see that?

MS. CUTHBERTSON: '75.

A. '75.

Q. And I take it you are not board certified in sleep medicine; is that correct?

A. I am not.

Q. Do you currently hold any titles or positions with University Hospitals of Cleveland?

A. I am the director of the Department of Neurology.

Q. Any other titles?

A. I am not sure. I think -- as far as I know, that's my title.

Q. Do you have any duties or responsibilities presently related to University Hospitals sleep center or University sleep

center?

A. I think the sleep center is still within the Department of Neurology from the point of view of administrative purposes.

Q. And in regard to your duties and responsibilities, is there anything that you do in regard to the sleep center as director of the Department of Neurology?

A. The director of the sleep center reports to me. But I have, other than a supervisory role, essentially no interaction with the sleep center on a day-to-day basis.

Q. Who is currently the director of the sleep center?

A. Dr. Carl Rosenberg.

Q. Now, in February of 1996, did you hold any titles or positions with University Hospitals of Cleveland?

A. In '96 I was also chairman or rather director of the Department of Neurology University Hospitals and I served as director of the sleep laboratory. I am not sure that was an official title.

Q. When did you begin serving as director of the sleep laboratory?

A. I am not certain. I became acting director of the department in January of 1994. I became the chairman of the department in December of '95. So I probably would have become director of the laboratory sometime after January of 1994.

Q. When you say you became acting director in 1994, are you speaking of acting director of the neurology department?

A. Yes.

Q. And so it's likely that at that time you also assumed responsibility as director of the sleep lab?

A. Yes. The point at which I became director of the sleep lab was the time in which the two preexisting sleep labs were merged. And I don't know precisely when that was.

Q. When did you relinquish the title of director of the sleep lab?

A. Sometime after July of 1996.

Q. And did you at that time appoint someone to that position?

A. That's at which point Dr. Rosenberg became director.

Q. Now, in February of 1996 was the University sleep center owned and operated by

University Hospitals of Cleveland?

A. Yes.

Q. And in February of '96, I would like you to tell me what your duties and responsibilities as the director of the University sleep center were.

A. My responsibilities were primarily administrative, so that I was responsible for representing to the hospital the needs of the laboratory and negotiating with them the resources necessary to the laboratory.

Q. Was there anyone else at that point in time, February of '96, that had responsibility for the medical direction of the lab?

A. I was the administrative head of the laboratory. There were two medical co-directors. Dr. Rosenberg was one, Dr. Brooks was the other.

Q. Did you personally provide any services to patients at the sleep center in 1996?

A. No.

Q. So any of the services that were provided were being provided by Dr. Brooks or Dr. Rosenberg, would that be correct?

MS. CUTHBERTSON: Objection.

Q. Was the responsibilities for the sleep center divided in any particular way between Dr. Brooks and Dr. Rosenberg?

A. Well, their responsibilities were joint. They were co-directors. They alternated in responsibility for interpreting tests.

Q. Did they have any particular time that they were required to be in the lab, like one works so many days and the other works the other days?

A. My recollection is that they designated months in which they were responsible for interpretation and alternated those months because it was convenient for the rest of their scheduling.

Q. ***So*** if patients were referred to the lab during a month when one of them was taking over responsibilities, that would be the physician that would be assigned as the attending physician for that patient?

MS. CUTHBERTSON: Objection.

A. Yes, I believe that to be the case, yes.

Q. Did the sleep center provide services to both pediatric and adult patients in February

of 1996?

A. Yes.

Q. And if you know, doctor, can you give me just a rough breakdown as to what the percent was of adults versus pediatric patients?

A. I don't recall exactly.

Q. Do you know if the majority were adult or the majority were pediatric patients?

A. I don't.

Q. Now, for the remainder of this deposition, I am going to be asking questions, but I am referring to what occurred in the time period of about November of 1995 through the spring of 1996. So that's the time period that I am referring to.

And when I am referring to some of the treatments, I am speaking about adult patients. And I understand that there may have been also pediatric patients that were at the sleep center.

Now, I understand that there was some type of a renovation and relocation of the sleep center about 1997; is that correct?

A. The sleep laboratory moved from the site in Rainbow Babies and Children's to its

present site in the Lakeside building.

