IN THE COURT OF COMMON PLEAS

CUYAHOGA COUNTY, OHIO

TRAVIS CATES, et al.,

Plaintiffs,

-vs-

CASE NO. 167835

CLEVELAND METROPOLITAN GENERAL HOSPITAL, et al.,

DOC. 353

Defendants.

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Deposition of ROBERTA L. PERSAUD, M.D., taken as if upon cross-examination before Ralph A, Cebron, a Registered Professional Reporter and Notary Public within and for the State of Ohio, at MetroHealth Medical Center, 3395 Scranton Road, Cleveland, Ohio, at 10:00 a.m. on Tuesday, March 27, 1990, pursuant to notice and/or stipulations of counsel, on behalf of the Plaintiffs in this cause.

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ROBERTA L. PERSAUD, M.D., of lawful age, called by the Plaintiffs for the purpose of cross-examination, as provided by the Rules of Civil Procedure, being by me first duly sworn, as hereinafter certified, deposed and said as follows:

CROSS-EXAMINATION OF ROBERTA L. PERSAUD, M.D.

BY MR. MELLINQ:

Q. Will you state your full name, please?

A. Roberta Lynn Persaud.

Q. How do you spell your last name?

A. P E R S A U D ,

Q. What is your address?

A, 9442 Hunters Chase Drive, Apartment 3-B, in Westlake, Ohio.

Q. And did you get married since November of '87?

A. Yes.

Q. What was your name in November of '87?

A. Robert Lynn Bender.

Q. Okay. Spell your last name.

A. B E N D E R .

Q. Okay, Have you been deposed before?

A. No, I haven't.

Q. Okay, I only ask two things of you, One is that you answer all my questions verbally so the

court reporter can take it down. The other is if at any time you don't understand one of my questions or hear it, you can ask me to repeat it or rephrase it, I will be happy to do that. Okay?

A. Okay.

Q. Where were you born?

A. In Cleveland, Ohio.

Q. Okay. And when were you born?

A. April 28, 1955.

Q. Where did you go to high school?

A. Our Lady of the Elms High School in Akron, Ohio.

Q. And what year did you graduate?

A. 1973.

Q. Okay. And where did you go to college?

A. University of Akron.

Q. When did you graduate from University of Akron?

A. 1978.

Q. Okay. What degree did you obtain?

A. Bachelor *of* science?

Q. What was your major?

A. Biology.

Q. And where did you go to medical school?

A. Wright State University.

Q. What year **did** you graduate from there?

A. 1984.
Q. Okay. And what additional training did you undergo?
A. I served my internship at Metro Hospital.
Q. Okay. What year was that?
A. 1984 through '85.
Q. Then what did you do?
A. Finished an internal medicine residency.
Q. What years?
A. '85 through '87.
Q. Then what?
A. Infectious disease fellowship.
Q. Okay. What years?
A. 1987 through 1989.
Q. Okay, That would have been July of 1987 through July of '89?
A. Right.
Q. Okay. Did you go straight through medical school?
A. Did I go --
Q. I mean continually+
A. Yes.
Q. Why did it take you six years then --
MR. ZELLERS: Objection.
Q. -- to get a degree?

MR. ZELLERS: Objection.

Q. Isn't medical school usually four years?

A. '80 through '84 I was in medical school. I'm sorry.

Q. Okay.

MR. ZELLERS: Nothing to be sorry for. That's what you said. I mean, you're right.

Q. Okay. You graduated from college at the end of '78?

A, Right.

Q. What did you do from '78 to '80?

A. I did two years of graduate school,

Q. Okay,

A. In anatomy and physiology,

Q. Where at?

A. At the University of Akron.

Q. Okay. You started your infectious disease fellowship in July of '87?

A. That's correct.

Q. What were your duties during your fellowship?

A. To evaluate patients, present them to the attending physician, follow up on cases, teach residents, make weekly presentations.

Q. To who?

A. To the infectious disease department.
Q. Anything else?
A. Worked on the clinical service. That pretty much encompasses my duties,
Q. What else would you do besides the clinical service?
A. Research.
Q. Okay. And did you have specific duties when you were doing research?
A. I worked with another attending physician who helped guide our research projects and I would also work in the infectious disease outpatient clinic one morning a week.
Q. Okay. The first part of that you said that you would work with an attending who guided your research?
A. Uh-huh.
Q. Okay. Were you working on more than one project during that time?
A. During which time?
Q. During the time that you were a fellow, '85 through 87?
MR. ZELLERS: That would be '87 to '89.
MR. MELLINO: I'm sorry.

MR. ZELLERS: You mean when she was involved in research? As I understand she sometimes is involved in clinical, then she moves over to research. Is that right?

MR. MELLINO: Yes.

THE WITNESS: Yes.

MR. ZELLERS: You want to know what was she doing when she was in research?

MR. MELLINO: Yes.

Q. When you were doing research did you work on one project the whole time or more than one project?

A. More than one project.

Q. Did you work with the same attending or was it different attendings?

A, Different attendings.

Q. Were all the attendings from the infectious disease department?

A, Yes.

Q. Okay. And the first part, during the time that you were on clinical service you said that you presented, you evaluated patients and presented them to the attendings, What attendings would those be?

A. Dr. Philip Spagnuolo, Dr. John Marino, Dr. Emanual Wolinsky, Dr. Walt Tomford and

Dr. Belai Damtew.

