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STATE OF OHIO,)
COUNTY OF CUYAHOGA.) SS:

IN THE COURT OF COMMON PLEAS

LAURIE ANN SMITH,)
Plaintiff,)
- vs -) Case No. 76756
CLEVELAND METROPOLITAN)
GENERAL HOSPITAL, et al.,)
Defendants.)

Doc. 299

- - - - -
CONTINUED DEPOSITION OF MARY BLAIR MATEJCZYK
VOLUME II
TAKEN THURSDAY, JUNE 20, 1985
- - - - -

The continued deposition of Mary Blair Matejczyk, called by the Plaintiff for examination pursuant to the Ohio Rules of Civil Procedure, taken before me, the undersigned, Judith Ann Trebus, a Registered Professional Reporter and Notary Public within and for the State of Ohio, taken at the offices of McIntyre, Oettinger & Winston, 330 Standard Building, Cleveland, Ohio, commencing at 2:40 p.m., the day and date' above set forth.

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APPEARANCES :

On behalf of the Plaintiff:

Ms. Gail R. Oettinger
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On behalf of the Defendant-Dr. Matejczyk:

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On behalf of Cleveland Metropolitan Hospital:

Mr. Patrick Murphy
Assistant Prosecuting Attorney
The Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

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1 MS. OETTINGER: This is a
2 continuation of the deposition of Dr. Mary
3 Matejczyk which began on May 2nd. At that time
4 her attorney, Cyril McIlhargie, was present as
5 was myself, Gail Oettinger, ~~my~~ partner, Tom
6 McIntyre, but attorney Patrick Murphy was not
7 here representing Cuyahoga County and Cleveland
8 Metropolitan General Hospital. Today he is
9 present. He was informed of the prior
10 deposition, however.

11 MR. McILHARGIE: He was informed
12 of the scheduling of the prior deposition.

13 MS. OETTINGER: Right.

14 Okay. We're just going to continue right
15 where we left off last time.

16
17 MARY BLAIR MATEJCZYK
18 of lawful age, called by the Plaintiff for examination
19 pursuant to the Ohio Rules of Civil Procedure, having
20 been first duly sworn, as hereinafter certified,
21 was examined and testified further as follows:

22 EXAMINATION OF MARY BLAIR MATEJCZYK

23 BY MS. OETTINGER:

24 Q Dr. Matejczyk, I would like you to refer to the
25 physician's order sheets, specifically one dated

1 June 30th.

2 A Yes, I have it here.

3 Q Okay. Towards the very bottom of the page the
4 fourth line up would you please tell me what was
5 prescribed? One, two, three -- the fourth line
6 from the bottom.

7 A Codeine 30-60 milligrams, -- pedol.

8 Q Would you please note on the top of the sheet
9 where it says "Allergies: If So, What"? What
10 does it say there?

11 A That says codeine.

12 MR. McILHARGIE : Can we clarify
13 who prescribed codeine?

14 MS. OETTINGER : Yes.

15 BY MS. OETTINGER:

16 Q Who did prescribe the codeine?

17 A The signature is Dr. Haller.

18 Q And Dr. Haller is whom again please?

19 A He is the orthopedic resident.

20 Q Okay. Who is ultimately in charge of the
21 patient Laurie Smith? Whose ultimate
22 responsibility was she?

23 MR. McILHARGIE : I am going to
24 object to that. At what point in time? We have
25 already established there were various points

1 when she was on the orthopedic service and other
2 points in time when she was on the general
3 surgical service. I also want some
4 clarification as to when you say "ultimately in
5 charge". I mean like is that administrative?
6 Is that a legal question? Are you asking for a
7 legal conclusion? Are you asking whether or not
8 orders can be written by a resident without them
9 being co-signed by Dr. Matejczyk? Your question
10 partakes the possibility of asking for a legal
11 conclusion. If that's what it really is doing,
12 I would object to it on those grounds.

13 BY MS. OETTINGER:

14 Q Let me go back. On June 28, 29th, and June 30th
15 I believe testimony was that Dr. Matejczyk was
16 in charge of the patient Laurie Smith. This was
17 prior to the surgery of July 1st.

18 A I believe I stated that I was in charge in a
19 medically supervisory capacity.

20 Q All right, and then you were then medically
21 ultimately responsible for Laurie Smith --

22 MR. McILHARGIE: Objection to
23 the legal conclusion,

24 Q -- from the 28th at least to the 30th, is that
25 correct?

1

MR. McILHARGIE : Objection to

2

the legal conclusion and direct the doctor not

3

to answer. What you are trying to do is net in

4

by implication the order written on 6-30. Just

5

ask your question directly and ask her whether

6

she was responsible for the order written on

7

June 30th, 1983.

8

MS. OETTINGER : It's apparent

9

that the signature is Dr. Haller. It's also

10

apparent that at the very beginning it was noted

11

that codeine was an allergy that Laurie Smith

12

had.

13

BY MS. OETTINGER:

14

Q Were you aware, Dr. Matejczyk, that Laurie Smith

15

had an allergy to codeine?

16

A No, I was not, and I'm not sure in this case

17

what "allergy" means.

18

Q In your definition what would "allergy" mean?

19

A When it's written in this context, it may mean

20

anything from true allergy in which giving the

21

medication can cause dangerous side effects to

22

the fact that codeine can often give people an

23

upset stomach and for that reason they prefer

24

not to take it and in her case I think that the

25

situation is the second, but I was not

1 specifically aware of that.

2 BY MS. OETTINGER :

3 Q However, it's noted in the emergency room
4 notation here, if you will turn to your
5 emergency room form, that there is an allergic
6 condition and again codeine is specified. Do
7 you see that?

8 A Yes.

9 Q Now who informs a patient whether they're
10 allergic to a certain drug or not usually?

11 A Generally a patient informs the doctor or nurse
12 or anyone else.

13 Q Right, but in general how does a patient become
14 aware of the fact that he or she is allergic to
15 any given drug?

16 MR. McILHARGIE : Object to the
17 speculation and the general nature of the
18 question.

19 BY MS. OETTINGER:

20 Q You may answer, if you will, with the objection.

21 A Patient becomes aware of a drug allergy by
22 having a prior experience with a particular
23 medication and then noticing a reaction to it.

24 Q If you would notice or if a patient of yours
25 would tell you that they feel that they're

1 having a reaction to a particular drug, would
2 you then indicate to them that they possibly
3 were allergic to it?

4 A I would question them about what symptoms they
5 were having. If they were having an upset
6 stomach or constipation from codeine, I would
7 inform them that that is not an allergy to that
8 medication.

9 Q Was there any indication in the nurse's records
10 that she was experiencing some distress after
11 taking the codeine?

12 MR. McILHARGIE: I'm going to
13 object again. Is it distress that is consistent
14 with a reaction, an allergic reaction to
15 codeine, or just distress from other sources?

16 MS. OETTINGER: No, distress
17 consistent with --

18 A First we would have to look and see if she was
19 actually given the codeine.

20 MR. McILHARGIE: Objection.

21 Q Here on June 30th on this physician order sheet
22 it does prescribe codeine.

23 MR. McILHARGIE: She is telling
24 telling you you have to look.

25 A It's prescribed on a PRM which means only if she

1 needs an oral pain medication.

2 Q Was she on other pain medication at the time or
3 was it ordered?

4 A The three pain medications that were ordered on
5 this situation were morphine, codeine, and
6 tylenol.

7 MR. McILHARGIE: And they were
8 ordered by whom, Doctor?

9 THE WITNESS: By Dr. Haller,
10 and they were all on a PRM basis,

11 BY MS. OETTINGER:

12 Q PRM meaning what exactly?

13 A As needed.

14 Q Was she, in fact, given the morphine that day?
15 Perhaps it would help if you look on the nurse's
16 notes.

17 A I'm looking on the medication sheets from which
18 the medications are recorded at the time that
19 they're given.

20 Q Okay.

21 A Okay, at the bottom of the page, morphine, 6
22 milligrams I-V now, which was at 8 p.m.

23 Q All right. That would be consist then with the
24 nurse's notes also which indicate that morphine
25 was also given. Was anything else given that

1 day?