Q. In February of 1996, before that renovation, where was the University sleep center located?

A. In Rainbow Babies and Children's Hospital.

Q. And both adult and pediatric patients were seen in that particular area then?

A. Yes.

Q. Okay. Was the polysomnogram laboratory located in conjunction with the sleep center in 1996? Were the two --

A. They were one.

Q. They were at the same site?

A. Yes.

Q. You mentioned at one time there were two sleep labs. Was that before 1996, February of '96?

A. Yes. Considerably before.

Q. In that same time period, how many sleep bedrooms did the sleep lab have?

A. There were at least two.

Q. And do you know how many sleep studies were being done per week in that time period?

A. I do not.

Q. Now, I would like to talk a little bit about the staffing for the sleep center in that time period. You mentioned that there were -- what was the title that you said Dr. Brooks and Dr. Rosenberg had?

A. They were the co-directors, the medical co-directors of the laboratory.

Q. There were two medical co-directors?

A. Yes.

Q. What other personnel staffed that lab?

A. Ordinarily the staffing structure had a chief technologist and a technologist who supervised the studies, and I cannot tell you now how many technologists were hired by the laboratory then.

Q. Did you also have clerical support?

A. There would have been a secretary associated with it.

Q. Okay. More than one secretary or just one secretary?

A. Just one.

Q. Do you know who that person was in February of '96?

A. I am not sure. In the papers that I reviewed, there was a note signed by Ruth which

would suggest to me that the secretary was named Ruth.

Q. And what papers are you referring to?

A. The information was in the list that I showed you earlier. (Indicating.) That's signed by Ruth.

Q. Now, we are referring to the letter that was signed by Justine Wells that has attached to it the letter of appointment of Tracy Smith as administratrix of the estate and a Becker and Mishkind request. There attached to the back of it is a handwritten note that I have never seen this particular note and that's why I am inquiring about it. It's handwritten and it looks like it has several different handwritings on it.

It reads Linda Neidlemann and it has a date, looks like 9-24-97, and some numbers. Can you tell me what the various information on here refers to? Who is Linda Neidlemann?

A. I have no idea.

Q. Do you know what these numbers beneath her name refer to?

A. No.

Q. The next handwritten note on the page,

Pat, this study was typed 3-6-96, Ruth. Who is Pat?

A. I don't know who that Pat is, but Patricia Anderson is the administrator of the Department of Neurology.

Q. And who is Ruth?

A. I believe Ruth is the present secretary of the sleep center.

Q. And below that is another handwriting. Send copy of chart per something medical records. I can't read the rest of this.

Do you know what this refers to?

A. No. I don't know who originated it or to whom it was directed.

Q. Okay. I am going to ask for a copy of that page.

Back to my question. We were talking about the personnel that staffed the sleep center. You mentioned there were two medical co-directors, a chief technologist and other technologists likely, and at least one secretary; correct?

A. I think so, yes.

Q. Were there any other personnel that staffed the unit that you recall?

A. At the very formation of the laboratory there had also been a nurse clinician associated with the laboratory. And I am not certain when that person left.

Q. And you don't know whether that person was still associated with the laboratory in February of 1996?

A. I don't. And the only other personnel would have been individuals responsible for maintenance of the equipment.

Q. The people, the chief technicians and the secretaries, were they employees of University Hospitals of Cleveland?

A. I believe so.

Q. Who was responsible for hiring the staff for the laboratory and for training the staff?

A. The prospective applicants were found by the medical co-directors. And I was in a position of approving their decision.

Q. And in regard to training the personnel, would that be the medical co-directors' responsibilities?

A. Yes. Which they would share with the chief technologist.

Q. Now, aside from Dr. Brooks and Dr. Rosenberg, there were no other staff physicians associated with the sleep center; is that correct?

MS. CUTHBERTSON: Objection.

A. That's right. As far as I'm aware.

Q. Well, doctor, you were their supervisor; correct?

A. Yes.

Q. So if there were other physicians involved at the sleep center at that time, *you* would have knowledge of them if they were providing services on a regular basis; correct?

A. Yes.

Q. And did you appoint both Dr. Brooks and Dr. Rosenberg to their positions?

A. Yes.

Q. Now, in regard to Dr. Brooks and Dr. Rosenberg's duties and responsibilities, if you could, to the best of your knowledge, describe for me what it was that they were supposed to do at the center.

A. Their responsibilities were similar. Each was responsible for interpreting studies, each was responsible together with the

technologist for education of the technicians and whatever quality control was required.

Q. Did they also provide evaluations of patients, aside from just interpreting studies?

A. The evaluation of patients was separate from their responsibilities within the sleep center.

Q. And when you say separate, what do you mean by that?

A. Both Dr. Rosenberg and Dr. Brooks saw patients outside of the sleep center in regular outpatient settings, and those patients may or may not have had anything to do with the sleep laboratory itself.