MR. ZELLERS: Spell that.

A, B E E A I, East name D A M T E W.

Q. Are these all infectious disease doctors?

A. Yes.

Q. Okay. When you were on the clinical service what would your relationship be with attendings from other services?

MR. ZELLERS: Can you answer that?

A, It depended on the service I was interacting with.

Q. Okay, What about the orthopedic service?

A, I had a very good rapport with most of the orthopedic attendings.

Q. Would you be responsible to report to them in terms of presenting patients like you would with infectious disease doctors?

A, No.

Q. At the time that you were a fellow were you an employee of Cleveland Metropolitan General Hospital?

A. Yes, I was.

Q. By the way, what is your position now?

A, I'm in private practice.

Q. Where?

A. In Westlake, Ohio.
Q. What's the address?
A. 29101 Health Campus Drive, Building 2, Suite 260 in Westlake.
Q. What's the name of your practice?
A. It's my name,
Q. Okay. Is it a corporation?
A. No.
Q. Okay. I take it you practice by yourself?
A. Yes. I'm a sole proprietor.
Q. And when did you start the practice?
A. October of 1989.
Q. Okay. That would have been at the end -- well, did you do anything between the time your fellowship ended and October of '89?
A. I set up my practice, studied for boards.
Q. Okay, Are you board certified?
A. In internal medicine, yes.
Q. Okay. Have you taken the infectious disease boards?
A. Not yet.
Q. Okay. Are you eligible to take them?
A. Yes, I am,
Q. When when did you become eligible?
A. At the completion of my infectious disease

fellowship.

Q. Do you plan on taking them?

A, Yes, I do.

Q. When?

A. I haven't decided yet.

Q. Okay. When is the next time it is offered?

A. November of 1990.

Q. Okay. Did you pass your internal medicine boards the first time you took them?

A. Yes, I did.

Q. Sorry. I might have asked you this. When did you become board certified in internal medicine?

A. September of 1989.

Q. All right. I take it you had the opportunity to review the Travis Gates chart prior to the deposition?

A, I have reviewed the November admission, yes.

Q. Okay. And you were involved in that admission?

A. Yes, I was.

Q. Okay. Do you remember what you were doing between July and November of '87?

MR. ZELLERS: You mean generally?

MR. MELLINO: Yes.

Q. Were you on the research?

A. I was on the clinical service.
Q. Okay. July, August, September?
A. October and November.
Q. Okay. When was the first time you saw Travis Gates?
A. November 13, 1987.
Q. Okay. Did you write a note when you saw him the first time?
A. No, I didn't.
Q. Okay. Why not?
A. I was called to the orthopedic clinic to see him basically to collect culture samples.
Q. Okay. Where are you getting that from, that information from?
A. My memory.
Q. Where is the orthopedic clinic?
A. It's on the ground floor of the Bell Greve building.
Q. Who called you there?
A. Dr. Meyer.
Q. And Dr. Meyer is what?
A. An orthopedic resident.
Q. A resident? What happened? What did you do?
A. I --
MR. ZELLERS: This is on November

13?

MR. MELLINO: Right,

A. I went to the clinic. I saw Mr. Cates' knee. I collected the specimens that I requested and took them to the lab.

Q. What specimens did you request?

A. A swab of a skin ulcer and an aspirate of the right knee.

Q. Okay. Were you the one that actually stuck the needle in the right knee?

A. Dr. Meyer did.

Q. You just took the sample?

A. Yes.

Q. Okay. Is that all you did in terms of the orthopedic clinic?

A. In the clinic.

MR. ZELLERS: On that day?

MR. MELLINO: On that day.

A. Yes.

Q. What did you do with the samples?

A. Took them to the lab.

Q. Okay. And what was the purpose in taking them to the lab?

A. I would be able to prepare my own Gram stains and make sure that the specimens were cultured

appropriately.
Q. And you did that?
A. I gave them to the lab tech to culture, but I made my own slides €or Gram stains.
Q. What was the purpose in getting Gram stains?
A, To determine whether or not there were bacteria both in the joint and over the ulcer.
Q. Okay. And is that all you did on the 13th?
A, No.
Q. Okay. What else did you do?
A. Later that evening **I** went to the floor to make sure that this man was started on antibiotics,
Q. Okay. I take it at the time you saw him in the orthopedic clinic he hadn't been admitted to the hospital?
A. That's correct.
Q. Had the decision been made to admit him?
A. It had been made, yes.
Q. Before you got there?
A, That's right,
Q. Before you were called?
A. That's correct.
Q. When you saw him on the floor you started antibiotics?
A, Yes.

Q. Okay. What antibiotics did you start?
A. Nafcillin.
Q. Was there anything else you did on the 13th?
A. No.
Q. Okay. When is the next time you saw him?
A, November 14th.
Q. Okay., And did you write a note when you saw him on that time?
A. Yes.
Q. Okay, Why don't you turn to that note and, if you would,, just read it for me?

MR. ZELLERS: You want her to read it out loud or to herself?

MR. MELLINO: Out loud.

MR. ZELLERS: Reasonably slow so the court reporter can get it.