2 A She was given antibiotics four times, One
3 75-milligram dose of aspirin, zinc sulfate,
4 vitamins, multiple vitamins.

5 Q If you will refer to the nurse's notes on 6-30
6 at 5 p.m. on the bottom of the page?

7 A Okay.

8 Q What does it say the last two lines? It's
9 difficult to read at least on ~~my~~ copy, but --

10 A Okay, "Last voided ten oh -- error. Voided 1:30
11 150 cc's, bed pan. At the time bilateral knee
12 immobilization in place -- "

13 Q I don't think you are reading the same place
14 that I am.

15 MR. McILHARGIE: Over in the
16 corner it says here, Mary, "Allergy: Codeine".
17 Over here on the --

18 Q It says --

19 A And it says error, right. ~~NKA~~ is crossed out
20 which means no known allergies.

21 Q But it's crossed out, and then it says "Error:
22 Codeine", is that correct?

23 A Right.

24 MR. MURPHY: I'm sorry.

25 Which note was that again?

1 MS. OETTINGER: The nurse's
2 note June 30th at 1:30 p.m.

3 MR. MURPHY: Okay. Go
4 ahead. I'm sorry.

5 BY MS. OETTINGER:

6 Q what other pain medication was given to Laurie
7 besides morphine and tylenol?

8 MR. McILHARGIE: Again do we
9 have a date?

10 A During which period?

11 Q In general.

12 MR. McILHARGIE: Object to "in
13 general". Give us a day.

14 Q All right, during the period of June 28th, 29th,
15 30th.

16 A I have -- I'm not sure exactly how to interpret
17 the medication sheet, but I have one with dates
18 28th, 29th, 30th on it --

19 Q Okay.

20 A -- listing antibiotics, aspirin, vitamins, a
21 dose of demerol on the 28th, another dose on the
22 28th, and the morphine on the 30th.

23 Q All right. What is the difference between
24 demerol and morphine?

25 A Well, they're similar narcotic analgesics.

1 Q Is one considered to be more powerful, more
2 pain-killing than the other?

3 A I would say that morphine is considered somewhat
4 more potent by some people but not by others and
5 really it depends on an individual response.

6 Q Is either one of them addictive?

7 A Yes, they both are.

8 MR. McILHARGIE: Can we clarify
9 that? By that you mean potentially addictive.
10 It's not simply the case that everybody who
11 receives the medication becomes addicted, is
12 that correct?

13 THE WITNESS: That's correct.

14 BY MS. OETTINGER:

15 Q For how many days did Laurie receive either
16 demerol or morphine as pain medication?

17 MR. McILHARGIE: Again can we
18 have a time frame?

19 MS. OETTINGER: During the
20 entire stay. If the hospital --

21 MR. McILHARGIE: I'm going to
22 object to that on the grounds of relevance since
23 she came under the care of a different service
24 during that period of time.

25 MS. OETTINGER: I think it's

1 relevant. She can look in the medication,

2 MR. McILHARGIE : I have made my
3 objection.

4 BY MS. OETTINGER :

5 Q You can answer.

6 A Just reviewing the nurse's medication sheets and
7 I see this medication, it-looks like it was
8 continued at least up until the 18th and these
9 sheets don't appear to be quite in chronological
10 order in the chart, but here's a dose of
11 morphine given on the 27th of July.

12 Q July 27th. Okay.

13 A And I think that that -- let's see. The last
14 sheet in this section ends on the 31st and she
15 had an oral dose of demerol on that day.

16 Q I'm sorry. What was the date of that?

17 a The 31st.

18 Q Okay. From those notes she was on morphine
19 and/or demerol from the time she entered the
20 hospital on June 28th until July 31st according
21 to the notes, is that correct?

22 MR. McILHARGIE : On a PRM basis.

23 A Right. It would be very confusing to go through
24 and see each dose that she had. Some were oral
25 and some were IM. She would probably require

1 more prior to dressing changes, that sort of
2 thing.

3 Q Yes, There's a notation starting with July 1st
4 stating "Altered circulatory status". What does
5 that refer to please, specifically July 1st,
6 '83, 10 p.m.?

7 A This is a nurse's note and their customary form
8 of writing progress notes is to state a problem
9 at the top and then delineate specific
10 information under that such as the subjective
11 complaints, the objective data that's available,
12 the particular person writing the note's
13 assessment at that time, and then the plan.

14 Q So then --

15 A So this problem has simply been entitled by that
16 nurse "Altered circulatory status".

17 Q So it is a problem then?

18 A It's a problem in the sense that it's something
19 that's actively being treated. For instance,
20 another problem might be nutrition; another
21 problem might be pain.

22 Q All right.

23 A So it's not problem in the lay sense of the term
24 "problem".

25 Q Around July 3rd on the nurse's notes there's an

1 indication that there's -- this is specific
2 3 p.m. There's an indication that there's a
3 large amount of serous fluid. What does that
4 indicate?

5 MR. McILHARGIE: First of all,
6 it's confirmed that the nursing notes don't, in
7 fact, say that. Can you help us find it?

8 MS. OETTINGER: Yes, July 3rd,
9 3 p.m.

10 A My -- my original chart says the 2nd.

11 BY MS. OETTINGER:

12 Q That's right. There was an error and I made a
13 note that there was a mistake there. 3 p.m.
14 Somebody put the wrong date.

15 A I'm still on the wrong page.

16 Q It's right prior to 7-3-83, 9:40 p.m. This is
17 3 p.m. Here it is. You have the same right
18 there. "Continues to drain large amount of
19 serous fluid." What does that indicate?

20 A Meaning what is serous fluid?

21 Q No, what does it indicate when large amounts of
22 serous fluid are present?

23 A It indicates that there's drainage from the
24 wound and at this point she had open wounds so
25 you would expect the normal body fluids to ooze

1 out of those wounds. I'm not sure I can make
2 any other interpretation of this nurse's note.

3 Q What would be considered to be a large amount as
4 opposed to a small amount?

5 A Well, that's a subjective assessment by the
6 person that wrote the note, but you would
7 consider how large the wound was. Certain
8 wounds you would expect to have a large amount
9 draining. If you had a very small wound, you
10 would not expect a large amount. So it's a very
11 vague and subjective term.

12 Q Would any serous draining indicated here as a
13 large amount be cause for concern?

14 A In a patient with an open wound some serous
15 drainage would be expected.

16 Q Some, What about large amounts?

17 A Large amounts might be expected.

18 Q Okay. If you notice on 7-4-83 at 7:30 a.m., I
19 believe that you will see another note, "Right
20 leg continues to drain large amounts of serous
21 drainage." Do you see that?

22 A Yes.

23 Q Is it customary for there to be large amounts of
24 serous drainage now from July 3rd now to July
25 4th?

1 A 1 would say it's not unusual at all.

2 Q Okay, and again July 4th at 2:20, another note.
3 Do you see that? "Right leg continues to drain
4 large amounts of serous"?

5 A Yes.

6 Q Would this trigger in your mind a problem and be
7 need for some kind of action to be taken at that
8 point?

9 A The action that seems to be taken is dressing
10 changes which seems entirely appropriate in
11 someone with wounds that were intentionally left
12 open.

13 Okay. And then we have on 7-5-83 at 3 a.m. in
14 the middle of the page "copious serous
15 drainage"?

16 A Could you repeat the date?

17 Q July 5th at 3 a.m. And what does this indicate
18 that there was wintergreen used? What is that?
19 Do you see where I am referring to?

20 A I can't answer that. I don't know. At this
21 point we were -- the orthopedic surgeon on the
22 service was not in charge of the patient.

23 Q Now who was in charge again?

24 A We don't use wintergreen dressings.

25 The general surgery service from the

1 period of the vascular surgery on July 1st.

2 Q And specifically which doctor was in charge?
3 Was that Dr. Imbembo?

4 A He was the head of the surgery service at that
5 time.

6 Q At that time also it says "Foul-smelling
7 drainage". Would this be alarming?

8 A Yes, I would be concerned about foul-smelling
9 drainage.

10 Q Were you informed about this?

11 A Well, I'm going to say no because I don't see
12 any orthopedic resident's notes around this
13 time.

14 Q Who signed this particular note here? Again I
15 am referring to July 5th at 3 a.m. Whose
16 signature is that on the bottom?