Q. Doctor, are you familiar with an organization called the American Sleep Disorders Association? I believe its now changed its name to American Academy of Sleep Medicine.

A. I only know of it as a certifying body.

Q. Are you a member of that organization?

A. No.

Q. Now, in February of 1996, University sleep center was accredited by that American Sleep Disorders Association; correct?

A. Yes.

Q. Did you participate in that accreditation?

A. I believe so, yes. The accreditation process occurred while I was director.

Q. I believe it was accredited in November of 1994. And you indicated that you took over probably in January of 1994?

A. It was an accredited sleep laboratory and the accreditation was carried over to the new laboratory, and that required a review by that accrediting body. I am not certain that that accrediting body is incidentally the same as you told me. I may have confused their titles. There is one accrediting body which provides accreditation for physicians and another which accredits the laboratory, and I don't know if they are the same.

Q. You don't know whether the American Sleep Disorders Association accredited the sleep lab?

A. I can't remember which is which.

Q. What does it mean when a sleep center is accredited by the American Sleep Disorders Association?

A. It indicates that the laboratory has conformed to their rules and regulations and standards for performance of sleep tests.

Q. And by undergoing accreditation and receiving accreditation, does the sleep center agree to operate based on those standards?

A. I believe so, yes.

Q. Do you consider the American Sleep Disorders Association -- which is the title that was appropriate in 1996 -- an organization that provided authoritative information on the subject of sleep disorders and sleep disorder treatment to practitioners in the field?

MR. KREMER: If you know that, doctor.

MS. CUTHBERTSON: Objection.

A. No.

Q. You don't believe that they provided authoritative information?

A. No, I don't know that they did. I have no way of evaluating their competence in the field.

Q. Well, did you -- you participated in 1994. I understand that the sleep center was reaccredited here at University Hospital in '97.

Did you participate in that accreditation?

A. I think probably the reaccreditation was done after Dr. Rosenberg had taken over as director.

Q. Did you sign any type of accreditation materials acknowledging that you agreed with the reports that were being provided --

A. I don't recall.

Q. -- to the American Sleep Disorders Association?

A. In 1997?

Q. Yes.

A. I don't recall.

Q. As the director of the University sleep center, understanding that you had co-medical directors, in 1996, were you required to adhere to the accreditation standards?

MS. CUTHBERTSON: Objection.

A. I think that if we had failed to adhere to those standards, we would no longer be accredited.

Q. Well, my question was, were you required to adhere to them?

MS. CUTHBERTSON: Same objection.

A. The answer is the same. I mean, if I

failed to adhere to their accreditation standards, then I would no longer be accredited after appropriate review.

Q. Was it your understanding that you were to adhere to those standards in your management of the sleep center?

MS. CUTHBERTSON: Objection.

A. If I chose to maintain accreditation, I would try to adhere to those standards. If I disagreed with such a standard, then I would accept lack of accreditation rather than violate my own sense of rule.

Q. My question is, in 1996, was it your understanding that you were to adhere to the standards of accreditation that were in effect at that point in time?

MS. CUTHBERTSON: Objection.

A. We would have made every effort to adhere to those standards unless they violated some other.

Q. Are you aware of any that violated --

A. I am not aware of any that conflicted between the two.

Q. Doctor, in February of 1996, did each patient that was seen at the sleep center have a

clearly identifiable staff physician who was responsible for the patient care throughout his or her active status at the sleep disorder center?

MS. CUTHBERTSON: Objection.

A. During the interval of the sleep study, a physician may or may not have been in attendance.

Q. I didn't ask if there had to be someone in attendance. I asked if there was an identifiable staff physician who was responsible for the patient's care throughout his or her active status at the sleep disorder center?

MS. CUTHBERTSON: Objection.

A. It's hard to answer. Maybe I can be more precise.

There was a physician identified who would be responsible for the interpretation of the test during that month. If in the technician's judgment medical intervention was required, then that physician also would be contacted by the technician. If emergencies arose, the technicians could contact anybody they wanted.

Q. And that assignment of a physician was

done by the sleep center based on whoever, which of the co-medical directors was responsible for the sleep center for that month?

MS. CUTHBERTSON: Objection to the term assignment.