A. Asked to see this 53 year old white male with long-standing rheumatoid arthritis who presented to the ortho clinic with a complaint of superficial ulceration over the right knee for approximately two weeks. No definite history of trauma. Has been caring for this wound with dressing changes only. No antibiotics taken. No healing noted over this time period and on the morning of admission he noted increased

right knee swelling. He called his rheumatology physician, who is Dr. Ballou, who suggested that the patient make an ortho clinic appointment. The right knee was found to have an appreciable effusion, a superficial right knee with obvious purulent drainage. Me was admitted to the ortho service for probable septic right knee (prosthetic knee). The knee aspirate fluid was cloudy, bloody draining with a glucose of 14 and a total protein of three grams. 216 white blood cells with six polys, 84 lymphs and ten monos. The Gram stain of the fluid had white cells, polys, though no identifiable bacteria noted. The swab of the right knee pus showed staph. Exam was significant for a nontoxic appearance. He was a pleasant, cooperative white male. He had severe rheumatoid changes involving his hands, ankles, feet, elbows. There were numerous rheumatoid nodules noted, Many small pustules were seen on the back and the Gram stain showed polys. Right ear, his external ear, had a nonhealing ulceration.

Lung exam with basilar inspiratory crackles. Heart exam with a grade of two to three over six systolic murmur which was heard

radiating to the base, the apex and out to the axilla. No diastolic component. His abdominal exam was within normal limits. He had bilateral knee effusions, right side greater than the left. There was very little right knee pain appreciated. No erythema or warmth noted, no cellulitis, and he had a right buttock abscess.

Assessment Number 1. Probable septic prosthetic right knee with superficial furuncle over the right patella.

Number 2. Severe rheumatoid arthritis. On steroids.

No. 3. Probable mitral regurgitant murmur with a history of rheumatic fever, Suggest patient started on nafcillin, two grams IV q four hours last night. We was cultured for staph carriage, On Number 3, the right ear was cultured, May need to biopsy this nonhealing ulcer.

Number 4. And I couldn't read my last word here, will require repeat aspiration of the right, looks like ear to me. I don't know what that is.

Number 5. Local care to the buttock abscess.

And I ended saying that I would check cultures.

Q. Okay. I take it then at the time that you saw him on November 14 that you had the results from the cultures done the day before?

A. I don't know if I had the culture results at that time.

Q. Okay. Is there anyway to determine that from the records?

A. If I didn't write it in my notes it doesn't look like I have the culture results at that time.

Q. Okay. When he was seen in the orthopedic clinic was Dr. Meyer the only doctor, only orthopedic doctor that saw him?

MR. ZELLERS: Objection.

A. E don't know that,

Q. Okay. Do you know if he was being followed in the orthopedic clinic?

MR. ZELLERS: Objection,

A. At that time I didn't know who he was following with. I was just called by Dr. Meyer.

Q. Okay. Well, you have in your note "has been caring," this is at the beginning, third line, "has been caring for --" I really can't read your writing,

A. He has been caring for this wound with dressing changes.
Q. All right. Well, it doesn't say "he," that was my question. When it says has been caring, who does that refer to?
A. The patient.
Q. How do you know that?
A, He told me that.
Q. Okay. Well, do you remember that or is it in your note?
A. I'm reading it from my note.
Q. You're reading what from your note?
A. That he had been caring for his wound with dressing changes.
Q. Well, your note doesn't say "he"?
A. Well, that's what I meant.
Q. Okay. My question is, is this the way you interpret your note or do you have a recollection that he was the one that was caring for his wound that way?
A. I asked him in the clinic what he had done for this wound and he told me that he was caring for it with dressing changes only.
Q. This is from your recollection?
A. That's correct.

Q. Okay. What does it mean when the Gram stain shows polys?
A. That means white blood cells are seen.
Q. Okay. What significance does that have?
A. It's a sign of inflammation.
Q. Is it a sign of infection?
A. That can be. But it's also seen in other inflammatory disorders.
Q. Were those the Gram stains that you did?
A. Yes,
Q. Okay. What does erythem --
A. Erythema.
Q. -- erythema mean?
A. It means redness.
Q. Okay. What does that tell you if there is no erythema?
A. Usually it's associated with cellulitis.
Q. What's cellulitis?
A. It's an inflammation of the soft tissues.
Q. Okay. So there was no inflammation of the soft tissues then?
A. That's what I wrote.
Q. Okay.. What is, I'm probably going to mispronounce this word, furuncle?
A. It's like a large boil.

Q. Okay. And what does that tell you, if there is one there?

A, That there is a collection of white cells.

Q. And is that an indication of infection?

A. Yes.

Q. Okay. You told my at the beginning when we started talking about this note that you didn't have the lab results from the collection you took the day before, but you did have the results of the Gram stain?

A. Right,

Q. Okay. Because you did those?

A. I did them myself, right,

Q. Okay. And on the 14th then you made the diagnosis of probable septic prosthetic right knee, right?

A. That's correct.

Q. Okay. Did you make that -- did you come to that conclusion based on your own examination and testing that you did?

A, Yes,

Q. Okay, When is the next time you saw him?

A. My next note is on the 16th of November.

Q. Okay. Is that the next time you saw him then?

A, I don't know,

Q. Okay. Why don't you read that note out loud, if you would?

A. Infectious disease service. Complaint of nausea and diarrhea for 24 hours. Then I have the culture results noted. 11/13 culture from the right knee ulcer shows metazoan resistance to staph aureus. 11/13 nasal shows metazoan resistancy to staph aureus. And 11/13 knee aspirate shows no growth. Will discuss culture results with Dr. Tomford. Suggest discontinuing nafcillin, change to vancomycin and agree to sending stool for cytisine.