17 A It's not -- not one that's familiar to me.

18 Q No, right here before the time. Is that
19 Dr. Hellerstein?

20 MR. McILHARGIE: If you know,
21 Doctor.

22 A It looks like it could be, but I don't know who
23 Dr. Hellerstein is. I assume he's one of the
24 general surgical personnel.

25 Q Then you don't know if he was on this particular

1 case at this point?

2 A Well, if he wrote this note he must have been,
3 but he was not on the orthopedic service at that
4 particular time and I'm not really sure who he
5 is.

6 Q Then am I correct to assume that from this --
7 from about July 1st until about July 15th you
8 were not really involved with the care of Laurie
9 Smith?

10 A Can you define what you mean by "involved"?

11 Q You were not called when foul-smelling drainage
12 was detected, You were not visiting her every
13 day and checking on her progress?

14 MR. McILHARGIE : We've already
15 established by prior testimony that she wasn't
16 seeing her on a daily basis during this period
17 of time.

18 MS. OETTINGER : Perhaps we
19 were. However, I thought it was unclear after
20 the last deposition.

21 MR. McILHARGIE : If you want to
22 read the transcript, I think it's very clear
23 from the --

24 MS. OETTINGER : I would like
25 her to answer the question.

1 MR. McILHARGIE : Break it down.

2 A At 3 a.m. on 7-5-83 I was not aware of any
3 problems of foul drainage or anything like that.

4 BY MS. OETTINGER:

5 Q Were you aware of it on July 6th?

6 A NO.

7 Q On July 5th at -- I believe that's 1 p.m. --/
8 what signs are there now in that right leg and
9 foot according to these nurse's notes?

10 A Can you help me find my place?

11 Q Yes, right here, July 5th, 1 p.m., about --
12 here. It's after the 10:45 a.m. It looks like
13 just 1 with a tiny P next to it.

14 A Okay.

15 MR. McILHARGIE : Let the record
16 reflect we're trying to correlate unnumbered
17 copies and multiple entries on different days.
18 It makes this process somewhat difficult.

19 A This nurse's note states that the right foot is
20 very warm, edematous and taut compared to the
21 left with Doppler pulses -- D-o-p-p-l-e-r. It
22 also states that there is some sensation present
23 last two toes on the right, unable to move those
24 toes, and then there's a comment about the left
25 leg,

1 Q Okay. Now at that time would any of these
2 scenes be alarming coupled with the
3 foul-smelling serous drainage?

4 MR. McILHARGIE : I'm going to
5 object to the word "alarming" from the
6 standpoint that it is vague and argumentative.
7 Cause for concern may be a better question.

8 A If you are asking whether foul drainage would
9 suggest an infection, the answer is yes.

10 BY MS. OETTINGER :

11 Q What is the purpose of the Infectious Disease
12 Service otherwise known as IDS?

13 A They operate at our hospital as a consultation
14 service to provide expertise in the management
15 of infections.

16 Q Would this evidence as indicated by the nurse's
17 notes of July 3rd and July 5th be reason to call
18 the IDS?

19 A I'm not sure I could make that judgment from the
20 information that's in the chart here.

21 Q Who would ordinarily call the IDS?

22 a The physicians directly managing the patient at
23 that time.

24 Q Are you aware of when the IDS was finally
25 called?

1 A No. I think it was later on in her hospital
2 course probably. I suspect the people that were
3 trying to manage the infection felt that it was
4 a bit beyond them.

5 Q Isn't that all speculation, however, on your
6 part?

7 MR. McILHARGIE: Didn't you
8 invite the question by asking?

9 MS. OETTINGER: I asked when is
10 the IDS ordinarily --

11 A Let me put it this way. Each service commonly
12 manages certain infections in certain
13 circumstances and the Infectious Disease Service
14 is available for special help. So, for
15 instance, on any service any sort of routine
16 infection, common organism, no trickiness about
17 choice of antibiotics, if that sort of
18 indication, the infection is managed by the
19 primary people looking after the patient at that
20 time.

21 Q Up until July 5th what antibiotic is Laurie
22 Smith receiving?

23 MR. McILHARGIE: I am going to
24 object to this entire series of questions
25 because it is general surgical service and she

3
1 has explained to you that really all she's doing
2 is reading records for you that are there in
3 front of you to be read by you or your expert.

4 Certainly utilizing Dr. Matejczyk to read
5 medical records for you concerning somebody
6 else's medical care and treatment is
7 inappropriate and abusive- of her time. You
8 know, I think we've been indulgent up to this
9 point, I'm not going to indulge much longer,
10 If your questions return to the general surgical
11 care or general overview as to things that she
12 wants to observe about changes in condition, I
13 think that's appropriate. That's fine, But
14 this detailed inquiry as to what the general
15 surgical people were or weren't doing, should or
16 shouldn't have been doing, I think is
17 inappropriate.

18 MR. MURPHY: I will join in
19 that objection.

20 MS. OETTINGER: However, I'm
21 not clear as to when Dr. Matejczyk actually
22 resumed the care. If we can establish the
23 date --

24 MR. McILHARGIE: We established
25 a date the last time.

1 MS. OETTINGER: What date was
2 that? My recollection -- and I could be
3 wrong -- is July 15th. Is that correct?

4 A Correct, on July 15th the patient was
5 transferred from 10-C, the general surgery
6 service, back to 7-B which is the orthopedic
7 service.

8 Q Would you tell me exactly where you are reading
9 please? Oh, I see.

10 A 7-15. There's a stamp.

11 Q I see it. Thank you.

12 All right. Now if you will refer please
13 to 7 -- July 19th. Who -- apparently it was
14 after you -- after she was transferred to your
15 service that the IDS was called, is that
16 correct?

17 MR. McILHARGIE: Let's clarify.
18 Back to the orthopedic service?

19 MS. OETTINGER: Back to the
20 orthopedic service.

21 BY MS. OETTINGER:

22 Q You will see the note 7-19, I believe, is the
23 first note made by Infectious Disease Service?

24 A Yes.

25 Q And who --

1 A That's correct.

2 Q Who finally called the IDS?

3 MR. McILHARGIE : Going to object
4 to the argumentative nature of the question,
5 "who finally called".

6 MS. OETTINGER : Excuse me.

7 BY MS. OETTINGER:

8 Q Who called the IDS?

9 MR. McILHARGIE : Thank you,

10 A I'm not sure there is a documentation if you
11 actually contacted them, There may be a written
12 order, but what generally happens is that the
13 residents call them up on the phone and say: We
14 have a problem that we're having difficulty
15 managing. Would you come and help us out.

16 Q Then you did not give the order to call the IDS?

17 A No.

18 Q Would you customarily give an order to call IDS
19 if you saw a problem?

20 A Generally the residents would pick up on that
21 sooner than I would.

22 Q Just a couple of review questions. It was
23 already established last time that you were the
24 only signatory on all three of the surgical
25 reports on June 28th, June 30th, and July 1st,

1 is that correct?

2 MR. McILHARGIE : I'm going to
3 object. She's already answered that question.

4 Q You can answer it again.

5 MR. McILHARGIE : Tell her you
6 have already answered it,

7 A I've already answered it.

8 BY MS. OETTINGER:

9 Q Is this your signature here?

10 A Yes.

11 MS. OETTINGER : Let the record
12 reflect that that was identified as her
13 signature on the surgical report dated 6-30-83.

14 BY MS. OETTINGER :

15 Q Is this your signature here?

16 A Yes.

17 MR. McILHARGIE : Object again to
18 this whole series of questions. It's already
19 been established.

20 MS. OETTINGER : I don't believe
21 that was actually identified as her signature.

22 BY MS. OETTINGER:

23 Q And then again was this your signature here?

24 A Yes.

25 MS. OETTINGER: And let the

1 record reflect that that is the surgery that
2 took place on July 1st.