A. I believe so.

Q. Your answer was yes?

A. My answer was I believe so, yes.

Q. Were the sleep center staff physicians, the co-medical directors required to obtain a sleep data base personally or from a referring physician and review it to determine if the information was current and complete for every patient that was seen at the sleep center?

A. I can't remember precisely. My recollection is that a request for a sleep study was reviewed by a technologist who was expected to acquire certain information. If that information was not available, then that would be acquired either by the technologists or by the physician.

Q. Was a sleep center staff physician required to determine if the test that was requested by a referring physician was indicated?

MS. CUTHBERTSON: Objection.

A. No. The medical co-director might offer advice if they recognized a major surprising finding, but it was not their responsibility to judge the medical indication for the test.

Q. Do you know whether the accreditation standards required that the staff physicians determine if the test requested by a referring physician was indicated?

A. I don't know.

Q. Were the sleep center staff physicians required to recommend other testing if it was indicated?

A. I don't know if it was a requirement to that point.

Q. Do you know whether the sleep center staff physicians were required -- were the sleep center staff physicians required to document in the patient's chart that they had reviewed evidence of a patient's recent general clinical workup prior to testing the patient?

MS. CUTHBERTSON: Objection.

A. I don't know the requirements for documentation.

Q. As a director of the University sleep center, were you responsible for quality control and assurance or was that the responsibility of your co-medical directors?

A. It was my responsibility to be sure that there were quality control measures. Most of the quality control was carried out by the medical co-directors.

Q. Do you know whether the sleep center had a policy defining its patient acceptance criteria.

A. I don't know what patient acceptance criteria is.

Q. Criteria that defined what patients would be accepted to the lab and which ones would not be.

A. No. Usually it was the responsibility of the laboratory to provide a service, not to deny a service.

Q. So any referring doctor could request the test to be done, and the test would then be done providing they had provided appropriate information on the patient's history and physical?

A. Yes. Unless the technologist or the

supervising physician found a reason for the test not to be done, I would think that would be the case.

Q. Were all of the sleep studies scheduled through one central location at the sleep center?

A. Yes.

Q. Who would determine the priority for scheduling of sleep studies?

A. That would have been a decision arrived at jointly between the senior technologist and the responsible medical director for that month.

Q. Do you know what the process is after a referral to the center was received, what process that referral went through in order to get the sleep study scheduled?

A. I don't know the details of the process. The outline of the process as we discussed, the technologist was to acquire sufficient information *so* they would know the kind of tests they had to perform and then discuss that with the supervising co-director.

Q. Now, if a referral came in asking for a workup as well as a sleep study, what would

happen to that type of a referral?

A. The workup would be performed, again, outside the sleep center itself. That workup could be performed either by Dr. Brooks or by Dr. Rosenberg or by other physicians with expertise in sleep.

Q. And who would be responsible for transmitting that information, something other than just the sleep study being requested?

A. The physician requesting the test.

Q. Well, if he writes out a referral form and sends it to the sleep center, I am asking once it arrives at the sleep center how the information gets to the appropriate person?

A. The requisition for the sleep center would be used for scheduling the test itself but would not be used for requesting consultation necessarily by one of the other physicians outside of the sleep center.

Q. And how would that -- would the sleep center transmit that information to the physician then?

A. No. The referring physician, if they wished further opinion aside from the interpretation of the polysomnogram, they would

direct that directly to a particular physician.

Q. If a referral comes in asking for a sleep study, a workup, and it had Dr. Rosenberg's name on it, would that referral be given to Dr. Rosenberg since he was associated with the sleep center?

A. I am not sure how that would be handled. The sleep center would perform the polysomnogram. The requisition that I have looked at is directed to the sleep center. I am not certain of the mechanism of providing additional outpatient consultation by one physician or the other. Those would be separate events.

Q. Okay. Well, let's talk a little bit. You have reviewed the referral and you said that that particular referral that is contained in the sleep center records for Patricia Smith was sent to the sleep center; correct?

A. Yes.

Q. And that's in her case how her sleep study was scheduled; correct?

A. I believe *so.*

Q. Now, that particular referral also includes a request for a workup. Did you see

that?

A. No, I didn't. But I can look at it. Do you want me to look at it now?

Q. Yes, please.

I believe at the bottom of the handwritten area it says workup requested, Dr. Collins. There is a W/U?

A. I am going to attempt to read this. It says the patient has been recently diagnosed with seizure disorder. Request evaluation for sleep study. As concerns patient, may desaturate. As etiology, seizure disorder. Workup requested Dr. Stephen Collins.