Q. Okay. Did you discuss the results with Dr. Tomford?

A. Yes.

Q. Is that reflected somewhere in the record? Did either one of you write a note about that discussion?

MR. ZELLERS: Other than what she's already read, she says she's going to do it.

MR. MELLINO: Yes, Okay.

A. I wrote nothing in addition to that line.

Q. Okay. Do you remember the discussion?

A. Yes, I do.

Q. Okay. Why don't you tell me what it was?

A. I gave him the culture results.
Q. Okay.
A. Told him what antibiotics he was on.
Q. Okay.
A. And then we discussed the likelihood of the knee joint itself being infected.
Q. And what did he feel the likelihood of the knee joint being infected was?
MR. ZELLERS: Objection.
A. He felt it was not infected,
Q. Okay. Did you agree with him?
A. Yes.
Q. And what were you basing that or what were the two of you basing that opinion on?
A. The culture results,
Q. Was it anything in particular?
A, It was a negative culture,
Q. The knee aspirate?
A. Yes.
Q. What antibiotics was he on on the, prior to your seeing him on the 16th?
A, He was initially started on nafcillin.
Q. Okay. That was the only antibiotic he was on?
A. That's correct.
Q. All right. When was the next time you saw him?

A. My next note is November 17th.
Q. Okay. Before we go to that note, these cultures you discussed with Dr. Tomford, were those the ones you took in the orthopedic clinic?
A. That's correct,
Q. Did you get those back on the 16th?
A. That's when I documented it. I don't remember exactly when I received the results,
Q. Okay. Your note on the 17th, why don't. you read that note?
A, Infectious disease service. Right knee examined, Decreased erythema, though increased warmth and effusion remain. Culture from superficial. wound repeated today. Suspect that this will still show metazoan resistance to staph aureus. Recommended continued vancomycin, 500 milligrams IV every six hours, monitoring renal function closely. Check vancomycin levels and continue local wound care.
Q. Okay. So on the 17th you repeated the culture for the wound?
A. That's correct.
Q. Okay. Why didn't you repeat, it for the knee?
A. We didn't feel it was necessary to reaspirate the knee.

a. Who is we?
A. My attending and I.
Q. Dr. **Tomford?**
A. That's right.
Q. Why not?
A, We did not feel it was infected,
Q. Okay.. Even assuming it wasn't infected on the 13th, would it have been possible for it to be infected on the 17th?
MR. ZELLERS: Objection.
A. We didn't feel the wound was infected or the knee was infected.
Q. I understand that in the answer you gave to me before.
My question now is would it have been possible for it to have been infected?
MR. ZELLERS: Objection. Based upon the record she's got in front of her, is that right?
MR. MELLINO: No, Just in general, is that a possibility?
MR. ZELLERS: Objection. I mean, his wound was infected, right?
A. His skin wound was infected, yes.
Q. Right. And that was above the knee?

A, Yes.
Q. Could it have been possible for that infection to go into his knee prosthesis?
MR. ZELLERS: Objection.
A. It would be very unlikely.
Q. But it was possible?
MR. ZELLERS: Objection.
MR. SEIBEL: Just like it's possible you may have your knee infected right now, Chris, based upon what she knows about you.
MR. MELLINO: Are you testifying for her?
MR. SEIBEL: No. No,
MR. MELLINO: Good.
MR. SEIBEL: Just commenting on the sillness of your questions.
MR. MELLINO: I don't think that's one of your functions as an attorney.
MR. SEIBEL: Well, I have to stay awake.
MR. MELLINO: That's not one of my jobs. I'm going to ask her questions and she answers. If you have an objection --
MR. SEIBEL: I think she did

answer.

MR. ZELLERS: She did say it would be very unlikely.

MR. MEELINO: Right.

MR. ZELLERS: Is there anymore you could add?

Q. It would be possible though, wouldn't it, doctor?

MR. ZELLERS: Objection,

A. Being the man was on vancomycin which adequately covered the bacteria isolated from his superficial wound it's very unlikely that the knee joint would become infected at that particular organism.

Q. Well, was that a, something that you and Dr. Tomford were concerned about at the time?

MR. ZELLERS: Objection.

A. On the 17th?

Q. Yes.

A, We were concerned about it when we first saw the case.

Q. Which was on the 13th, you mean?

A. We saw the case together on the 14th.

Q. Okay. Well, on the 14th I take it you were concerned about the knee being infected?

A. Correct.
Q. Okay. I guess my question, maybe I didn't ask it right, were you concerned on the 17th about the possibility of the infection from the wound spreading into the knee joint?
MR. ZELLERS: Objection.
A. No.
Q. All right, Your recommendation on the 17th was continued vancomycin at 500 -- what is that, IV?
A. Yes.
Q. Every six hours?
A. Correct.
Q. At that time did you have -- how are antibiotics ordered? Are they ordered for a number of days?
A. This particular drug had to be approved by the infectious disease service and it had to be reordered periodically. I don't remember how often.
Q. Okay. How long do you usually give it for?
MR. ZELLERS: Objection.
A. It depends on what it's being used for.
Q. How long is it usually given for in a patient with a superficial wound infection?