3 MR. McILHARGIE : Let me see
4 that. Just a moment. That wasn't July 1st.
5 That was July 10th.

6 MS. OETTINGER : That was
7 dictated July 10th, I believe.

8 MR. McILHARGIE : Date of surgery
9 is July 1st, 1983.

10 MS. OETTINGER : Just one
11 second.

12 THE WITNESS: These are notes
13 from the multiple dressing changes and
14 debridements in the operating room.

15 MS. OETTINGER: Right, I
16 understand that.

17 BY MS. OETTINGER:

18 Q I want to go back to that just one minute.

19 All right, this signature that was identified by
20 a previous question was the surgery of July 1st.
21 However, it's dated June 30th.

22 A We have discussed that that date was incorrect
23 because the surgery started after midnight.

24 Q That's right. All right. Now is this your
25 signature on the surgical note dated July 10th?

1 A Yes.

2 Q All right. Then you were treating her in that
3 period of time. You indicate to me just a few
4 minutes ago that you weren't treating her until
5 after July 15th.

6 A No, that's --

7 MR. McILHARGIE : Objection.
8 That's a misstatement of her testimony.

9 MS. OETTINGER: She had said
10 that she was not called -- that she was not on
11 the orthopedic service until July 15th and,
12 therefore, she was not treating her or involved
13 in her treatment until July 15th and here is a
14 signature --

15 MR. McILHARGIE : That wasn't the
16 testimony.

17 MS. OETTINGER: What was the
18 testimony?

19 Would you like to read it back?

20 MR. McILHARGIE : Repeat
21 the question to her.

22 BY MS. OETTINGER:

23 Q What's the date of this surgery on which your
24 signature appears at the end?

25 a July 10th.

1 Q Were you present in the operating room at that
2 time?

3 A No, I think at this operative note this person
4 is general surgery.

5 Q Which person is that please?

6 A Heller.

7 Q All right. Let the record reflect John G.
8 Heller --

9 A Different than Haller. This is the orthopedic
10 chief resident.

11 Q This person being Harry Figgie, okay?

12 A John Ferron is a general surgery resident, and I
13 believe that our service was called to help
14 these guys out or inspect the wound in the OR
15 and that sort of thing. So it's not unusual at
16 all to have two services working together or
17 giving opinions one way or another.

18 Q However, but didn't you testify that your
19 service was not involved in the care and
20 treatment of Laurie Smith between the dates of
21 approximately 7-1 --

22 A Yes, I did, and that's correct.

23 Q -- and July 15th, and is it not true that your
24 signature appears on the surgical note?

25 A Yes, it is, and we've already discussed exactly

1 what a signature on a surgery note means.

2 Q Does it mean that you have read the surgery
3 note?

4 A Generally yes.

5 Q Does it mean that you by signing it agree that
6 that is what happened in the operating room?

7 A Generally yes.

8 Q Is this your signature here?

9 A Yes.

10 Q And what is the date on the surgical note of the
11 signature that you just identified as yours?

12 A The 18th.

13 Q Were you present in the operating room at that
14 time?

15 A May I refer to that note specifically? Yes, I
16 believe I was. Yes, I was.

17 Q Did you participate in the surgery?

18 A Only from the point of view of looking to see
19 what the situation was.

20 Q Did you scrub?

21 A No, and I wouldn't ordinarily scrub on a case
22 like this.

23 Q Were you the supervisor?

24 A I believe that's the word that we had used
25 previously.

1 Q What exactly does supervisor in this capacity
2 mean?

3 MR. McILHARGIE : On July 10th --
4 18th?

5 BY MS. OETTINGER :

6 Q On July 18th, for example?

7 A It means a person who is available to provide
8 any expertise that might be beyond the level of
9 the residents participating in the procedure at
10 that moment.

11 Q Were you the only Board certified doctor present
12 in the operating room at that time?

13 A Yes, the residents are not Board certified.

14 Q And both Dr. Figgie and Dr. Haller were
15 residents?

16 A Yes.

17 Q Were they considered to be senior residents?

18 A Well, it's a little bit odd because between the
19 beginning and the end of this each person has
20 moved up a rank so --

21 Q So at the beginning --

22 A I would say that they were not beginning
23 residents.

24 Q But they were not senior residents. Is that
25 what you are saying?

1 A I would have to figure out exactly what year
2 they were in --

3 Q So then really --

4 A -- to tell you who -- Mark Figgie at this point
5 is a senior resident. Ralph Haller would
6 probably still be considered a junior resident.

7 Q And for how long was Mark Figgie a senior
8 resident at this time, meaning July 18th?

9 A Well, I suppose technically 11 days -- or 18
10 days. Excuse me.

11 Q So in other words, the status of the residents
12 would change around July 1st?

13 A Right.

14 Q On July 10th, going back again, Harry Figgie,
15 was he a junior resident or a senior resident?

16 A He was a senior resident.

17 Q Was he a senior resident by ten days?

18 A Well, I think I previously stated that fourth
19 and fifth year people are generally considered
20 senior residents. So, no, he was a more senior
21 senior resident.

22 Q Okay. What about John Ferron?

23 MR. MURPHY: Is a fifth year
24 resident? Is that what you are --

25 THE WITNESS: He would be

1 fourth at the beginning and beginning his fifth
2 year so we're in the transition period here, but
3 he's experienced enough in my judgment at this
4 point to be doing this stuff,

5 John Ferron I don't know. He's not one of
6 the orthopedic residents,

7 BY MS. OETTINGER:

8 Q You said that Dr. Figgie was experienced in your
9 opinion, How do you make those judgments?

10 MR. MURPHY: Harry Figgie
11 are we talking about?

12 BY MS, OETTINGER:

13 Q Harry Figgie. Referring now to July 10th
14 surgery.

15 A Would you repeat the question?

16 Q You stated in your judgment that Harry Figgie
17 was experienced enough to perform the surgery.
18 How do you make your judgments as to whether
19 they are, in fact, experienced enough?

20 A Well, I personally make the judgments by working
21 with these people on daily basis. At this point
22 I had worked with Harry probably for several
23 months at various times, and you just know the
24 residents that you are dealing with and you know
25 what they're capable of doing and not doing.

1 Q Are you the one who actually makes the judgment
2 as to whether they're capable of performing the
3 surgery? Is there someone else who also makes
4 that judgment?

5 A On a case by case basis?

6 Q Yes.

7 A For cases that I would personally be involved in
8 I would make that judgment,

9 Q Referring to the surgery note of July 27th, is
10 this your signature?

11 A Yes.

12 Q Were you present in the operating room at that
13 time?

14 A I don't think so. This was a relatively simple
15 procedure to close the wound.

16 Q And who actually did the surgical procedure?

17 A Dr. Haller.

18 Q And what is his status at that time?

19 A He is a resident at this time,

20 Q Senior or junior?

21 A I'm not sure. I wasn't sure about that a few
22 minutes ago. I think he was a third year
23 probably.

24 Q Which would make him junior, is that correct?

25 A Well, I think you are -- there aren't exact

1 definitions of junior and senior,

2 Q I understand. Okay.

3 a So maybe we should change it to more
4 experienced, less experienced, but I think he
5 had enough experience at this stage in his
6 training to partially close a wound.

7 Q Before we indicated that the foul-smelling
8 serous drainage was indicative of infection, is
9 that correct?

10 MR. McILHARGIE : We're going
11 back to 7-5?

12 MS. OETTINGER: Yes.

13 MR. McILHARGIE : I'm going to
14 object again,

15 MS. OETTINGER : On what grounds
16 this time, Counsel?

17 MR. McILHARGIE : Same grounds as
18 before: The patient was on the general surgical
19 service, the fact that Dr. Matejczyk was later
20 consulted on July 10th and brought in the
21 operating room to oversee, you know, a procedure
22 that was conducted by general surgical as to the
23 condition of the wound at that time doesn't have
24 any relevance to her medical care and treatment.

25 MS. OETTINGER: Well, I'm not

1 convinced that Dr. Matejczyk wasn't intimately
2 involved in the day-to-day procedures of Laurie
3 Smith given the fact that she signed these
4 reports.