Q. And then below that it has a number of visits and there is a three written in there.

A. Yes.

Q. Okay. Now, this is the request that was sent to the sleep center and then subsequently the sleep study was scheduled; correct?

A. Yes. Now, this would have been interpreted as a request for a sleep study. And it ordinarily is a separate request for an outpatient evaluation.

Q. Okay. Now, normally a sleep study

doesn't take more than one visit, though, does it, doctor?

MS. CUTHBERTSON: Objection.

MR. KREMER: If you know.

A. An individual can be evaluated on several occasions for sleep disorders.

Q. In most cases does it take more than one visit?

MS. CUTHBERTSON: Objection.

A. It depends upon the nature of the problem. If a diagnosis can't be arrived at on one visit, more may be asked.

Q. And if they do a CPAP titration, it can take more than one visit?

A. It can, yes.

Q. In this instance it has a referral to Dr. Carl Rosenberg. Do you see that specialist's name on there?

A. Yes.

Q. Okay. In other words, if this particular referral was received by the sleep center, it's your testimony that the information for a workup, which was requested by Dr. Stephen Collins, would not be transmitted to Dr. Rosenberg to do the workup?

MS. CUTHBERTSON: Objection.

A. It's my impression that the interpretation of this would be a request for a sleep study.

Q. Now, we looked at a reservation form in which, I believe, the admitting physician listed on the reservation form is Dr. Brooks.

A. Was this the form that you are referring to?

Q. Yes.

A. Okay.

Q. And also, I believe, contained in those records we have a preliminary report and a final report that is signed by Dr. Brooks?

A. Yes.

Q. Okay. And in this instance, the referral has Dr. Rosenberg's name on it, but Dr. Brooks was the one that did the sleep study, or rather interpreted the sleep study and is listed as the admitting physician.

Now, can you tell me why that would be?

A. Again, this would have been interpreted as a request for polysomnography. The requesting physician could not be aware which

medical co-director was responsible at that month, and so they would make the request to the laboratory and the laboratory would be met by one of the other directors.

Q. So it would be whoever was taking over for that particular month?

A. Yes.

Q. And your interpretation of this particular referral is that by workup, that refers only to a sleep study; correct?

A. Yes.

Q. Once a referral requesting a sleep study is received by the sleep center, how long would it usually take before the patient received the sleep study?

MS. CUTHBERTSON: Objection.

Q. And again, we are speaking of February of 1996.

A. I can only answer that in general terms. The interval between request and performance of the study would be influenced by the number of people needing such studies, the relative severity of the illness, and the age of the person.

Q. Now, doctor, are you qualified -- and

I don't know the answer to this -- but are you qualified to make a determination as to the severity of someone's illness as to whether they should have a high priority or lower priority?

MR. KREMER: Objection.

A. With respect to priority, it's the pediatric population to severity.

Q. In regard to adult patients, are you in a position to say what conditions would make it a higher priority to have a sleep study done as opposed to a lower priority?

A. As I said, I am not involved in those decisions. It would have been the decision of the medical co-director.

Q. Was there any system in place to expedite the scheduling of the sleep study if there was a medical concern regarding a patient?

A. The intention of acquiring information about the patient was to help the technologist and the co-director decide about scheduling. If they felt that the patient was a special risk, and usually dealing with pediatric patients, we would expedite the study.

Q. Are you aware of any instances where a study was expedited for an adult patient?

A. No.

Q. Do you know whether patients were ever referred to another sleep center in the Cleveland area that may have had a shorter waiting list than what may have been available here at University Hospitals?

A. I am not aware of such instances.

Q. Do you know whether in February of 1996 there were any other accredited sleep centers in the City of Cleveland?

A. There are several sites in the vicinity of Cleveland that carry out sleep studies. At that time, sleep studies were carried out at Mt. Sinai, to my knowledge, and also The Cleveland Clinic Foundation, to my knowledge. And I believe there were other sites, but I don't know specifically what they were. And I don't know the precise nature of the accreditation of the various laboratories.

Q. Now, if a patient came into the sleep center for a sleep study, the physician that was handling the lab for that month would be the physician that would interpret the sleep study that month; correct?

A. That was the usual circumstance.

Q. Okay. How -- if you know this, doctor. I realize that this is not your area of expertise.

Do you know how long it takes for a physician to review the raw data in a sleep study?

A. It isn't my area of expertise. My understanding of the steps involved is that the raw data is actually reviewed by the technologist first who prepares an assessment of the study. That assessment together with the raw data is then reviewed by the interpreting physician. The technologist may be asked to review the raw data on several occasions if the medical director is not satisfied with the accuracy of their reporting.