A. It depends on the clinical response of the infection. You can't set forth a time course for antibiotic duration at the initiation of therapy.

Q. Is there a minimum amount of time it should be given?

MR. ZELLERS: Objection.

A. No.

Q. Okay. So you could give it for one or two days and if he responds clinically you can discontinue it?

MR. ZELLERS: Objection.

A. This particular drug or any drug?

Q. Yes, Vancomycin.

A, I wouldn't give it for one or two days.

Q. Okay. Well, is there a minimum amount of time that you would give vancomycin?

A. In what particular situation?

Q. In Mr. Cates' situation,

A. We gave him the drug so long as we felt it was necessary.

Q. Well, if you're treating a superficial wound infection, is there a minimum amount of time that you would give vancomycin?

A, I don't know how to answer that question.

Q. Okay. Well, you said before you wouldn't give it for one or two days and stop it, isn't that true?
A. In this case, no, I wouldn't.
Q. Okay. Would you give it for five days and stop it?
MR. **ZELLERS**: Objection. You're talking now in general, not this case?
MR. MELLINO: I'm talking in general, but for a superficial wound infection.
A. Again, it depends on how the patient clinically responds to the antibiotic.
Q. Okay. *So* there might be some cases where a person has a superficial wound infection and you would give five days of vancomycin treatment and then stop it if he responded clinically?
MR. **ZELLERS**: Objection.
Q. If the infection responded clinically?
A. That's possible.
Q. Okay. Is there a minimum amount of time that you would give vancomycin for an infected knee prosthesis?
A. If a prosthetic joint was infected antibiotics alone are not going to eradicate the infection,
Q. Okay. How would you eradicate the infection?

A. By removing the prosthesis.
Q. After removing the prosthesis, how long would you continue or how long would you give vancomycin?
MR. ZELLERS: Objection,
A. For a period of weeks.
Q. Okay. How many weeks?
MR. **ZELLERS**: If you can say. Objection.
A. I'm not sure.
Q. Okay. When is the next time you saw Mr. Cates?
A. My next note is on the 20th.
Q. Okay. Once again you don't know if this is the next time you saw him, but this is the next time you recorded anything in the chart?
A, That's correct.
Q. Could you read that note into the record?
A. Infectious disease. Would not make any changes in the vancomycin dose at this time. His creatinine was 0.8, and I noted we were following daily,
Q. Okay. Did you have the results from the repeat culture when you saw him on the 20th?
A. **I** didn't document it **at** that time,
Q. And I take it you don't remember if you did or

you didn't?
A. At that particular time I don't remember.
Q. Okay. Would you be able to tell by looking at the lab sheets?
A. Yes. It says no growth in three days,
Q. Okay. Can you tell though by the lab sheet when you got those results?
A. No, I can't,
Q. Okay. The time that's on the sheet, was that the time that the lab gets them or the time that they're reported or what does that time mean?
A. This says that the lab logged in the specimens at 3:27 in the afternoon on November 17th.
Q. Okay. There is no record that tells when these results are reported?
A. Well, it must have been three days later, It says no growth in three days,
Q. Okay.

MR. SEIBEL: Just for the record, that's Specimen 13561? Am I looking at the right thing?

THE WITNESS: Yes.

MR. SEIBEL: Okay.

Q. When is the next time you saw Mr. Cates?
A. My next note is on November 29th.

Q. Okay, Read that note into the record.
A. November 29th. Infectious disease, Day No. 14 of vancomycin. The knee looks very good without erythema or drainage. Plan to discontinue vancomycin after today. Creatinine 1.0.
Q. Okay. Once again you haven't documented any lab results in that note?
A. Uh-huh.
Q. Do you know if you had the lab results of the repeat culture at that time?
A. I didn't document it, but I'm sure 1 knew it.
Q. Okay, And on what facts did you base your decision to discontinue vancomycin?
A. The appearance of the superficial right knee wound.
Q. Was it your decision?
A. It was a joint decision with my attending.
Q. Okay. Did he see the wound?
A. I don't recall on which days he saw the wound.
Q. Okay, *So* you don't know if he saw it on November 29th or not?
A. No, I don't,
Q. Did Dr. Matejczyk have any input into discontinuing the vancomycin?
A. 1 don't know that,

Q. Well, did you talk to her about it?
A. I did not talk to her.
Q. Okay. You don't know if Tomford talked to her or not?
A. I don't know that.
Q. Okay. Do you have any other notes in here from this November admission?
A. No, I don't,
Q. Okay. Did you ever see the patient after November 29th?
A. During this admission?
Q. No. After this admission,
A. I saw him once.
Q. When?
A. I was teaching history and physicals, I asked him if he would mind having a medical student talk with him.
Q. When was this?
A. I don't recall the month. I believe it was in the spring.
Q. Of '88?
A. Of '88.
Q. Okay. I want to go back to some of your earlier notes for a minute. Your first note on the 14th, it says that there is obvious purulent

drainage?
A. Uh-huh.
Q. What does that indicate to you?
A. That there is an area of inflammation.
Q. Okay. And what does an area of inflammation tell you?
A. That that area is infected,
Q. Okay. What about on the line above that, it says, "right knee found to have appreciable --" what is that word?
A. Effusion.
Q. Okay. What's that mean?
A. That's fluid within the joint.
Q. What does that tell you?
A. That there is inflammation.
Q. Does that tell you there is an area of infection?
A. No.
Q. Okay. Why would there be fluid in the joint?
MR. ZELLERS: Objection.
A, You can develop joint effusion from noninfectious processes.
Q. Okay. Can you develop it from infectious processes?
MR. ZELLERS: Objection.