5 MR. McILHAGIE: In the -- in
6 the operative notes.

7 MS. OETTINGER: The operative
8 notes which has already been established she
9 signed and read.

10 MR. McILHARGIE: The only one
11 that comes within the relevant period of time
12 from my understanding, Miss Oettinger, is on
13 July 10th and she's already explained that.
14 That doesn't make her responsible for the
15 patient throughout that period of time. She's
16 brought in in a consulting basis while the
17 patient is under somebody else's care.

18 THE WITNESS: I think that's
19 a fair statement. I suspect the situation on
20 the 10th was that there was no general surgery
21 attending in the vicinity and I was simply asked
22 to cover that case as the attending. Every case
23 that's done in the operating room has to have
24 someone at least on paper as an attending.

1 BY MS. OETTINGER:

2 Q And then --

3 A So I think by taking my signature on these
4 records to indicate that I was intimately
5 involved day-to-day with direct patient care is
6 a mistake on your part.

7 Q And the doctor who is in the operating room in
8 that capacity, is that doctor ultimately
9 responsible for what goes on in the operating
10 room?

11 MR. McILHARGIE : Objection;
12 calls for a legal conclusion. She's not
13 answering that question,

14 MR. MURPHY: Objection,

15 MR. McILHARGIE : You want to
16 certify it, we can. You've only asked it about
17 four times,

18 MS. OETTINGER: That's true.

19 BY MS. OETTINGER:

20 Q In the surgery that took place on June 28th and
21 also June 30th who was ultimately responsible
22 for the tourniquet inflation and the release of
23 the tourniquet?

24 MR. McILHARGIE : Objection;
25 calls for a legal conclusion,

1 MS. OETTINGER: This is
2 ridiculous .

3 MR. McILHARGIE : I think your
4 questions are ridiculous,

5 Go ahead if you can answer.

6 A The anesthesiologist inflates and deflates the
7 tourniquet .

8 Q Who was the anesthesiologist on duty at that
9 time?

10 A We already spelled out the names of both of them
11 in the previous record.

12 Q I don't recall that we did.

13 MR. McILHARGIE: We did, It's
14 in the prior deposition, Let's take time to
15 find it for you.

16 BY MS. OETTINGER :

17 Q When blood flow is cut off to an area of the
18 body, what potentially can occur?

19 MR. McILHARGIE : I'm going to
20 object; asked and answered, You have gone
21 through this entire area.

22 MS. OETTINGER: No, I have not.

23 MR. McILHARGIE : Fine. We'll

24 stop and I will read it to you. We'll take
25 the time to show you where in the transcript of

1 the prior deposition you asked those questions,

2 MS. OETTINGER: We did not --

3 MR. McILHARGIE: Name of the

4 anesthesiologist is Dr. Prisanaumba,

5 P-r-i-s-a-n-a-u-m-b-a, Page 23, line 4 of the

6 prior transcript, okay? Discussion of what

7 happens when you cut off blood supply.

8 MS. OETTINGER: I did not ask

9 who was responsible for the tourniquet placement

10 at that time.

11 MR. McILHARGIE: Your next

12 series of questions concerned, Miss Oettinger,

13 what happens when you cut off blood supply with

14 a tourniquet, right?

15 MS. OETTINGER: I remember

16 that, Counselor, and if I'm not mistaken, I am

17 the one conducting this deposition.

18 MR. McILHARGIE: We're not going

19 over the same area twice. If you want to go

20 over that area, I'm telling you you are not.

21 BY MS. OETTINGER:

22 Q Dr. Matejczyk, if blood flow is restricted or

23 cut off, would there be a greater possibility of

24 clotting in an artery?

25 MR. McILHARGIE: You may answer

1 that.

2 A Yes.

3 Q If antibiotics are given to -- and you testified
4 that Ancef was given as a precaution because
5 there's always a chance of infection. If
6 antibiotics are given, how do they get to the
7 area where they are supposed to kill the
8 bacteria?

9 A Well, they're generally given prior to inflation
10 of the tourniquet and they profuse the area.
11 The circulation is then cut off by the
12 tourniquet so no antibiotics are getting in
13 right at that moment and then another dose is
14 usually given prior to the release of the
15 tourniquet -- but depending on the length of the
16 procedure -- and then they go back in there.
17 During the period when there's no flow to the
18 area we usually irrigate the wound with
19 antibiotic solution. So during that period it's
20 applied topically.

21 Q Okay. But ordinarily how would an antibiotic
22 get into an area where it's supposed to fight
23 infection if there's no surgery going on?

24 A Through the blood stream.

25 Q And if blood flow is cut off, does antibiotic

1 get into that area?

2 A Are you talking about completely cut off as in a
3 tourniquet situation?

4 Q No, I'm talking about --

5 A Partially cut off?

6 Q -- partially cut off. In the case where an
7 artery is tethered and occluded would antibiotic
8 get into the area where the flow of blood has
9 been stopped?

10 MR , McILHARGIE : Object to the
11 assumptions.

12 Go ahead and answer if you can.

13 A Wait a minute.

14 Q All right, There was testimony that the blood
15 flow was occluded, that the artery was tethered,
16 and that --

17 A Are you talking occluded to mean total or
18 partial? Are you talking about the operative
19 period?

20 Q I'm not talking about the operative period,
21 After the operation on June 30th there is in the
22 nurse's notes and in the operation notes that
23 the artery was occluded. There is conflicting
24 notes there saying totally and partially, But
25 if an artery -- if blood flow is stopped to a

1 given area, does antibiotic get into that area?

2 MR. McILHARGIE: Objection to
3 the question.

4 BY MS. OETTINGER:

5 Q Go ahead and answer.

6 A I think that you are talking about the
7 post-operative period in-which I am of the
8 opinion that there was a gradual decline in the
9 blood flow and, therefore, my answer would be
10 that there were some amount of antibiotics
11 getting in there at that time.

12 Q And how did you form your opinion that there was
13 a gradual cutoff of blood flow?

14 A On the basis of all the clinical evidence that
15 we have reviewed.

16 Q Doesn't the clinical evidence, however, indicate
17 that the blood flow was absolutely negligible at
18 that point?

19 MR. McILHARGIE: Objection. At
20 what point?

21 BY MS. OETTINGER:

22 Q By the time that she was taken into surgery on
23 July 1st right after midnight.

24 A Yes, at that point. But I don't think that that
25 was the situation at the end of the surgery on

1 June 30th.

2 Q Could the artery go into a spasm due to the
3 tethering that occurred on June 30th?

4 MR. McILHARGIE: Objection;
5 question calls for speculation.

6 Answer if you can.

7 A Yes, I would think it could. Yes, it could. ,

8 BY MS. OETTINGER:

9 Q Could a clot have formed at the site of the
10 tethering of the artery?

11 MR. McILHARGIE: Objection;
12 speculation.

13 Go ahead and answer. Is it possible? Is
14 it within the realm of possibility?

15 A It's possible that a clot could have formed, but
16 I don't believe that the vascular surgeons found
17 a clot when they opened the artery at that
18 level.

19 Q There is no mention of a clot, is there, on July
20 1st?

21 A I would have to review that whole note to be
22 sure.

23 On Page 2 they say no clot was retrieved
24 distally at this point where they opened the
25 artery, but that may have meant that they simply

1 were not able to get it or that simply it wasn'
2 there. It could have meant either.

3 Q Didn't we **also** establish that this surgery
4 occurred July 1st right after midnight but it
5 wasn't dictated until July 10th? Is that
6 correct?

7 A That's correct, and I would again point out that
8 was the responsibility of the general surgeons
9 for, you know, the procedure.

10 Q Would it be correct to say that Laurie suffered
11 gangrene in her right leg due to the infection
12 that occurred after July 1st?

13 MR. McILHARGIE : Can we
14 establish a point in time? And again I'm going
15 to object. Your questions are multiple. Why
16 don't we break it down? Did she experience
17 gangrene? At what point in time? Et cetera, et
18 cetera.