Q. Okay. And do you know how long the process takes from the time that the study is completed until the time that the analysis of the data is completed, generally?

A. No, because, again, that would depend on how many times it was necessary to review the information.

Q. Do you know what the average interval between a polysomnogram overnight test and the

transmittal of the completed final report to the referring physician was in February of 1996?

A. That was my question to Dr. Rosenberg. And he said it was not unusual for that period of time.

Q. To be four weeks?

A. Yes.

Q. Or longer?

A. He didn't say that interval. Four weeks was not unusual for the time.

Q. Where did you get the four weeks number from?

A. From the time of the test, which was the 6th.

Q. Until?

A. Until the typing of the test reports, which was approximately -- the note appeared to me to be an indication of when the test was typed.

Q. And the date on that was, I believe, March?

A. This is the piece of paper you and I looked at earlier.

Q. March 6th?

A. Yes.

Q. Do you know whether the accreditation standards had any criteria that dealt with how soon final reports were to be submitted to referring physicians?

A. I don't know the standards in effect at that time.

Q. If the standard said that it was supposed to be a shorter interval, would you agree that the sleep center should have been adhering to those standards?

MS. CUTHBERTSON: Objection.

A. Again, the most important thing is the accuracy of the interpretation. If the medical co-director felt that the study needed to be reviewed on more than one occasion, that in my mind would take precedence.

Q. Okay. And in Patricia Smith's case, do you know whether or not her study had to be reviewed on more than one occasion?

A. I do not know.

Q. There was a letter that was sent by Dr. Brooks in this case that you had an opportunity to review. It was sent out, I believe, the day after the sleep study. And we have referred to it generically as a preliminary

report.

Under what circumstances would a preliminary report be sent out?

A. The intention was to send out a preliminary report after every examination.

Q. And were there any particular things that were to be included in the preliminary report?

A. What was to be included in the preliminary report was a guide to the physician until the final information could be processed and made available.

Q. Now, in regard to the final reports that were generated, what information was included in the final reports?

A. The information varied test to test. And you have provided me with a copy of the individual's data.

Q. Okay. So now --

A. ***So*** that includes a numeric descriptor of the polysom itself, a summary and interpretation by the physician.

Q. Would implications and recommendations be conveyed to the referring physician along with the final report?

MS. CUTHBERTSON: Objection.

A. That would be at the discretion of the medical co-director.

Q. Do you know whether information regarding implications and recommendations were placed in the patient's chart?

A. I don't know.

Q. Doctor, assuming that the accreditation standards that were in effect in 1996 stated that recommendations and implications were to be included in the final report, or along with the final report, if University Hospitals' sleep lab was not generating such a report, would you agree that that would be substandard?

MS. CUTHBERTSON: Objection.

A. The requirement for recommendation depends upon what was actually in the report. And so that requirement would vary individual to individual.

Q. And in Patricia Smith's report at the bottom it says that she has severe obstructive sleep apnea with oxygen desaturations as low as 60 percent.

Do you have an opinion as to whether recommendations were appropriate in her case?

MS. CUTHBERTSON: Objection.

A. No, that's a description of the polysom and it doesn't -- as we previously pointed out, I am not an expert in the sleep medicine, but I don't think that description necessitates a specific recommendation.

Q. Do you know whether the accreditation criteria requires that recommendations be made in regard to treatment and follow-up for all patients --

MS. CUTHBERTSON: Objection.

Q. -- that are seen in the lab?

A. I don't know the details of the accreditation standards.

Q. Now, doctor, there is at the top of the page on that final report an indication of two referring doctors. I believe it says Dr. Rowane and Dr. Collins; correct?

A. Yes.

Q. Okay. If two doctors referred the patient to the sleep center, would it be the sleep center's policy to send a report to both referring physicians?

A. I don't know the precise policy. The default would be to send the report to the

physician who requested the study. If he or she indicated that another physician should be informed, then both would be informed.

Q. Were the results of the overnight polysomnograms done in February of '96 provided to the patient?

A. No.

Q. And what was the basis for not providing them to the patient?

A. Virtually all laboratory data information is provided to the physician, and the physician serves as an interpreter for the patient.

Q. Did the sleep center do anything to ensure that the patient eventually received these results, other than sending out the written reports?

MS. **CUTHBERTSON:** Objection.