A. It's possible.
Q. Okay. Am I correct that the only cultures you did were the ones on the 13th in the orthopedic clinic and. the repeat culture of the wound on the -- was that on the 17th?
A. That's correct.
Q. Okay. How does it work when you're on the clinical service as far as when you're called to consult on a patient? Do you continue to follow the patient? Do you only see the patient if you're asked? How does that work?
A. This is after the initial evaluation?
Q. Yes.
A. We follow them until we feel that they no longer need infectious disease advice.
Q. Did you stop seeing this patient because you felt he no longer needed infectious disease advice or was it because he was being discharged from the hospital?
A. I felt he no longer needed infectious disease advice.
Q. Okay. On your note of the 14th also, we talked about this before, I forgot how you pronounce that word again, ery --
A. Erythema.

Q. Erythema. Okay. You told me that -- what did you say that was again?
A. Erythema?
Q. Yes. What was it?
A. It's redness.
Q. Okay. And what does it mean if there is redness?
A. That there is probably an associated cellulitis,
Q. And what does it mean if there is cellulitis?
MR. ZELLERS: Objection.
A. That there is soft tissue inflammation.
Q. Okay. And what's the significance of soft tissue inflammation?
MR. ZELLERS: Objection.
Q. Does that give you any indication of whether there is infection or not?
A. It's possible.
Q. Okay. The reason I asked that was because a later note, we were going through them, you had on there, you have in this note that there is no erythema and the later note you say there is decreased erythema, Do you remember that note?
A. Yes, I do.
Q. Okay. Isn't that inconsistent?
MR. ZELLERS: Objection.

A, I'm not really sure by reading my note what area I was trying to describe.
Q. Which note are you talking about now?
A. My initial note.
Q. Okay. So -- go ahead. What were you going to say? Was there erythema on the 14th?
A. I have no on my chart,
Q. Okay. What would it mean if there was no erythema on the 14th -- I'm sorry. Do you remember what note it was that you had decreased erythema, what day that was? What day was it?
A. November 17th. I wrote decreased erythema, though warmth and effusion remain.
Q. Okay. And on the 14th you wrote no erythema. What's the next word?
A. Or warmth noted,
Q. Okay. What would it mean if erythema and warmth developed between the 14th and the 17th?
MR. ZELLERS: Objection.
A. I'm not sure from reading my note whether I was describing the ulcer over the knee or the appearance of the knee itself.
Q. What difference would it make?
A. Et would make a big difference. I'm either describing the superficial ulcer or the knee

itself.

Q. Well, what would be the significance of erythema and warmth developing between the 14th and the 17th if you were describing the knee?

MR. ZELLERS: Objection.

A. It would mean there is still inflammation present.

Q. Well, I thought you said there was no inflammation on the 14th? No cellulitis?

A. Well, there was an ulcer over the knee,

Q. Okay.

A. An open ulcer draining pus, That's inflammation.

Q. Well, I thought we were -- I asked you if this was describing the knee, you were differentiating between describing the knee and describing the wound.

A. Right.

Q. Okay.

A. Right.

Q. When you say ulcer are you talking about the wound?

A, And I can't tell from my notes, it's very difficult to discriminate between the two.

Q. Right. I understand that.

A. But from recollection.
Q. I just wanted to make sure we're talking about the same thing. When you talk about the ulcer, you're talking about the wound?
A. That's correct,
Q. My question now is let's assume that your two notes are talking, describing the knee rather than the wound, okay, your November 14th note and your November 17th note,
A. Okay.
Q. Okay. What would be the significance of there being no erythema, warmth or cellulitis on the 14th and having those findings on the 17th?
MR. ZELLERS: Objection.
A. I think my original note did not give an accurate description of the man's knee at the time of the admission.
Q. Well, would erythema, warmth and cellulitis be signs of infection?
MR. ZELLERS: Objection,
A. Yes.
Q. Okay. So if they weren't present on the 14th and they were present on the 17th, that could tell us that there was infection that developed in that time period?

MR. ZELLERS: Objection,

A. This man's knee did nothing but improve during this hospital course.

Q. Well, my question really wasn't directed toward this patient. My question is you have findings of no erythema, warmth or cellulitis on November 14th and three days later you have those findings. Would that be an indication to you as an infectious disease doctor that an infection has developed in that interim period?

MR. ZELLERS: Objection.

A. It's possible,

Q. Okay. Did you have -- did you render anymore treatment to **this** patient after November 29th?

A. No.

Q. Okay. Did you receive any phone calls from Dr. Matejczyk regarding this patient?

MR. ZELLERS: After November 29th?

MR. MELLINO: Yes.

A. I do not recall any phone calls from Dr. Matejczyk.

Q. Okay. Are you aware of Dr. Matejczyk's note regarding a telephone conversation with infectious disease on December 30th, 1987?

MR. ZELLERS: Objection.