19 BY MS. OETTINGER:

20 Q All right. Did she experience gangrene?

21 A Yes.

22 Q At what point in time **was** it established that
23 she experienced gangrene?

24 A What I would look for in the notes is the first
25 mention of grossly necrotic muscle and --

1 MR. McILHARGIE: Take your time.

2 Why don't we go off the record.

3 (Discussion off the record)

4 BY MS. OETTINGER:

5 Q I believe if you look at July 1st at 1 p.m, was
6 it -- was there evidence of gangrene at that
7 time?

8 MR. McILHARGIE: Progress notes
9 or the nursing notes?

10 BY MS. OETTINGER:

11 Q The nursing notes, right.

12 A July 1st at 1 p.m. No, I don't think there's
13 anything in that note that indicates gangrene
14 present at that time.

15 Q However, are those symptoms of gangrene -- the
16 right foot very warm, edematous, unable to move?

17 A Those are non-specific symptoms at this point.

18 Q What about on July 6th -- there's no time so I
19 can't give you a time -- where it says "gross
20 evidence of infection". Would that be evidence
21 of gangrene yet?

22 A No, infection and gangrene are not strictly
23 synonymous.

24 Q What would cause gangrene? What are the typical
25 things that would cause gangrene?

1 A The two critical factors would be loss of
2 circulation and infection on top of it.

3 Q And what happens?

4 A Or infection alone can also cause gangrene.

5 Q What happened specifically with Laurie Smith?
6 What caused the gangrene in her case?

7 A I think you would have to conclude that both the
8 vascular compromise and the infection
9 contributed to it. However, the vascular
10 compromise was remedied and then the infection
11 developed in the open wounds.

12 Q Antibiotics were administered to her during this
13 period of time from June 28th and specifically
14 until June -- excuse me -- until July 15th, is
15 that correct, at least until then?

16 MR. McILHARGIE: Objection.

17 Again you are asking about orders written by the
18 general surgical services.

19 MS. OETTINGER: Counselor, she
20 is answering questions back and forth from July
21 7th, July 6th, and when it suits your fancy to
22 object, you object.

23 MR. McILHARGIE: I am tired of
24 your prolonging this examination. You have
25 already had three hours. We're going into the

7
1 fourth hour .

2 MS. OETTINGER : That's not very
3 long.

4 MR , McILHARGIE : If you go over
5 everybody's treatment, we could be here several
6 hours longer, I think it is unfair and abusive
7 of this witness to ask her to go over the
8 treatment rendered by others, You are perfectly
9 entitled to call the people on the general
10 surgical service and ask them what they did and
11 why they did what they did and what they
12 administered, and it is inappropriate to ask her
13 why they did what they did.

14 MS , OETTINGER : The point is
15 she was the supervising doctor during the
16 surgeries of June 28th and June 30th when --
17 well, June 30th particularly when the vascular
18 compromise took place.

19 MR, McILHARGIE : I am going to
20 object to that statement and ask that it be
21 stricken from the records.

22 MS. OETTINGER : On what
23 grounds?

24 MR , McILHARGIE : It's an
25 inaccurate statement .

1 MS. OETTINGER: It's not
2 inaccurate. She was a physician. She was the
3 signatory. She was present in the room and
4 there was a vascular compromise that resulted at
5 that time.

6 MR. McILHARGIE: Object and move
7 that it be stricken from the record. If you,,
8 have a question, ask your question.

9 BY MS. OETTINGER:

10 Q All right. Can you answer whether or not Laurie
11 was given antibiotics from June 28th until at
12 least July 15th?

13 A Going back to the medication records again which
14 you have --

15 MR. McILHARGIE: Be sure to
16 indicate under whose orders and who authorized
17 those antibiotics.

18 MS. OETTINGER: As a matter of
19 fact, I don't think I have the medication
20 records. I have everything but those and I
21 would appreciate a copy of them.

22 MR. McILHARGIE: Sure. No
23 problem.

24 A She **was** on Ancef a period of time; tobramycin
25 was added.

1 BY MS. OETTINGER:

2 Q When was that added?

3 A I need to go back in the orders to find that.
4 From these orders written by the general surgery
5 service on July 10th, I think that's the date
6 that tobramycin was added.

7 Q And up until that time she was given Ancef, is
8 that correct?

9 A Yes.

10 Q That's the only antibiotic she was given?

11 A From the medication records there are four doses
12 of Kefzol on the 30th.

13 Q Is Kefzol --

14 A It's very tedious for me to read each little
15 thing.

16 Q Was that Kefzol? How do you spell that please?

17 A K-e-f-z-o-l.

18 Q Is that **also** an antibiotic?

19 A Yes, **it** is.

20 Q Okay. Were any cultures taken subsequent to the
21 discovery of the foul-smelling serous drainage?

22 MR. McILHARGIE: Again this is
23 while the patient is on the general surgical
24 service. My problem is what you are doing.
25 From 7-1 to 7-15 her only contact for purposes

1 of consultation was on 7-10. The orders being
2 written here are all being written by general
3 surgical people, orders for culture, orders for
4 antibiotics, except -- except for maybe the one
5 on 6-30. You are having her go through and read
6 other people's handwriting and ferret out and
7 figure out what other people's orders were at
8 that time. It's getting a bit tedious.

9 A Well, in order to answer that question I would
10 have to read all these notes in detail to see if
11 a nurse's notes said a culture was sent. Then I
12 would have to read the order to see if a
13 culture -- but let me tell you this. Commonly
14 cultures are sent by the nurses and a notation
15 may not even be made.

16 BY MS. OETTINGER:

17 Q I read the notes --

18 A Okay .

19 Q -- thoroughly and I found no indication that a
20 culture was sent until after the IDS was called
21 except that there was a culture sent, if you
22 will note, on 7-7. Would you tell me why a
23 culture was sent and for what purpose?

24 MR. McILHARGIE: Object to that
25 portion of counsel's statement which are her own

1 observations and review of the record and I have
2 no objection to the question itself except for
3 the statement which preceded it.

4 BY MS. OETTINGER:

5 Q On July 7th under AP. July 7th there is A,
6 slash, P.

7 A Okay .

8 Q Would you read that please?

9 A "Patient still maintaining steady fever above
10 38, lungs same, still suspect pulmonary source,
11 check sputum cultures AM and get CXR."

12 Q Indicate whose name that is, Doctor.

13 A Douglas L. someone.

14 MR. McILHARGIE : Whose service
15 is he on?

16 THE WITNESS: I can't tell
17 whether that's a nurse's progress note or a
18 resident or a medical student. I just don't
19 know.

20 MR. McILHARGIE : Is it the
21 orthopedic service?

22 THE WITNESS: No, it is not.

23 BY MS. OETTINGER:

24 Q Isn't it customary when giving the antibiotic
25 Ancef that if there are signs of infection

1 culture should be obtained?

2 A Could you say that again? I got lost.

3 Q Isn't it customary when giving the antibiotic
4 Ancef that if there are signs of infection, that
5 cultures should be given to find the cause,
6 causative organism?

7 A I would say yes.

8 Q Was this done? Well, this is repetitive of the
9 last question. You said no, you don't know if
10 it was done. Were you one of the doctors who
11 prescribed the Ancef?

12 A No.

13 Q But it was given, however, on June 28th and June
14 29th and, June 30th, is that correct?

15 A It was started on the patient's admission and
16 continued on. I also notice here there is a
17 note by an orthopedic resident.

18 Q Where is that please?

19 A On the 7th stating that the incision is healing
20 well, check fasciotomy incisions later.

21 Q Would you please tell me where you are reading,
22 what time?

23 A 7-7 just prior to the note we were just
24 discussing.

25 Q I see. Ortho. Didn't you testify, however,

1 earlier that the wounds were open wounds?

2 A Yes,

3 Q Well, what does that mean exactly "incision
4 healing well"?

5 A It may be referring to the surgical incisions
6 for the repair, I'm not sure -- oh, I see.
7 Excuse me. Fasciotomy wounds are the open
8 wounds.

9 Q In the circle there is a little letter. What
10 does that signify?

11 A Excuse me. That says left, I think that
12 signifies left incision healing well. So --
13 excuse me. We're referring back to the
14 palatamus.