A. I am not aware that that is either policy or whether they attempted to do that.

Q. Was there any system in place for patient follow-up in the sleep center?

A. The sleep laboratory does not require follow up. It carries out designated sleep tests.

Q. Do you know whether most patients with sleep disorders require follow-up care?

A. I don't know the precise numbers. I would say that the likelihood that they require follow-up care depends upon individual clinical circumstance.

Q. Are you aware of the policies and procedures that the sleep lab had in regard to administration of tests or in carrying out CPAP titrations?

A. An overview, yes.

Q. Can you tell me in February of 1996 if the University sleep center had written policies in regard to the administration of overnight polysomnograms?

A. My recollection is that there were two patterns of CPAP determinations. One pattern, a full sleep study was obtained, and then CPAP determinations were done. The second pattern, the first half of the study was used for polysomnography and the second half of that evening was used for CPAP titration.

Q. That's sometimes referred to as a split study?

A. Yes.

Q. And it's your understanding that there were written policies for both of those procedures in February of 1996?

A. There were procedures for the mechanics of carrying them out. The decision about which was appropriate for a particular patient I think was not reduced to the level of an algorithm.

Q. That would be a clinical judgment there?

A. Yes.

Q. But in regard to the actual procedure for carrying out those two different types of studies, there were written policies and procedures in February of 1996?

A. I think there should have been procedures for carrying out each, yes.

Q. Do you know where those particular written policies and procedures are at the current time?

A. No.

Q. Okay. Who was custodian of those policies and procedures?

A. The medical directors would jointly be the custodians of those procedures and they would

know presumably where the procedures were kept.

Q. Have you been asked at any point over the last year or so to try to locate those policies and procedures that were in effect in February of 1996?

A. No.

Q. Okay. If I asked you now to find those, would that be something that you may be able to do?

A. I would start by walking over to the laboratory and asking them. I have never been the custodian of documents like that.

Q. Would Dr. Rosenberg be the person that you would make that inquiry to?

A. Today? Yes.

Q. If a patient was determined to have severe obstructive sleep apnea, do you know how long it would take before they would be able to be rescheduled for a CPAP titration?

A. I don't know. Again, the availability of the slot would depend upon other patients and particularly the pediatric population.

Q. In February of 1996, do you know whether the University sleep lab had facilities for doing portable sleep studies?

A. In '96? No, I think it did not. You have to be careful. There are portable sleep studies done at home and portable sleep studies done in the hospital setting. We did not have portable studies done at home.

Q. As director of the University sleep center in February of 1996, was it your responsibility to make sure that the University sleep center was operating in conformance with the accreditation standards set by the American Sleep Disorders Association?

A. As we said, we would adhere to those standards until it conflicted with other standards. And those other standards would be at the discretion of the medical co-directors.

Q. And I believe you said you weren't aware of any conflicts --

A. As far as I know, that's correct.

Q. -- in those standards?

Would it be your expectation if there was a conflict in the standards that your co-medical directors would bring that to your attention?

A. If conflicts developed consistently and required a systematic change, they would

bring that to my attention.

Q. Now, doctor, in regard to what criteria would be indicators for treatment of a patient with severe obstructive sleep apnea, are you qualified to make those types of decisions or would you defer to one of the doctors that is certified in sleep disorders?

A. I think they would have a more informed opinion than I do.

Q. Do you have an opinion as to whether or not a patient such as Patricia Smith who was found to have severe obstructive sleep apnea and oxygen desaturations falling to 60 percent, whether she should have been recommended for prompt treatment?

MS. CUTHBERTSON: Objection.

A. Again, I don't have a subspecialist's opinion in this situation.

Q. Now, I understand that during the renovation that took place in 1997 that the sleep center received some upgraded equipment during the renovation. Do you know whether the equipment that was in the lab in February of 1996, whether it accurately and reliably measured oxygen saturations that were in the 60 percent

range?

A. As far as I'm aware, they were accurate. The change in equipment was primarily from paper base recording to digital recording. The accuracy of the instruments was not in question.

Q. Well, I was speaking in regard to the one specific parameter which was the oxygen saturations.

A. As far as I'm aware, the accuracy is not an issue.

Q. Okay. Do you have any recollection of having any contact with Patricia Smith when she was seen at the sleep center?

A. No.

Q. Have you ever discussed, other than the conversation that you mentioned with Dr. Rosenberg today, did you ever have any conversations with anyone regarding Patricia Smith's care in this case?