A. I read her deposition.
Q. Okay. Well, did you read the note?
A. No.
Q. Okay. And if you read her deposition you know that she feels that she talked to you on the 30th?
MR. ZELLERS: Objection.
Q. Would that be --
A. I don't recall any conversation with Dr. Matejczyk,
Q. Okay, Do you need to answer that page?
A. I will get it later.
Q. Okay. But you told me you read her deposition?
A. Yes.
Q. Okay. And did you read there when she said that she thought she talked to the infectious disease person that followed Mr. Cates in the hospital?
A. I read her deposition, yes.
Q. Do you remember reading that part?
A. Yes, I do.
Q. Okay. But you think she's wrong about that?
MR. ZELLERS: Objection.
MR. SEIBEL: Objection.
A. I don't recall any conversation with her.
Q. Okay. If she wanted infectious disease advice

on the 30th, would you have been the one that she would call on this patient?

MR. ZELLERS: In December?

MR. MELLINO: Right.

A. I was not on service at that time.

Q. I understand that. But would you have been the one that she called?

MR. ZELLERS: Objection.

A. She is able to attempt to contact any member of the infectious disease department.

Q. Okay. Is there -- well, are there any policies and procedure at the hospital about who an attending would call in this situation if they wanted a consult?

A. Not really.

Q. You were the one that followed him in the hospital?

A. Right.

Q. And Dr. Blinkhorn apparently had no contact with him prior to December 30th --

MR. ZELLERS: Objection.

Q. -- 1987?

MR. ZELLERS: Objection.

A. I don't know that.

Q. Okay. Well, let me just ask you to assume that

he didn't, Okay?

A. Okay.

Q. You were the one that followed Mr. Cates in the hospital?

A. Right.

Q. Okay. Would there be any policy and procedure, either formal or informal, or rules of the hospital that would dictate who Dr. Matejczyk should have called as between you or Blinkhorn?

A. In general when a person wants an **ID** opinion they would call the infectious disease fellow on service.

Q. Okay. That would be the normal policy is what you're telling me?

A. That's the normal policies.

Q. I take it that's just an informal policy, there is nothing written down?

A. That's correct.

Q. Okay. Do you remember what you were doing in December of '87?

A. Part of the month, yes,

Q. Okay. What?

A. I was on vacation until mid-December,

Q. Okay. And then what were you doing the second half of December? You were on your research

parts of it?
A. I was in the research lab.
Q. Where is the research lab?
A. On the second floor of the research building.
Q. Which is where?
A. It is at Metro.
Q. Okay, And when you're on the research -- what did you call it, research lab?
A. Uh-huh.
Q. Sou come in at a certain time and leave at a certain time?
A. The hours are much more liberal.
Q. Okay, Do you wear a beeper during that time?
A. I can't remember if I had a beeper at that time.
Q. Okay. How about in general when you were on research, would you wear a beeper?
A. You see, they obtained several more beepers because they took on more ID fellows, but at that particular time, and I can't swear to this, I don't think I had a beeper.
Q. Okay.
A. Because it was just Rick and I and we traded the beeper back and forth.
Q. So if she wanted to call you, she would have had

to call the research lab?
A. That's correct.
Q. And you may have been there, you may not have been there?
MR. ZELLERS: Objection.
Q. I mean you weren't necessarily there from like 7:30 to 6:00 every day?
A. That's correct. I had no defined hours.
Q. Okay. You said that you hadn't read this note before?
MR. ZELLERS: She still hasn't.
MR. MELLINO: Okay. Why don't you take a look at it? Can you read that?
A. Yes.
Q. Okay, Read it out loud for the record?
A. 12/30/87. No treatment, I suppose, no antibiotics per ID of wound --
Q. If?
A. ID if wound fine, Path report, Rheumatoid nodules exclamation point. Wound check excellent.
Q. What's the date?
A. 12/30.
Q. Okay. Is that advice that you would give out over the phone?

MR. **ZELLERS:** Objection. If you can, answer,

A. Not usually,

Q. Okay. Why not?

MR. **ZELLERS:** Objection.

A. In general **I** like to see whatever people are asking me advice on.

Q. Well, would that be the lab results or would you want to see the patient yourself?

A. I would want to see the patient.

Q. All right. Would you also want to see the lab results?

A. Certainly.

Q. Okay. Does reading this note assist you at all in determining whether or not Dr. Matejczyk called you?

MR. **ZELLERS:** Objection.

A. No.

Q. Okay. **I** mean, does the fact that this is, isn't something, advice that you would normally give, would that tell you that she didn't call you?

A. No,

Q. Okay. Would it be appropriate not to give antibiotic therapy based on the appearance of the wound alone?

MR. ZELLERS: Objection,
A. I'm sorry? Could you say that again?
Q. Would it be appropriate to not give antibiotic therapy based on the appearance of the wound alone? This is in general,
A. It's possible.
Q. Okay. Would it be appropriate to not give antibiotic therapy based upon the appearance of the wound if there was cultures done eight days earlier that showed growth of staph aureus?
MR. ZELLERS: Objection.
A, It's possible,
Q. It's possible that that would be appropriate?
A. Uh-huh.
Q. Okay. Well, under what circumstances would that be appropriate?
A. If the appearance of the wound was such that it did not look infected, I would not treat it with an antibiotic.
Q. And is an orthopedic surgeon equally as qualified as an infectious disease doctor to look at a wound and determine whether or not it is infected?
MR. SEIBEL: Objection,
A. It's possible,

Q. Well, is Dr. Matejczyk equally as qualified as you or Dr. Blinkhorn or -- well, start with those two, you and Dr. Blinkhorn to look at a wound and determine if it is infected?