15 Q What about in the right foot? What does the
16 orthopedic note of 7-7 say about the right --

17 A -- foot and leg? "Foot with decreased swelling;
18 some lateral and plantar sensation" which
19 indicates an improvement, "No motor yet.
20 Fasciotomy wounds not checked" with a plan to
21 check them later today.

22 I think if you would like to go back to
23 your question about cultures,

24 Q Okay.

25 A You have the culture lab reports?

1 Q Under microbiology reports?

2 A Yes. They seem to be kind of mixed in here.
3 Here's a culture of the wound specimen taken
4 7-5-83.

5 Q I don't have those notes.

6 A There's another culture of the wound specimen
7 taken 7-5-83, and then there are many later
8 ones,

9 MS. OETTINGER: I'd appreciate
10 copies of those. I do not have those. I have
11 microbiology reports, pathology.

12 MR. McILHARGIE: These were --
13 appear as orderly sheets. They look something
14 like what you have.

15 MS. OETTINGER: I do have 7-9,
16 Ancef.

17 MR. McILHARGIE: Yes, you do,
18 That's a lab sheet. That's a culture sheet.

19 MS. OETTINGER: Okay,

20 MR. McILHARGIE: For
21 clarification of that last question let the
22 record reflect that Dr. Matejczyk has, in fact,
23 modified her prior answer and she has been able
24 to locate lab sheets that do, in fact, indicate
25 that cultures were taken during that time.

1 MS. OETTINGER: Except my
2 understanding is that that -- those cultures
3 were taken for the suspected pneumonia, not from
4 the wound of the leg.

5 MR. McILHARGIE: Let's make it a
6 question, Gail.

7 BY MS. OETTINGER:

8 Q Were they, in fact, taken from the wound or were
9 they taken from the suspected pneumonia? 1
10 don't see any indication here that it was taken
11 from the wound,

12 A They're all mixed up really.

13 MR. McILHARGIE: Take your time.

14 A Okay, Here is a culture report specimen taken
15 7-5-83. "Type and location of specimen
16 drainage: Right leg wound".

17 Q And that was dated what?

18 A 7-5-83.

19 MR. McILHARGIE: Who would have
20 ordered that culture, Doctor?

21 THE WITNESS: It states that
22 it was requested by Dr. Heller.

23 BY MS. OETTINGER:

24 Q Is Dr. Heller on the orthopedic service?

25 A No, he's not.

1 MR. McILHARGIE: Is he on the
2 general surgical service?

3 THE WITNESS: Yes.

4 BY MS. OETTINGER :

5 Q Do you keep personal records of your patients,
6 you know, for example, Laurie Smith?

7 A I keep private office charts on my private
8 patients and Laurie Smith was not one of my
9 private patients,

10 Q Had Laurie Smith been a private patient, would
11 you yourself have done the surgery?

12 A No.

13 MR. McILHARGIE : Objection .

14 A Not necessarily,

15 Q We were back now to the original question which
16 was never answered. When was gangrene finally
17 determined to have been a problem?

18 MR. McILHARGIE: Objection to
19 the argumentative nature of the question. Why
20 don't you ask it: When was it determined?

21 MS. OETTINGER: It was already
22 asked that way.

23 BY MS. OETTINGER :

24 Q When was it first determined that she had
25 gangrene?

1 A Well, the first time that that word is used in
2 the chart -- and I don't think it's a strictly
3 medical term -- is on 7-10-83.

4 Q And who made that notation?

5 A I think that signature **looks** like Ferron, but
6 I'm not cert in.

7 Q Is he on the medical service?

8 A He's on general surgery service.

9 Q General surgery service. Okay.

10 A I would hesitate a bit to identify that
11 signature positively though.

12 Q All right. Would you mind reading this ortho
13 chief resident **note** of 7-10-83 that's right
14 underneath the note that you are just referring
15 to please?

16 MR. McILHARGIE : What's the
17 date -- 7-10-83?

18 MS. OETTINGER : 7-10-83 .

19 A Ortho chief resident note: "Patient seen with
20 spiking temperatures, lateral wound healthy but
21 has superficial scar. Medial wound has
22 desiccated tendon and fascia" That means dried
23 out. I think it says "Concur re: Closed portion
24 of proximal wound." I don't know what that
25 means. "Will proceed with debridement assisting

1 Dr. Ferron." That's just prior to the operative
2 note that we were discussing before when both
3 services were involved.

4 Q Who signed that ortho?

5 A That's ortho. That's Dr. Figgie.

6 Q Which one?

7 A Harry.

8 Q On July 10th -- turning the page -- what
9 antibiotics were given at that time according to
10 these notes?

11 A DO you --

12 MR. MURPHY: I will object
13 at this point. We're sitting here again having
14 the doctor read somebody else's notes. The
15 medication charts --

16 MS. OETTINGER: Well, I have a
17 purpose for asking this question.

18 MR. MURPHY: That's fine,
19 but the medication charts and the records are
20 what actually reflects what medications were
21 given. Whatever is written here may or may not
22 be accurate, but --

23 THE WITNESS: I don't see a
24 mention of antibiotic on this page. Am I
25 missing something?

1 MS. OETTZNGER: No, you are on
2 a different page. We're on different pages.

3 THE WITNESS: Okay.

4 BY MS. OETTINGER:

5 Q It's 7-10 just prior to the note 7 -- at 1:30
6 p.m. No, turn the page. There we go. What
7 antibiotics were given at that time?

8 A Tobramycin and Ancef.

9 MR. McILHARGIE: Whose order,
10 Doctor?

11 A Douglas L. -- and a name that I can't read, but
12 it appears to be counter-signed by --

13 BY MS. OETTZNGER:

14 Q Looks like Hellerstein to me.

15 A Looks like Hellerstein to me. I don't know
16 either of those people.

17 MS. OETTINGER: Can you read
18 this signature, Counsel?

19 THE WITNESS: I suspect that
20 if that signature is apparently counter-signed,
21 it may have been a medical student.

22 MR. MURPHY: I would object
23 to the indication that those medications were
24 given at that time. The note simply says that
25 medications are to be continued. And again

1 reference would have to be made to the
2 medication records to see whether, in fact, they
3 were given or not,

4 MS , OETTINGER : I do not have
5 medication records, I am requesting them.

6 Well, I'm not going to look at them now.

7 BY MS. OETTINGER:

8 Q Given the fact that she was given Ancef and
9 tobramycin, why in your opinion was she
10 suffering such gross infection?

11 MR. McILHARGIE : I'm going to
12 object. First of all, the doctor has already
13 told you that she wasn't there to observe.

14 MS. OETTINGER: Her opinion,

15 MR. McILHARGIE : You are loading
16 the question up, Gail. You are making an
17 argumentative statement. You are stating it was
18 a "gross infection".

19 MS. OETTINGER: I'm only
20 quoting from the notes. I'm quoting exactly the
21 words.

22 TNE WITNESS: But you are
23 quoting from notes from a lot of different
24 people's subjective opinions of what's --

25 MS. OETTINGER: That's the only

1 thing I have to quote from.

2 MR. McILHARGIE : Of variable
3 observation and variable skills and training.

4 BY MS. OETTINGER:

5 Q Have we established the fact that she had an
6 infection, yes or no?

7 MR. McILHARGIE : As of what
8 date?

9 Q As of July 4th.

10 A I think if we could take a break here I will
11 answer the call and go to the bathroom.

12 MS. OETTINGER : Fine. I will
13 be finished shortly,

14 (Short recess)

15 MR. McILHARGIE : Question is
16 July 4th did she have an infection.

17 MS. OETTINGER : Let me change
18 that --

19 Okay. I'm sorry. Let me change that
20 question.

21 BY MS. OETTINGER:

22 Q As of July 6th. I'm sorry.

23 A It appears from these records that she did have
24 an infection as of July 6th.

25 Q We've already established also that she was

1 taking an antibiotic, at least Ancef, and also
2 you testified to another one --

3 MR. McILHARGIE: Tobramycin.

4 Q -- tobramycin and there was another one.

5 A Kefzol was for one day only at the beginning and
6 it's -- essentially Ancef and Kefzol are
7 interchangeable.

8 Q Now in your opinion why weren't those
9 antibiotics affecting the infection that was
10 taking place in Laurie's leg as of July 6th and
11 through to the first debridement which was July
12 10th?