A. I have no recollection of any such discussions.

Q. Have you had any contact with Dr. Brooks in the last year?

A. No, Dr. Brooks left to go to another

institution.

Q. What about with Dr. Collins?

A. I haven't heard from Dr. Collins in a long time.

Q. Now, Dr. Collins was an associate of yours; is that correct?

A. Yes.

Q. He was also a member of University Neurologists?

A. Yes.

Q. Dr. Rosenberg is also an associate of yours?

A. Yes.

Q. Do you all work in the same -- at the time when they were here in Cleveland, did you all work in the same office?

A. No. We were in different offices throughout the institution.

Q. Other than the documents that we have just looked at that are before you on the table, do you have any other personal notes or personal file on this case?

A. No, I do not.

Q. Now, doctor, you mentioned that you had acted as an expert in a medical/legal

proceeding before and had your deposition taken three times.

How often do you do medical/legal reviews?

A. Rarely. I mean, that's three instances over 21 years of practice.

Q. Have you ever worked with Ms. Cuthbertson's office before?

THE WITNESS: Which one is your office?

MS. CUTHBERTSON: I guess that answer would be no.

Q. Have you ever worked with an attorney by the name of Kris Treu before?

A. No.

Q. Have you served as an expert in any case that dealt with questions related to severe obstructive sleep apnea?

A. No.

Q. Or sudden death in sleep?

A. No.

Q. Have you had your deposition taken before in the Cleveland area? Let me ask that again.

Were the cases that you served as an

expert in the Cleveland area?

A. I have had at least one deposition done in the Cleveland area.

Q. Okay. Have you given trial testimony before?

A. In a courtroom?

Q. Yes.

A. No.

Q. Have you ever been named as a defendant in a medical negligence suit?

A. I had a single 180 day paper, whatever that was, which didn't come to an action.

Q. And you are currently licensed to practice medicine in the State of Ohio; correct?

A. Yes.

Q. And in February of 1996, were you also licensed?

A. Yes.

MS. TOSTI: Doctor, I don't think I have any further questions for you. Ms. Cuthbertson may have some.

EXAMINATION OF D.M.D. LANDIS, M.D.

BY-MS. CUTHBERTSON:

Q. I just have one or two questions for you, doctor. As I told you, I represent

University Hospitals of Cleveland in this case.

In February of '96, if a referring physician wanted a patient to be evaluated by Dr. Brooks or Dr. Rowane, what process would the referring doctor follow?

A. It would be the same as any request for a neurological opinion.

MS. TOSTI: Let me correct something, you said Dr. Brooks or Rowane. Brooks or Rosenberg.

MS. CUTHBERTSON: Rosenberg.

A. The request would be directed to the their secretaries or central scheduling office, and I am not sure when the central scheduling office was in action and working at that point.

Q. Is there a form that's completed?

A. Not necessarily. The request can be verbal. Forms may be required by the insurance company.

MS. CUTHBERTSON: That's the only question I had.

MS. TOSTI: I think we are all done. I thank you for your time.

MR. KREMER: You have the opportunity to review what the court reporter has taken down

as your testimony in this matter. You can waive that right if you like.

I have never worked with this particular court reporter before. I am sure she did a fine job, but that is your personal decision whether you wish to review this before it is actually transcribed.

THE WITNESS: I will go with your recommendation.

MR. KREMER: We will waive.

- - - -

(Deposition concluded at 3:00 p.m.; signature waived.)

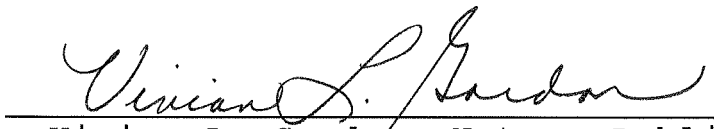
CERTIFICATE

State of Ohio,)
) ss:
County of Cuyahoga.)

I, Vivian L. Gordon, a Notary Public within and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within named D.M.D. LANDIS, M.D. Was by me first duly sworn to testify to the truth, the whole truth and nothing but the truth in the cause aforesaid; that the testimony as above set forth was by me reduced to stenotypy, afterwards transcribed, and that the foregoing is a true and correct transcription of the testimony.

I do further certify that this deposition was taken at the time and place specified and was completed without adjournment; that I am not a relative or attorney for either party or otherwise interested in the event of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Cleveland, Ohio, on this 18th day of November, 1999.



Vivian L. Gordon, Notary Public
Within and for the State of Ohio

My commission expires June 8, 2004.

INDEX