MR. ZELLERS: Objection.

MR. SEIBEL: Objection.

A. I don't know her educational background.

Q. Well, have you worked with her?

A. On several occasions,

Q. Okay, Based on your working with her, would you say that she's more or less qualified to look at a wound and determine whether or not it's infected?

A. Yes, I think she's qualified.

Q. The question was was she more or less qualified than you or Dr. Blinkhorn to determine that?

MR. ZELLERS: Objection.

A. I can't answer that,

Q. Okay. Would you be able to determine if the knee prosthesis was infected by looking at the wound alone?

A. No.

Q. Okay. And I take it if the knee was infected that it would not be within the standard of care to not give antibiotic therapy based on the

wound appearance?

MR. ZELLERS: Objection,

MR. SEIBEL: I didn't hear that question. Would you read it back, Ralph?

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(Thereupon, the requested portion of the record was read by the Notary,)

MR. SEIBEL: Objection. What do you. mean when you say the knee was infected, Chris? That's a little vague.

MR. MELLINO: I mean the knee prosthesis.

A. This is in general, this doesn't relate to this specific case?

MR. ZELLERS: Is that your question?

MR. MELLINO: It may or may not be.

MR. ZELLERS: Well, she's trying to answer it.

Q. Yes.

A. If a prosthetic joint was infected --

Q. Right.

A, -- regardless of what a superficial wound looks like, it would be inappropriate not to

administer antibiotics.

Q. Okay. I take it based on your previous answers that you weren't involved at all with the outpatient surgery that Mr. Cates had on December 22?

A. No, I wasn't.

Q. Were you made aware of any of the lab cultures from that procedure?

A. No, I wasn't.

Q. Okay. What would be the relationship between you and Dr. Tomford as far as your consultation with this patient? Would you basically just report your findings and clinical observations to him and he would make the decision as to treatment or would you recommend treatment plans and he would approve them or how would that work?

A. We present the case.

Q. Well, who is we?

A. I present the case,

Q. Okay.

A. Give him the clinical findings, tell him what I had recommended and then as a group, the entire ID service for that month, goes up with him to see the patient, to examine the patient, and he

decides whether or not he agrees with my clinical assessment and my recommendations. And if any modifications need to be made, they're made at that time.

Q. Okay. Who was the ID group in November of '87?

A. I can't recall. Residents rotate through the service on a monthly basis,

Q. Okay. Well, I didn't mean specific names, but it would be the attending?

A. The attending, the ID fellow, residents, medical students.

Q. Okay. And they would all be present when you presented the case?

A. That's correct.

Q. Do you know if the orthopedic service made a diagnosis independent of yours as far as the knee was concerned?

A. The orthopedic service or the orthopedic resident?

Q. Well, isn't the orthopedic resident on the orthopedic service?

A. He's on the service, but I mean the service would be the group of residents and the chief who make their rounds every day.

Q. All right. Well, let me ask a more specific

question, The discharge summary contains an admitting diagnosis of infected right total knee arthroplasty. Okay? You can look at it if you want, Whose diagnosis is that?

A. That's what the resident thought at the time of admission.

Q. Okay. That's also what you thought?

A. I felt it was a possibility, yes.

Q. Well, you felt it was a probability?

A. A probability.

Q. Okay.

A. I stand corrected.

Q. Okay. Can I see the original chart for a minute? Okay, This discharge order, okay, it has Number 1, principal discharge diagnosis, infected total knee arthroplasty?

A. Yes.

Q. Whose diagnosis is that?

MR. ZELLERS: Objection.

A. In general they have nurses go around and take items from the chart and complete this and then the attending physician is supposed to review what's listed here and decide whether or not they agree with that.

Q. Okay. Do you know where they would get the

diagnosis from?

A. The nurses?

Q. Yes.

A. I'm speculating from reading the chart.

MR. ZELLERS: So you don't know.

A. I don't know. I'm sorry.

Q. Do you know who lined that out?

A. No, I don't know.

Q. Do you know whose writing this is, superficial wound breakdown?

A. I don't know whose writing that is.

Q. It's not yours?

A. It's not mine.

Q. And you didn't line that out?

A. No. That's not my writing.

Q. Okay. Did you write any other diagnosis in the chart other than what you wrote on the 14th, the probable infected knee prosthesis?

MR. ZELLERS: Objection.

A. No, I didn't,

Q. Okay.

MR. MELLINO: I don't have any other questions of the doctor.

MR. SEIBEL: Maybe just one or two.

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CROSS-EXAMINATION OF ROBERTA L. PERSAUD, M.D.

BY MR. SEEBEL:

Q. Doctor, as far as you're concerned in this hospitalization from 11/13/87 to 12/2/87 did Mr. Cates have an infected right knee prosthesis?

A. No, he did not.

Q. And for the infection that he did have, was that infection being managed by the infectious disease service here at the hospital?

A. Yes, it was.

MR. SEIBEL: I don't have anything further.

MR. ZELLERS: Okay. We will not waive signature, You're done.

_____

ROBERTA L. PERSAUD, M.D.

CERTIFICATE

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

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

IN WITNESS WHEREOF, 1 have hereunto set my hand and seal of office, at Cleveland, Ohio, this _____ day of _____, A.D. 19 ____

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