13 MR. McILHARGIE: Object. It
14 assumes that they weren't having some effect
15 upon the infection, your question. If your
16 question is why it didn't effect a cure, that's
17 a different question.

18 BY MS. OETTINGER:

19 Q Well, was it having any effect on the infection
20 that occurred from July 6th until the first
21 debridement of July 10th?

22 A Well, I think that's a more sophisticated
23 question than I can give a simple answer to and
24 I think an infectious disease person maybe could
25 answer that better, but the antibiotics that

1 were given initially were given in -- for the
2 purpose of prophylaxis, preventing infection,
3 and sometimes what happens in patients with
4 serious wounds is that the antibiotics that are
5 given are killing one set of germs but meanwhile
6 another set of germs invades the tissues and
7 another infection progresses. An infection can
8 be due to one germ or many germs.

9 Q How does a doctor or a culture help to determine
10 the germs that are causing the infection?

11 A A culture is done to identify the specific germs
12 causing the infection.

13 Q Would a gross evidence of infection -- and I'm
14 quoting now from the nurse's notes of July
15 6th -- give rise to a need for cultures to be
16 taken periodically?

17 A Can you point?

18 Q I'm sorry. I thought you had it.

19 A There are so many sixes here, okay?

20 Q I think it's over here, gross -- I believe I'm
21 not -- upside down it's a little hard, but --

22 A Yes.

23 MR. McILHARGIE : Here we are.
24 It says "without". It's a slash S. "Clear
25 without gross evidence".

1 MS. OETTINGER: Where is that?

2 MR. McILHARGIE: Slash with an
3 S, isn't it?

4 THE WITNESS: That's true.

5 To clarify further, this is not a nurse's
6 note. This is an M.D. note, and --

7 MR. McILHARGIE: Would you read
8 the note please?

9 THE WITNESS: From the
10 original copy the relevant part reads "Wounds
11 right clean, S slash" -- which is an
12 abbreviation for without --

13 MS. OETTINGER: That's unclear
14 on my note.

15 MR. McILHARGIE: Finish it.

16 THE WITNESS: -- "without
17 gross evidence of infection. Will check
18 cultures." Those were cultures done before.

19 BY MS. OETTINGER:

20 Q There is a misunderstanding here. Would you
21 read the sentence before that where it begins
22 with "Lungs"?

23 A "Lungs filled with large airway secretions.

24 Q This little C with a line over it means "with"?

25 A C means "with".

1 Q And what do you say this note means because this
2 looks like a --

3 MR. McILHARGIE: On the original
4 which the doctor has in front of her it's S
5 slash.

6 A S stands for sans or without.

7 Q I understand that.

8 A It's pretty clear in this.

9 Q But it wasn't clear in my --

10 A S slash and with slash.

11 MR. McILHARGIE: Let the record
12 reflect as to the notation on 7-6-83, the
13 progress note the doctor has been referring to,
14 specifically it reads "Right clean", slash over
15 the letter S meaning 'without' "gross evidence
16 of infection". Can we agree that that's what it
17 reads, Counsel?

18 MS. OETTINGER: That's what it
19 apparently looks like it reads. However, on my
20 copy it doesn't read that way.

21 MR. McILHARGIE: Can we agree
22 that Dr. Matejczyk's copy is the original?

23 MS. OETTZNGER: Yes,
24 Dr. Matejczyk's copy looks like it's the
25 original. However, I'm not convinced that

1 that's "with" or "without".

2 BY MS. OETTINGER:

3 Q On that same note what is the prognosis and what
4 is the plan, the assessment and the plan,
5 indicated by Dr. Heller here?

6 A Number one, watch fever; likely pulmonary
7 source; no smoking; continue PT with postural
8 drainage and **TPPB** incentives barometry. Number
9 two, check wound culture -- referring to the one
10 sent previous day. Number three, reculture if
11 fever persists",

12 Q I'm going to state for the record that it seems
13 that there is indication that problems with
14 pneumonia and that her lungs, they were -- these
15 notes indicate that there was suspected
16 pneumonia and there was culture for pneumonia
17 and I'm not clear whether this indicates the
18 lungs or the leg because it has an R with a
19 circle and usually an R with a circle, it
20 indicates a leg after it, and all other surgical
21 notes --

22 MR. McILHARGIE : I'm going to
23 object to counsel's characterization. Move to
24 strike her characterization.

25 A His notes are organized Wounds, "Wounds", and

1 when you are suspecting a pulmonary source for a
2 fever, you don't necessarily suspect a gross
3 pulmonary infection. You can have a fever from
4 just secretions blocking the airway without
5 necessarily having a pneumonia. So I think it
6 is clear that the cultures referred to under
7 Wounds do refer to leg cultures.

8 Q All right. Then when was infection evident in
9 these notes? Look on 7-9-83 at 3 p.m. towards
10 the bottom of the page. What is happening with
11 the right leg at this time?

12 A I'm having trouble reading the writing.

13 Q Yes, so did I.

14 MR. McILHARGIE: Doctor, if you
15 are unable to make out the writing, there's no
16 requirement that you try to interpret somebody
17 else's writing.

18 Q Let me read it. "Right leg wounds debrided"?

19 A Per H0; per house officer.

20 Q Okay, and then it says "thick, foul-smelling" --
21 after that -- "large amount of thick,
22 foul-smelling" -- and I don't know what comes
23 after that but is that coming from the right
24 leg?

25 A Interpreting this note it sounds like it.

1 Q Okay. would that be indicative of infection?

2 A Yes.

3 Q And again she is still receiving the antibiotics
4 at this date, is that correct?

5 A Yes, according to the medication records which
6 we examined before.

7 MS. OETTINGER: Okay .

8 I have no further questions as of this
9 time but I still reserve the right to call the
10 doctor again at a further time,

11 MR. McILHARGIE: No, I object to
12 that. You asked them now twice. I am putting
13 you on notice right now that any effort at
14 bringing her down for further questions,
15 questioning, without a showing of good cause
16 will be opposed. I invite you to ask any
17 questions you have right now.

18 MS. OETTINGER: After I depose
19 the doctors in charge from July 1st to July 15th
20 it may become necessary for me to depose
21 Dr. Mate]czyk again.

22 MR. McILHARGIE: You can go to
23 court and require that if you can show good
24 cause.

25 MR. MURPHY: I don't have

any questions at this time. Thank you.

MR. McILHARGIE: Doctor, you have a right to review the transcript for technical errors with respect to transcription. Even the best of people when others are talking very rapidly sometimes make errors. My recommendation to you would be to take that opportunity to review the transcript when it is prepared and make such corrections as are appropriate and submit it under signature,

Turn to the court reporter and tell her you are not going to waive signature.

THE WITNESS: I will not waive signature,

MR. McILHARGIE: We will make a stipulation to this effect that for purposes of convenience to the doctor that once the transcript is prepared in complete form, that it be submitted to her so that she can review it at her office or the hospital without having to come down in the presence of the court reporter to make the corrections.

MS. OETTINGER: I have no objections to that.

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THE STATE OF OHIO,)
COUNTY OF CUYAHOGA.)

SS :


CERTIFICATE

I, Judith Ann Trebus, a Notary Public within and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within-named witness, Mary Blair Matejczyk, M.D., was by me duly sworn to testify to the truth, the whole truth and nothing but the truth in the cause aforesaid; that the testimony then given by her was by me reduced to stenotypy in the presence of said witness, afterwards transcribed upon a typewriter, and that the foregoing is a true and correct transcript of the testimony so given by her as aforesaid.

I do further certify that this deposition was taken at the time and place in the foregoing caption specified, and was completed without adjournment.

I do further certify that I am not a relative, counsel or attorney of 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 5th day of July, 1985.



Judith Ann Trebus, RPR, Notary Public
within and for the State of Ohio

